2–12–97
Vol. 62 No. 29
Pages 6443–6702

federal register

Wednesday
February 12, 1997

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Title 3—

The President

Proclamation 6972 of February 8, 1997

National Child Passenger Safety Week, 1997

By the President of the United States of America

A Proclamation

Children are our Nation's most precious gift, and one of our most profound responsibilities is protecting their health, well-being, and safety. Nowhere is this duty more critical than on America's streets and highways.

Automobile accidents are the leading cause of death for America's young people. It is tragic that a high proportion of these deaths could be prevented, but are not. For example, we know that seat belts save lives—last year they prevented the deaths of almost 10,000 Americans—and, yet, many still fail to wear them.

I encourage all Americans to take a few simple steps to ensure that their families travel safely. The most important rule is also the simplest: The safest place for children is the back seat. Also, parents and guardians must always make sure that children are secured, either in a locked seat belt or in an appropriate child safety seat.

I commend the Department of Transportation for its ''Patterns for Life'' program, begun in 1996 to focus attention on correct child safety seat use and the proper positioning of children and their safety seats away from air bags. Working through national safety organizations and State public safety and highway offices, this program offers a network of qualified child passenger safety trainers to provide communities with the valuable resources they need to reduce motor vehicle-related deaths and injuries.

Laws exist in every State and the District of Columbia that require proper restraints for younger children. However, 40 percent of our children under five are still not properly restrained. We must do better to enforce the existing laws and protect our precious cargo.

The steps we take now will make our roads safer and our children more secure. My Administration is striving to increase the use of seat belts throughout the Nation. We are also working with automobile makers, car dealers, private organizations, and insurance companies to teach parents how to install child safety seats properly, and new technologies will eventually make air bags safer for children.

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 February 9 through February 15, 1997, as National Child Passenger Safety Week. I urge all Americans to help reduce injuries and the tragic loss of life on our highways by buckling up every child in an approved restraint, in the vehicle's back seat. And let us all help spread these important child safety messages throughout our communities. By doing so, we can save many young lives.

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

William J. Clinton

[FR Doc. 97–3677
Filed 2–11–97; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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NATIONAL LABOR RELATIONS BOARD

5 CFR Chapter LXI

29 CFR Part 100

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the National Labor Relations Board

AGENCY: National Labor Relations Board (NLRB).

ACTION: Interim rule with request for comments.

SUMMARY: The National Labor Relations Board, with the concurrence of the Office of Government Ethics (OGE), is issuing an interim regulation for employees of the NLRB that supplements the executive branch-wide Standards of Ethical Conduct (Standards) issued by OGE. The supplemental regulation requires NLRB employees to obtain approval before engaging in outside employment, and requires employees to provide written notification of disqualification. The NLRB is also repealing provisions in its old standards of conduct regulations that required prior approval to engage in outside employment and prohibited the private practice of law, both of which have been superseded by the Standards.

DATES: This interim rule is effective on February 12, 1997. Comments must be received on or before April 14, 1997.

ADDRESSES: Send comments to: Gloria Joseph, Director of Administration (Designated Agency Ethics Official), National Labor Relations Board, Suite 7100, 1099 14th Street, NW., Washington, DC 20570–0001.

FOR FURTHER INFORMATION CONTACT: Gloria Joseph, Director of Administration (Designated Agency Ethics Official); or Kym Heinzmann, Program Analyst, both at the National Labor Relations Board, Suite 7100, 1099 14th Street, NW., Washington, DC 20570–0001; telephone 202–273–3890.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). See 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52583, and 60 FR 51667, and amended at 61 FR 42965–42970 (as corrected at 61 FR 48733) and 61 FR 50689–50691, with additional grace period extensions at 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952. The Standards as codified at 5 CFR part 2635 and effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

On July 21, 1994, the NLRB issued a final rule which removed all of the provisions of its Administrative Regulations at 29 CFR part 100 that had been superseded by 5 CFR part 2635 or by OGE's executive branch financial disclosure regulations at 5 CFR part 2634. See 59 FR 37157–37159, as corrected at 60 FR 22269–22270. Along with portions not related to 5 CFR parts 2634 and 2635, the NLRB preserved those provisions of its Administrative Regulations prohibiting the private practice of law and requiring prior approval to engage in outside employment which were temporarily preserved, respectively, by the notes following 5 CFR 2635.403(a) and 2635.803 (as extended by 59 FR 4779–4780, and subsequently by 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952).

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their ethics programs. The NLRB, with OGE's concurrence, has determined that the following interim supplemental regulations, to be codified in part 7101 of new chapter LXI of 5 CFR, are necessary to the successful implementation of NLRB's ethics program. By this rulemaking, the NLRB is also repealing the provisions of subpart A of its Administrative Regulations at 29 CFR part 100 that required prior approval to engage in outside employment and prohibited the private practice of law, the grace period extensions for which have expired.

II. Analysis of the Interim Regulations

Section 7101.101 General

Section 7101.101(a) of 5 CFR explains that the supplemental regulations apply to employees of the National Labor Relations Board, including Board members, and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. This paragraph further explains that Board Members and other employees are subject, in addition, to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

The head of each executive branch agency is required by 5 CFR 2638.202(b) to appoint a designated agency ethics official (DAEO) and an alternate DAEO to carry out the duties specified in 5 CFR 2638.203. Section 7101.101(b) explains that the Director of Administration is the NLRB's DAEO and the Deputy Director of Administration is the alternate DAEO. Section 7101.101(c) explains that, except as provided in § 7101.102 regarding prior approval of outside employment, the DAEO is the NLRB's agency designee for purposes of making determinations, granting approvals, and taking other actions required of agency designees under 5 CFR part 2635 and the supplemental regulations.

Section 7101.102 Prior Approval for Outside Employment

The Standards, at 5 CFR 2635.803, specifically recognize that individual agencies may find it necessary or desirable to supplement the executive branch-wide regulations with a requirement for their employees to obtain approval before engaging in outside employment or activities. Under 29 CFR 100.102, now repealed, the NLRB required its employees to obtain approval prior to engaging in any type of outside employment, including certain occasional and private legal activities that were permitted under an exception to that regulation's prohibition against the outside practice of law. This approval requirement helped to ensure that potential ethical problems were resolved before employees undertook outside employment that could involve a

violation of applicable statutes or standards of conduct.

In accordance with 5 CFR 2635.803, the NLRB has determined that it is desirable for the purpose of administering its ethics program to require employees to obtain approval before engaging in outside employment, including the practice of law, regardless of whether that employment is undertaken for compensation. Moreover, the NLRB has decided that the officials authorized to grant approval under its old prior approval regulation should continue to have such authority under its new rules. Thus, § 7101.102(a)(1) requires written approval from the Board or General Counsel (depending on which independent side of the NLRB the employee is employed) to engage in the private practice of law, and § 7101.102(a)(2) requires written approval from the employee's Chief Counsel, Regional Director, Branch Chief, or the equivalent for outside employment not involving the private practice of law.

Section 7101.102(b) sets forth the procedures for requesting approval to engage in the private practice of law or other outside employment. This paragraph requires that requests for approval be submitted in writing in advance of undertaking the employment, and contain pertinent information regarding the anticipated employment, including the name of the employer, the nature of the legal activity or other work to be performed, the estimated duration of the employment and the amount of compensation to be received.

Section 7101.102(c) sets forth the standard to be applied by the agency designee in acting on requests for prior approval of outside employment. Under that standard, approval shall be granted unless the agency designee determines that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635. Section 7101.102(c) provides further that, before granting approval, the approving official may consult with the designated agency ethics official to ensure that the request for approval of outside employment meets the standard for approval.

In § 7101.102(d), ''employment'' is broadly defined for purposes of this section to cover any form of non-Federal employment or business relationship involving the provision of personal services, including writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of nonprofit charitable, religious, professional, social, fraternal and similar organizations, unless such activities involve the provision of professional services or advice and are for compensation other than the reimbursement of expenses.

Section 7101.103 Standard for Accomplishing Disqualification; Disqualifying Financial Interests

Under 5 CFR 2635.402(c), it is the employee's obligation to disqualify from participation in matters affecting his own financial interests or those of the persons whose interests are imputed to him under 18 U.S.C. 208(a). Section 2635.402(c) generally permits disqualifying to be accomplished simply by not participating in the matter, although § 2635.402(c)(1) provides that an employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment.

Under old 29 CFR 100.116(c), now repealed, NLRB employees were required to complete and submit Form NLRB–4573, ''Request for Financial Interest Determination,'' when they were assigned a case, proceeding, or other matter in which they had a financial interest. Based upon the information provided, a determination was made as to whether the employee could participate in the case or would have to be disqualified.

The NLRB has determined that it is necessary for the efficient management of the agency's relatively small workforce, and to the success of its ethics program, to require employees to provide written notice of their disqualification under 5 CFR 2635.401(c). Therefore, § 7101.103 requires such written notice. This requirement is similar to the NLRB's old requirement for employees to seek a financial interest determination when they were assigned a case, proceeding, or other matter in which they had a financial interest. However, the new provision does not require the written notice to be provided on a particular form.

The NLRB recognizes the problems noted by OGE in adopting a requirement for written notice of disqualification on an executive branch-wide basis. See 57 FR 35024. It is not the NLRB's purpose to impose an overly technical requirement that would result in disciplining an employee for failure to provide written notice by some arbitrary deadline. Thus, the notice requirement contained in § 7101.103 is phrased to give an employee flexibility in determining precisely when he or she will give notice of disqualification from a matter to which he or she has been assigned. Notice is to be given when the employee determines that he or she will not participate in the matter. In no way does this notice requirement affect the employee's primary obligation not to participate in the matter.

III. Repeal of the NLRB's Old Administrative Regulations Regarding Employee Responsibilities and Conduct

Because the NLRB's regulations prohibiting the private practice of law and requiring prior approval for outside employment, at 29 CFR 100.102, were superseded upon expiration of the last grace period granted by OGE, the NLRB is removing that section in its entirety at this time. The NLRB is also revising 29 CFR 100.101, which now cross-references 5 CFR parts 735, 2634, and 2635, to provide an additional cross-reference to the new supplemental regulations at 5 CFR part 7101.

IV. Matters of Regulatory Procedure

Administrative Procedures Act

The NLRB has found good cause, pursuant to 5 U.S.C 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to these interim rules. It is important to a smooth transition from the NLRB's prior ethics rules to the new executive branch-wide Standards that these rulemaking actions take place as soon as possible. Furthermore, this rulemaking is related to NLRB organization, procedure, and practice. Nonetheless, this is an interim rulemaking, with provision for a 60 day public comment period. The NLRB will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence of OGE.

Executive Order 12866

In promulgating these regulations, the NLRB has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These regulations have not been reviewed by the Office of Management and Budget under the Executive order, as they deal with agency organization, management, and personnel matters, and not in any event, deemed ''significant'' thereunder.

Regulatory Flexibility Act

The NLRB has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that these regulations will not

have a significant economic impact on a substantial number of small entities because they affect only NLRB employees.

Paperwork Reduction Act

The NLRB has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these interim regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 7101

Conflict of interests, Government employees.

29 CFR Part 100

Employee responsibilities and conduct, Government employees.

Dated: January 24, 1997.

By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

Approved: January 29, 1997.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the National Labor Relations Board, with the concurrence of the Office of Government Ethics, is amending title 5 and Chapter I of subtitle B or title 29 of the Code of Federal Regulations as follows:

TITLE 5—[AMENDED]

1. A new chapter LXI, consisting of part 7101, is added to title 5 of the Code of Federal Regulations to read as follows:

CHAPTER LXI—NATIONAL LABOR RELATIONS BOARD

PART 7101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL LABOR RELATIONS BOARD

Sec.
7101.101 General.
7101.102 Prior approval for outside employment.
7101.103 Standard for accomplishing disqualification, disqualifying financial interests.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 29 U.S.C. 141, 156; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42457, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.402(c), 2635.803, and 2638.202(b).

§ 7101.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to Board members and other employees of the National Labor Relations Board (NLRB) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR 2635. Board Members and other employees are subject, in addition, to the executive branch financial disclosure regulations contained in 5 CFR part 2634.

(b) *Ethics program responsibilities*—(1) *Designated Agency Ethics Official.* The Director, Division of Administration, is designated under 5 CFR 2638.202(b) as the NLRB's Designated Agency Ethics Official with responsibilities that include:

(i) Acting as liaison with the Office of Government Ethics with regard to all aspects of the NLRB's ethics program;

(ii) Coordinating the NLRB's counseling and advisory service under 5 CFR 2635.107;

(iii) Collecting, reviewing, evaluating and, where applicable, making publicly available the public financial disclosure reports filed by NLRB officers and employees;

(iv) Upon request, advising NLRB officials responsible for reviewing the Confidential Financial Disclosure Reports filed by designated NLRB employees; and

(v) Coordinating and maintaining the NLRB's ethics education program.

(2) *Alternate Designated Agency Ethics Official.* The Deputy Director of Administration is designated under 5 CFR 2638.202(b) as the NLRB's Alternate Designated Agency Ethics Official.

(c) *Agency designees.* Except as provided in § 7101.102, the Designated Agency Ethics Official shall serve as the NLRB's designee for purposes of making the determinations, granting the approvals, and taking other actions under 5 CFR part 2635 and this part.

§ 7101.102 Prior approval for outside employment.

(a) *General Requirement.* Before engaging in compensated or uncompensated outside employment, an employee must obtain written approval:

(1) From the Board of General Counsel to engage in the private practice of law; or

(2) From the employee's Chief Counsel, Regional Director, Branch Chief, or the equivalent for outside employment not involving the practice of law.

(b) *Procedure for requesting approval* (1) The approval required by paragraph (a) of this section shall be requested in writing in advance of engaging in outside employment, including the outside practice of law.

(2) The request for approval to engage in the outside practice of law or in other outside employment shall be submitted to the appropriate official as set forth in paragraph (a) of this section, and shall set forth, at a minimum:

(i) The name of the employer;

(ii) The nature of the legal activity or other work to be performed;

(iii) The estimated duration; and

(iv) The amount of compensation to be received.

(3) Upon a significant change in the nature of scope of the outside employment or in the employee's official position, the employee shall submit a revised request for approval.

(c) *Standard for approval.* (1) Approval shall be granted unless the agency designee determines that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(2) The agency designee may consult with the Designated Agency Ethics Official to ensure that the request for outside employment meets the standard in paragraph (c)(1) of this section.

(d) *Definition of employment.* For purposes of this section, ''employment'' means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless such activities involve the provision of professional services or advice or are for compensation other than reimbursement of expenses.

§ 7101.103 Standard for accomplishing disqualification; disqualifying financial interest.

An NLRB employee who is required, in accordance with 5 CFR 2635.402(c), to disqualify himself from participation in a particular matter to which he has been assigned shall, notwithstanding the guidance in 5 CFR 2635.402(c) (1) and (2), provide written notice of disqualification to his or her supervisor upon determining that he or she will not participate in the matter.

TITLE 29—[AMENDED]

SUBTITLE B—REGULATIONS RELATING TO LABOR

CHAPTER I—NATIONAL LABOR RELATIONS BOARD

PART 100—ADMINISTRATIVE REGULATIONS

2. The authority citation for part 100 is revised to read as follows:

Authority: Sec. 6, National Labor Relations Act, as amended (29 U.S.C. 141, 156).

Subpart A is also issued under 5 U.S.C. 7301.

Subpart B is also issued under the Inspector General Act of 1978, as amended by the Inspector General Act Amendments of 1988, 5 U.S.C. app. 3; 42 U.S.C. 2000e–16(a).

Subpart D is also issued under 28 U.S.C. 2672; 28 CFR part 14.

Subpart E is also issued under 29 U.S.C. 794.

3. Subpart A is revised to read as follows:

Subpart A—Employee Responsibilities and Conduct

§ 100.101 Cross-reference to financial disclosure requirements and other conduct rules.

Employees of the National Labor Relations Board (NLRB) should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635; the NLRB's regulations at 5 CFR part 7101, which supplement the executive branch-wide standards; the employee responsibilities and conduct regulations at 5 CFR part 735; and the executive branch financial disclosure regulations at 5 CFR part 2634.

[FR Doc. 97–3376 Filed 2–11–97; 8:45 am]

BILLING CODE 7545–01–M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

RIN 3206–AH31

Funding of Administrative Law Judge Examination

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation to require agencies employing administrative law judges to reimburse OPM for the cost of developing and administering examinations for judge positions. The regulation implements OPM's authority to delegate examining authority for all competitive service positions except for administrative law judges, and to require employing agencies to reimburse OPM for the cost of administrative law judge examinations.

EFFECTIVE DATE: March 14, 1997.

FOR FURTHER INFORMATION CONTACT: Richard A. Whitford on 202–606–2525, TDD 202–606–0591, or FAX 202–606–1768.

SUPPLEMENTARY INFORMATION: On July 29, 1996, OPM issued an interim regulation at 61 FR 39267 to implement the new funding arrangement for administrative law judge examinations as required by the Treasury, Postal Service, and General Government Appropriations Act, 1996 (Pub. L. 104–52, November 19, 1995). This act amended 5 U.S.C. 1104 to require OPM to continue examining for administrative law judges and to require employing agencies to reimburse OPM for the cost of doing so.

OPM's interim regulation added a new paragraph (c) to 5 CFR 930.201 to require affected agencies to reimburse OPM annually for the cost of developing and administering administrative law judge examinations. Each employing agency's share of reimbursement will be based on its relative number of such judges as of March 31 of the preceding fiscal year. The regulation also provided that OPM would work with employing agencies to review the examination program for effectiveness and efficiency and identify needed improvements, consistent with statutory requirements. On this basis, OPM would compute and notify each agency of its share, along with a full accounting of costs.

We received two written comments, both from agencies employing administrative law judges. One agency questioned the basis for the fee, pointing out that the law does not specify any specific reimbursement method. This agency agreed with OPM's proposal to establish a working group of officials from OPM and affected agencies but suggested that this group determine how costs are to be allocated and have a continuing role in overseeing the operation of the examination.

OPM will continue consulting, as we have been, with the stakeholders in the administrative law judge program, including Chief Administrative Judges from agencies with the largest judge populations. For this fiscal year, however, OPM has not allocated any of its appropriated funds and has no other funding source to operate this examination. Therefore, we must bill affected agencies, as indicated in the interim regulation, based on their relative share of the administrative law judge workforce.

Another agency did not object to the fee or the reimbursement method but requested that OPM refer for its appointment consideration only those candidates who possess specialized experience related to its programs. Inasmuch as this action would require a substantive change to 5 CFR part 930 that is outside the scope of this rulemaking, OPM cannot act on the proposal at this time. We will, however, consider it in the future.

OPM is adopting without change the new paragraph (c) to § 930.201 contained in the interim regulation published on July 29, 1996.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it pertains only to Federal agencies.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 930

Administrative practice and procedure, Government employees, Motor vehicles.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is adopting its interim regulation at 5 CFR part 930 as published on July 29, 1996 (61 FR 39267) as final with the following change:

1. The part title is corrected to read as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

2. The authority citation for subpart B continues to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5372, 7521.

[FR Doc. 97–3423 Filed 2–11–97; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Chapter XVII

Policy Statement for Direct Final Rulemaking

AGENCY: Rural Utilities Service, USDA.

ACTION: Policy statement.

SUMMARY: The Rural Utilities Service (RUS) is implementing a new rulemaking procedure to expedite making noncontroversial changes to its regulations. Rules that RUS judges to be noncontroversial and unlikely to result in adverse comments will be published as ''direct final'' rules. ''Adverse comments'' are those comments that suggest a rule should not be adopted or suggest that a change should be made to the rule. Each direct final rule will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments is received within 30 days from the date the direct final rule is published in the Federal Register , the rule will be effective 45 days from the date the direct final rule is published in the Federal Register.

At the same time, RUS will publish a document in the proposed rules section of the same issue of the Federal Register proposing approval of and soliciting comments on the same action contained in the direct final rule. If adverse comments or notice of intent to file adverse comments are received by RUS, the direct final rule will be withdrawn prior to the effective date.

RUS will address the comments received in response to the direct final rule in a subsequent final rule. This new policy should expedite the promulgation of noncontroversial rules by reducing the time that would be required to develop, review, clear and publish separate proposed and final rules.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Room 4034–S, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522. Telephone: 202–720–0736. FAX: 202–720–4120. E-mail: fheppe@rus.usda.gov.

SUPPLEMENTARY INFORMATION: RUS are committed to improving the efficiency of its regulatory process. In pursuit of this goal, we plan to employ the rulemaking procedure known as ''direct final rulemaking'' to promulgate some RUS rules.

The Direct Final Rule Process

Rules that RUS judges to be noncontroversial and unlikely to result in adverse comments will be published in the Federal Register as direct final rules. At the same time, RUS will publish a document in the proposed rules section of the same issue of the Federal Register proposing approval of and soliciting comments on the same action contained in the direct final rule. Each direct final rule will advise the public that no adverse comments are anticipated, and that unless within 30 days, the direct final rule will be effective 45 days from the date the direct final rule is published in the Federal Register.

''Adverse Comments'' are comments that suggest that the rule should not be adopted, or that suggest that a change should be made to the rule. A comment expressing support for the rule as published will not be considered adverse. Further, a comment suggesting that requirements in the rule should, or should not, be employed by RUS in other programs or situations outside the scope of the direct final rule will not be considered adverse.

If RUS receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the publication of a direct final rule, a document withdrawing the direct final rule prior to its effective date, will be published in the Federal Register stating that adverse comments were received. RUS will address the comments received in response to the direct final rule in a subsequent final rule on the related proposed rule. RUS will not institute a second comment period on the action.

In accordance with rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 533), the direct final rulemaking procedure gives the public general notice of RUS's intent to adopt a new rule, and gives interested persons an opportunity to participate in the rulemaking process through submission of and consideration by RUS of comments. The major feature of the direct final rulemaking process is that if RUS receives no written adverse comments and no written notice of intent to submit adverse comments within the comment period specified in the RUS will publish a document in the Federal Register stating that no adverse comments were received regarding the direct final rule, and confirming that the direct final rule is effective on the date specified in the direct final rule.

Determining When To Use Direct Final Rulemaking

Not all RUS rules are good candidates for the direct final rulemaking. RUS intends to use the direct final rulemaking procedure only for rules that we consider to be non-controversial and unlikely to generate adverse comments. The decision whether to use the direct final rulemaking process for a particular action will be based on RUS experience with similar actions.

Dated: February 5, 1997.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 97–3373 Filed 2–11–97; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket No. 97–02]

RIN 1557–AB56

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–0957]

FEDERAL DEPOSIT INSURANCE CORPORATION

112 CFR Part 337

RIN 3064–AB90

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563

[Docket No. 96–114]

RIN 1550–AB02

Expanded Examination Cycle for Certain Small Insured Institutions

AGENCIES: Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision.

ACTION: Interim rule with request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit

Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are issuing this joint interim rule with request for comment to implement section 306 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), and section 2221 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). CDRI section 306 and EGRPRA section 2221 authorize the Agencies to increase the asset size of certain financial institutions that may be examined once in every 18-month period, rather than once in every 12-month period, from the current limit of $100 million to a revised limit of $250 million. This interim rule makes certain institutions that have $250 million or less in assets eligible for the 18-month examination schedule.

Furthermore, section 2214 of EGRPRA amends the International Banking Act of 1978 and requires that each Federal branch or agency, and each State branch or agency, of a foreign bank be subject to on-site examination by an appropriate Federal banking agency or State banking supervisor as frequently as would a national or a state bank, respectively, by the appropriate Federal banking agency. Certain issues are raised regarding the manner in which the criteria established by CDRI and EGRPRA for a national or state bank should be made applicable to U.S. branches and agencies of foreign banking organizations. The method(s) by which the criteria will be applied to such entities is currently being developed.

DATES: This interim rule is effective on February 12, 1997. Comments must be received by April 14, 1997.

ADDRESSES: Comments should be directed to:

OCC: Communications Division, Office of the Comptroller of the Currency, 250 E Street S.W., Washington, D.C. 20219, Attention: Docket No. 97–02. Comments will be available for public inspection and photocopying at the same location. Comments may also be sent by facsimile transmission to (202) 874–5274 or by electronic mail to Regs.comments@occ.treas.gov.

Board: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551, and refer to Docket No. R–0957. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., except as provided in Section 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FDIC: Jerry L. Langley, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to room F–402, 1776 F Street, N.W., Washington, D.C. on business days between 8:30 a.m. and 5:00 p.m. Comments may be sent through facsimile to (202) 898–3838 or by Internet to comments@fdic.gov. Comments will be available for inspection at the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C. on business days between 9:00 a.m. and 4:30 p.m.

OTS: Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention Docket No. 96–114. These submissions may be hand-delivered to 1700 G Street, N.W., 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 will be available for inspection at 1700 G Street, N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Lawrence W. Morris, National Bank Examiner, Examination Process (202) 874–4915; Ronald Schneck, Director, Special Supervision, (202) 874–4450; or Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities, (202) 874–5090; Timothy M. Sullivan, Director, International Banking and Finance, (202) 874–4730.

Board: Jack P. Jennings, II, Assistant Director, (202) 452–3053, William H. Tiernay, Senior Financial Analyst, (202) 872–7579, Betsy Cross, Manager, Division of Banking Supervision and Regulation, or Greg Baer, Managing Senior Counsel, (202) 452–3236, Legal Division.

FDIC: Mark A. Mellon, Counsel, Regulation and Legislation section (202) 898–3854, Legal Division, or Robert W. Walsh, Manager, Planning and Program Development section (202) 898–6911, Division of Supervision, or international contact: Karen M. Walter, Review Examiner (202) 898–3540, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

OTS: Scott M. Albinson, Special Assistant to the Executive Director, Supervision, (202) 906–7984; or Ellen J. Sazzman, Counsel (Banking and Finance), Regulations and Legislation Division, Office of the Chief Counsel, (202) 906–7133.

SUPPLEMENTARY INFORMATION:

Background

Section 111 of the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102–242, 105 Stat. 2236 (1991) (12 U.S.C. 1820(d)), established a requirement that each appropriate Federal banking agency conduct a full-scope on-site examination of each insured depository institution that it supervises at least once during each 12-month period.[1] It allowed an exception, however, for certain small insured depository institutions that are well managed and well capitalized, permitting such institutions to be examined once during each 18-month period. To qualify, an institution was required to have $100 million or less in total assets and its composite condition must have been found to be outstanding (rated 1 under the Uniform Financial Institutions Rating System (UFIRS)) at its most recent examination. In addition, qualifying institutions must not have experienced a change in control during the previous 12-month period in which a full scope examination would have been required by 12 U.S.C. 1820(d).

In 1994, Congress amended this provision to expand the availability of an 18-month examination cycle to a broader number of small institutions. CDRI section 306, Public Law 103–325, 108 Stat. 2160 (1994), amended section 10(d)(4) of the FDI Act to increase to $250 million the total-asset size of institutions rated outstanding (UFIRS 1) that could be examined on an 18-month cycle. CDRI section 306 also added a provision permitting an 18-month cycle for institutions rated satisfactory (UFIRS 2) at their most recent examination, provided they did not exceed $100 million in total assets. CDRI also authorized the Agencies to increase that $100 million threshold to $175 million beginning on September 23, 1996. CDRI further requires that to qualify for the expanded examination cycle, the insured institutions not be subject to a formal enforcement proceeding or order, and that they meet all the other criteria of section 10(d) of the FDI Act, which were not changed by CDRI. These criteria require that an institution: (1) Be

[1] Section 111 amended section 10 of the Federal Deposit Insurance Act (the FDI Act) by adding a new subsection (d), codified at 12 U.S.C. 1820(d).

well capitalized; (2) be well managed; and (3) must not have experienced a change in control during the previous 12-month period.

EGRPRA section 2221 provides that, at any time after September 23, 1996, the Agencies, in their discretion, may increase to $250 million the maximum asset size of UFIRS 2-rated institutions eligible for examination on an 18-month cycle. CDRI requires that the Agencies implement this provision by regulation and that they first determine that the increased amount is consistent with the principles of safety and soundness for insured depository institutions. (12 U.S.C. 1820(d)(10)).

The International Banking Act of 1978 (the IBA), as amended by the Foreign Bank Supervision Enhancement Act of 1991, requires an examination of each U.S. branch or agency of a foreign bank once during each 12-month period. 12 U.S.C. 3105(c)(1)(C). EGRPRA section 2214 amended the IBA to provide that each Federal or State branch or agency of a foreign bank shall be subject to on-site examination by an appropriate Federal or State banking agency as frequently as would a national or state bank, respectively, by the appropriate Federal banking agency. Consequently, U.S. branches or agencies of foreign banks are eligible for the 18-month cycle provided that they meet the qualifying criteria outlined above. The method by which these qualifying criteria should be applied to Federal and State branches and agencies is currently under consideration. The Board, the OCC and the FDIC request comment regarding application of these criteria to U.S. branches and agencies of foreign banks.

The Agencies have determined that increasing the size limitation of UFIRS 2-rated institutions that are eligible for an 18-month cycle is generally consistent with the safety and soundness of insured depository institutions assuming the absence of other risk factors. A longer examination cycle permits the Agencies to focus their resources on the segments of the banking and thrift industry that present the most immediate supervisory concern, while concomitantly reducing the regulatory burden on smaller, well-run institutions that do not pose an equivalent level of supervisory concerns. In lieu of the more frequent examinations that would otherwise be conducted for these institutions once in every 12-month period, the Agencies rely upon off-site monitoring tools to identify potential problems in smaller, well-managed institutions that present low levels of risk. Moreover, neither the statute nor the regulation limits, and the Agencies therefore retain, the authority to examine an insured depository institution more frequently. The Agencies that supervise state-chartered insured institutions also recognize that flexibility must be made available in the implementation of this regulation to accommodate requirements for annual examinations by various states.

Description of the Interim Rule

This interim rule makes eligible for an 18-month examination schedule an institution that: (1) Has total assets of $250 million or less; (2) is well capitalized; (3) is well managed; (4) received a UFIRS rating of 1 or 2 at its most recent examination; (5) is not subject to a formal enforcement proceeding or order; and (6) has not experienced a change in control during the previous 12-month period. This interim rule increases the number of institutions eligible for an 18-month examination cycle by about 1,087 institutions (300 national banks, 497 nonmember banks, 105 state member banks, and 185 savings associations), thereby reducing the regulatory burdens attendant to the examination process for those institutions and freeing additional supervisory resources to focus on higher-risk institutions. Off-site monitoring and the discretionary ability to examine institutions more frequently minimizes the supervisory risks of the less-frequent examinations. Furthermore, the supervisory emphasis that the Agencies are placing on risk management assessment provides reasonable assurance that a ''well managed'' institution has been evaluated on its ability to identify and monitor risk, and to deal effectively with changes in its environment that may occur between examinations.

The Agencies find good cause for issuing this interim rule without prior notice and the opportunity for comment and for dispensing with the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* (the APA). This interim rule confers a benefit on certain small insured depository institutions by reducing the frequency of, and therefore the regulatory burden associated with, on-site examinations. Making the 18-month examination cycle effective immediately will maximize the benefit of this burden reduction by enabling the Agencies to incorporate immediately the revised examination schedule into their planning for 1997. Conversely, this interim rule does not increase the frequency of examination or otherwise increase the regulatory burden for any insured depository institution. Thus, those institutions that are not eligible for the exemption from the statutorily prescribed 12-month examination cycle are not adversely affected by the interim rule. Under these circumstances, the Agencies conclude that prior notice and comment procedures are unnecessary and would be contrary to the public interest. 5 U.S.C. 553(b)(B).

In addition, the Agencies have determined that, under the APA, examination schedules are a matter of internal agency procedure. See *Donovan* v. *Wollaston Alloys, Inc.*, 695 F.2d 1, 9 (1st Cir. 1982). Determining when an insured financial institution is to be examined is based, in part, on examiner availability, the Agencies' need to plan examiner time in advance, and other issues relevant to the internal operations of the Agencies. This interim rule is a matter of internal agency procedure rather than a rule of substantive effect on bank activities and authority. Therefore, this interim rule is exempt from the APA's public notice requirement. 5 U.S.C. 553(b)(3)(A).

The Agencies are nonetheless interested in the views of the public and are therefore requesting comment on this interim rule, as well as how the qualifying criteria should be applied to the U.S. branches and agencies of foreign banks. An interim rule for each agency is set out below.

Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (the RFA) is only required whenever an agency is required to publish a general notice of proposed rulemaking for any proposed rule. 5 U.S.C. 603. As noted previously, the Agencies have determined that is not necessary to publish a notice of proposed rulemaking for this rule. Accordingly, an initial regulatory flexibility analysis is not required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Agencies have determined that no collections of information pursuant to the Paperwork Reduction Act are contained in this interim rule.

OCC and OTS Executive Order 12866 Statement

The OCC and OTS have each independently determined that this interim rule with request for comment is not a significant regulatory action under Executive Order 12866.

OCC and OTS Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public

Law 104–4, 109 Stat. 48 (March 22, 1995) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may 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. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

Because the OCC and OTS have each independently determined that this interim rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year, the OCC and OTS have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. Nevertheless, as discussed in the preamble, this interim rule will have the effect of reducing regulatory burden on certain institutions.

List of Subjects

12 CFR Part 4

Freedom of information, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Crime, Currency, Federal Reserve System, Flood insurance, Mortgages, Reporting and recordkeeping requirements, Safety and soundness, Securities.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

For the reasons set forth in the joint preamble, part 4 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM

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

Authority: 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552; 12 U.S.C. 481, 1820(d). Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR, 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 481, 482, 1821(o), 1821(t); 18 U.S.C. 641, 1905, 1906; 31 U.S.C. 9701. Subpart D also issued under 12 U.S.C. 1833e.

2. In Subpart A, a new § 4.6 is added to read as follows:

§ 4.6 Frequency of examination

(a) *General.* The OCC examines national banks pursuant to authority conferred by 12 U.S.C. 481 and the requirements of 12 U.S.C. 1820(d). The OCC is required to conduct a full-scope, on-site examination of every national bank at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The OCC may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The national bank has total assets of $250 million or less;

(2) The national bank is well capitalized as defined in 12 CFR part 6;

(3) At its most recent examination, the OCC found the national bank to be well managed;

(4) At its most recent examination, the OCC determined that the national bank was in outstanding or good condition, that is, it received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (Copies are available at the addresses specified in § 4.14 of this chapter);

(5) The national bank currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC, or Federal Reserve Board; and

(6) No person acquired control of the national bank during the preceding 12-month period in which a full-scope on-site examination would have been required but for this section.

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the OCC to examine any national bank as frequently as the agency deems necessary.

Dated: December 23, 1996.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System

12 CFR CHAPTER II

Authority and Issuance

For the reasons set forth in the joint preamble, the Board amends part 208 of chapter II of title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1820(d)(8), 1823(j), 1828(o), 1831o, 1831p–1, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1 and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. In Subpart A, a new § 208.26 is added to read as follows:

§ 208.26 Frequency of examination.

(a) *General.* The Federal Reserve examines insured member banks pursuant to authority conferred by 12 U.S.C. 325 and the requirements of 12 U.S.C. 1820(d). The Federal Reserve is required to conduct a full-scope, on-site examination of every insured member bank at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The Federal Reserve may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The insured member bank has total assets of $250 million or less;

(2) The insured member bank is well capitalized as defined in subpart B of this part (§ 208.33);

(3) At its most recent examination, the Federal Reserve found the insured member bank to be well managed;

(4) At its most recent examination, the Federal Reserve determined that the insured member bank was in outstanding or good condition, that is, it received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (Copies are available at the address specified in § 216.6 of this chapter);

(5) The insured member bank currently is not subject to a formal enforcement proceeding or order by the

FDIC, OCC, or Federal Reserve Board; and

(6) No person acquired control of the insured member bank during the preceding 12-month period in which a full-scope on-site examination would have been required but for this section.

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the Federal Reserve to examine any insured member bank as frequently as the agency deems necessary.

By order of the Board of Governors of the Federal Reserve System, January 23, 1997.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR CHAPTER III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC amends part 337 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for part 337 is revised to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1816, 1818(a), 1818(b), 1819, 1820(d)(10), 1821(f), 1828(j)(2), 1831f, 1831f–1.

2. A new § 337.12 is added to read as follows:

§ 337.12 Frequency of examination.

(a) *General.* The Federal Deposit Insurance Corporation examines insured state nonmember banks pursuant to authority conferred by section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820). The FDIC is required to conduct a full-scope, on-site examination of every insured state nonmember bank at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The FDIC may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The insured state nonmember bank has total assets of $250 million or less;

(2) The insured state nonmember bank is well capitalized as defined in 12 CFR 325.103(b)(1);

(3) At its most recent examination, the FDIC found the insured state nonmember bank to be well managed;

(4) At its most recent examination, the FDIC determined that the insured state nonmember bank was in outstanding or good condition, that is, it received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (Copies are available at the addresses specified in § 309.4 of this chapter);

(5) The insured state nonmember bank currently is not subject to a formal enforcement proceeding or order by the FDIC, OCC, or Federal Reserve Board; and

(6) No person acquired control of the insured state nonmember bank during the preceding 12-month period in which a full-scope on-site examination would have been required but for this section.

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the FDIC to examine any insured state nonmember bank as frequently as the agency deems necessary.

By order of the Board of Directors.

Dated at Washington, DC, this 21st day of January, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

Office of Thrift Supervision

12 CFR CHAPTER V

Authority and Issuance

For the reasons set forth in the joint preamble, the OTS amends part 563 of Chapter V of title 12 of the Code of Federal Regulations as follows:

PART 563—OPERATIONS

1. The authority citation for part 563 is revised to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 3806; 42 U.S.C. 4106.

2. § 563.171 is added to read as follows:

§ 563.171 Frequency of examination.

(a) *General.* The OTS examines savings associations pursuant to authority conferred by 12 U.S.C. 1463 and the requirements of 12 U.S.C. 1820(d). The OTS is required to conduct a full-scope, on-site examination of every savings association at least once during each 12-month period.

(b) *18-month rule for certain small institutions.* The OTS may conduct a full-scope, on-site examination at least once during each 18-month period, rather than each 12-month period as provided in paragraph (a) of this section, if the following conditions are satisfied:

(1) The savings association has total assets of $250 million or less;

(2) The savings association is well capitalized as defined in 12 CFR 565.4;

(3) At its most recent examination, the OTS found the savings association to be well managed;

(4) At its most recent examination, the OTS determined that the savings association was in outstanding or good condition, that is, it received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (Copies are available at the addresses specified in § 516.1 of this chapter);

(5) The savings association currently is not subject to a formal enforcement proceeding or order; and

(6) No person acquired control of the savings association during the preceding 12-month period in which a full-scope on-site examination would have been required but for this section.

(c) *Authority to conduct more frequent examinations.* This section does not limit the authority of the OTS to examine any savings association as frequently as the agency deems necessary.

Dated: November 20, 1996.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–3460 Filed 2–11–97; 8:45 am]

BILLING CODES 4810–33–P 6210–01–P 6714–01–P 6720–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Waiver of the Nonmanufacturer Rule for Airborne Integrated Data Components (master units, remote units, bus monitors, analog multiplexers, convolutional encoders, digital multiplexers, signal conditioners, time code readers).

SUMMARY: This document advises the public that the Small Business Administration (SBA) is establishing a waiver of the Nonmanufacturer Rule for Airborne Integrated Data Components. The basis for a waiver is that no small business manufacturers are available to participate in the Federal market for these products. The effect of a waiver will allow otherwise qualified nonmanufacturers to supply the products of any domestic manufacturer on a Federal contract set-aside for small businesses or awarded through the SBA 8(a) Program.

EFFECTIVE DATE: February 12, 1997.

ADDRESSES: David Wm. Loines, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street S.W., Washington, DC 20416, Tel: (202) 205–6475.

FOR FURTHER INFORMATION CONTACT: David Wm. Loines, Procurement Analyst, (202) 205–6475, FAX (202) 205–7324.

SUPPLEMENTARY INFORMATION: Public law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set-aside for small businesses or the SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines ''class of products'' based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual. The second is the Product and Service Code (PSC) established by the Federal Procurement Data System.

The SBA was asked to issue a waiver for Airborne Integrated Data Components because of an apparent lack of any small business manufacturers or processors for them within the Federal market. The SBA searched its Procurement Automated Source System (PASS) for small business participants and found none. We then published a document in the Federal Register on December 13, 1996 (61 FR 65492), of our intent to grant a waiver for these classes of products unless new information was found. The proposed waiver covered Airborne Integrated Data Components. The document described the legal provisions for a waiver, how SBA defines the market, and asked for small business participants of these classes of products. After the 15-day comment period, no small businesses were identified for Airborne Integrated Data Components. This waiver is being granted pursuant to statutory authority under section 303(h) of Public Law 100–656 for Airborne Integrated Data Components. The waiver will last indefinitely but is subject to both an annual review and a review upon receipt of information that the conditions required for a waiver no longer exist. If such information is found, the waiver may be terminated.

Judith A. Roussel,

Associate Administrator for Government Contracting.

[FR Doc. 97–3456 Filed 2–11–97; 8:45 am]

BILLING CODE 8025–01–P

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13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Waiver of the Nonmanufacturer Rule for Routers and Switches.

SUMMARY: This document advises the public that the Small Business Administration (SBA) is establishing a waiver of the Nonmanufacturer Rule for Routers and Switches. The basis for a waiver is that no small business manufacturers are available to participate in the Federal market for these products. The effect of a waiver will allow otherwise qualified nonmanufacturers to supply the products of any domestic manufacturer on a Federal contract set-aside for small businesses or awarded through the SBA 8(a) Program.

EFFECTIVE DATE: February 12, 1997.

ADDRESSES: David Wm. Loines, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street SW, Washington, DC 20416, Tel: (202) 205–6475.

FOR FURTHER INFORMATION CONTACT: David Wm. Loines, Procurement Analyst, (202) 205–6475, FAX (202) 205–7324.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set-aside for small businesses or the SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines ''class of products'' based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual. The second is the Product and Service Code (PSC) established by the Federal Procurement Data System.

The SBA was asked to issue a waiver for Routers and Switches because of an apparent lack of any small business manufacturers or processors for them within the Federal market. The SBA searched its Procurement Automated Source System (PASS) for small business participants and found none. We then published a document in the Federal Register on November 22, 1996 (61 FR 59382), of our intent to grant a waiver for these classes of products unless new information was found. The proposed waiver covered Routers and Switches. The document described the legal provisions for a waiver, how SBA defines the market, and asked for small business participants of these classes of products. After the 15-day comment period, no small businesses were identified for Routers and Switches. This waiver is being granted pursuant to statutory authority under section 303(h) of Public Law 100–656 for Routers and Switches. The waiver will last indefinitely but is subject to both an annual review and a review upon receipt of information that the conditions required for a waiver no longer exist. If such information is found, the waiver may be terminated.

Judith A. Roussel,

Associate Administrator for Government Contracting.

[FR Doc. 97–3458 Filed 2–11–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–226–AD; Amendment 39–9924; AD 97–03–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 and 767 series airplanes, that currently requires inspection of the door opening thrusters and door opening/snubbing actuators for proper oil quantity, and modification of the off-wing compartment latching assemblies. This amendment adds a requirement for replacement of the currently installed door opening thrusters with new, improved thrusters for Model 747 series airplanes. This amendment also removes Model 767 series airplanes from the applicability of the AD, since those airplanes are addressed currently in a separate AD. This amendment is prompted by reports indicating that the requirements of the existing AD do not adequately detect leakage of fluid from the actuators. The actions specified by this AD are intended to prevent such leakage, which could result in failure of the escape slide to deploy; such failure could delay and possibly jeopardize the successful emergency evacuation of an airplane.

DATES: Effective March 19, 1997.

The incorporation by reference of Boeing Service Bulletin 747–25–3073, dated September 21, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of March 19, 1997.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of November 25, 1992 (57 FR 47987, October 21, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; and OEA Aerospace Inc., P.O. Box KK, Hwy. 12, Explosive Technology Road, Fairfield, California 94533–0659. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gregory L. Schneider, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2028; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–16–17, amendment 39–8327 (57 FR 47987, October 21, 1992), which is applicable to certain Boeing Model 747 and 767 series airplanes, was published in the Federal Register on June 26, 1996 (61 FR 33050). The action proposed to continue to require repetitive inspections of the door opening thrusters and door opening/snubbing actuators for proper oil quantity, and modification of the off-wing compartment latching assemblies for Model 747 series airplanes. For those airplanes, the action proposed to add a requirement for replacement of existing door opening thrusters with new, improved thrusters. Additionally, the action proposed to remove Model 767 series airplanes from the applicability of AD 92–16–17, since those airplanes are addressed currently by AD 95–08–11, amendment 39–9200 (60 FR 20013).

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

Support for the Proposal

Two commenters support the proposed rule.

Request To Revise Description of Effect of Required Actions

One commenter requests that Summary section of the preamble to the proposal be revised to replace the word ''preclude'' with the word ''detect'' in the following sentence that appeared in that section: ''This proposal is prompted by reports indicating that the requirements of the existing AD do not adequately *preclude* leakage of fluid from the actuators.'' The commenter indicates that the actions required by AD 95–08–11 do not ''preclude'' fluid leakage; rather, they provide a means of detecting decreased fluid quantities in an effort to prevent failure of the escape slide to deploy.

The FAA concurs with the commenter's request and justification, and has revised the Summary section of this final rule accordingly.

Request To Explain Removal of Certain Airplanes From Applicability

The same commenter requests that the Summary section of the preamble to the proposal be revised to specify that the new AD action would remove Model 767 series airplanes from the applicability of AD 92–16–17, since those airplanes are addressed currently by AD 95–08–11. The commenter notes that the existing AD is, in effect, being superseded by two AD's, one for each airplane model. The clarification will direct operators of Model 767 series airplanes to the appropriate AD.

The FAA does not consider that additional clarification is necessary. This issue was discussed in detail elsewhere in the preamble to the proposal. Such detail is unnecessary in the Summary section to a rule, since that section is intended to provide only a synopsis of the proposed or required actions. Further, since operators of Model 767 airplanes are no longer subject to this AD, there is no reason to address those operators further in this final rule.

Request To Remove Paragraph (d) From the Proposal

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the FAA remove paragraph (d) from the proposal, which would require that all spare parts be modified as of the effective date of the final rule. The ATA states that inclusion of that paragraph would place an unnecessary burden on operators of Model 747 series airplanes. The commenter points out that AD 95–08–11 provides operators of Model 767 series airplanes an interval of two years to modify uninstalled actuators. The ATA maintains that there is no need to create different compliance periods between installed and uninstalled components, except where results of a risk assessment support two compliance periods. The commenter concludes that proposed paragraph (d) is unnecessary since paragraph (c) requires that all airworthy units, installed and uninstalled, be modified within two years.

The FAA concurs partially. First, the FAA does not agree that paragraph (d) should be removed from this final rule altogether. The FAA finds that paragraph (d) must be included in the AD to ensure that only new, improved door opening thrusters (that are not fluid filled) are installed on the affected airplanes. However, upon reconsideration of the compliance time proposed in that paragraph, the FAA finds that it is appropriate to revise the

compliance time for paragraph (d) of this final rule so that is parallel to a similar paragraph in AD 95–08–11, which addresses these same components for Model 767 series airplanes. Accordingly, paragraph (d) of this final rule has been revised to specify that only new, improved door opening thrusters shall be installed on the affected airplanes as of two years after the effective date of this AD. This revision will also preclude the potential for any parts availability problem that may arise in the interim.

Second, the FAA must clarify for this commenter that neither paragraph (c) nor paragraph (d) of this AD address ''uninstalled'' components. Part 39 of the Federal Aviation Regulations (14 CFR part 39) precludes AD actions taken to address components that are not currently installed on the airplane (or product). Therefore, the FAA cannot require via an AD that operators inspect, repair, or modify a ''spare part'' (i.e., currently in an operator's parts inventory). However, the FAA can ensure, via a requirement such as that specified in paragraph (d) of this AD, that any spare part is inspected, repaired, or modified prior to it being installed on an airplane. Accordingly, paragraphs (c) and (d) of this AD do not require that any action to be taken on ''uninstalled'' parts (spares). The requirements of those paragraphs only specify that, whenever a door opening thruster is to be installed on an airplane now or in the future, that thruster must be an improved model.

Request To Reference Additional Service Information

One commenter requests that the proposal be revised to cite the following service bulletin revisions, which have been reviewed and approved by the FAA, as additional sources of appropriate service information:

- Boeing Service Bulletin 747–25–3073, Revision 1, dated August 1, 1996.
- Boeing Service Bulletin 747–25–2951, Revision 1, dated May 13, 1993.
- Boeing Service Bulletin 747–25–2951, Revision 2, dated September 30, 1993.
- OEA Service Bulletin 2174200–25–013, Revision 1, dated September 14, 1993.
- OEA Service Bulletin 2174200–25–013, Revision 2, dated November 1, 1993.
- OEA Service Bulletin 2174200–25–013, Revision 3, dated January 13, 1994.

The FAA agrees that the service bulletins listed above, with the exception of Boeing Service Bulletin 747–25–3073, Revision 1, dated August 1, 1996, should be referenced in the final rule. The FAA has confirmed that Boeing has not yet released Revision 1 of Service Bulletin 747–25–3073 due to changes in the engineering aspects prior to receipt of FAA approval of that service bulletin. However, Boeing advises that it plans to issue Revision 1 of that service bulletin in early 1997 and, subsequently, will request approval of it as an alternative method of compliance with this AD.

The FAA has revised the final rule to add new NOTES 2 and 3, which specify that accomplishment of the actions required by this AD in accordance with the last five service bulletins listed above is acceptable for compliance with the requirements of this AD.

Request To Add Address To Obtain Service Information

One commenter requests that the FAA revise the Addresses section of the preamble to the proposal to include the address for OEA Aerospace Inc., since an OEA service bulletin is cited in the proposal.

The FAA concurs. The address for OEA was omitted inadvertently from the proposal, but has been included in this final rule.

Conclusion

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

Cost Impact

There are approximately 400 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 125 airplanes of U.S. registry will be affected by this proposed AD.

The actions that are currently required by AD 92–16–17 and retained in this new AD take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $510 per airplane. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $153,750, or $1,230 per airplane.

The new actions that are required by this new AD will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $6,400 per airplane. Based on these figures, the cost impact on U.S. operators of the new requirements of this AD is estimated to be $815,000, or $6,520 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8327 (57 FR 47987, October 21, 1992), and by adding

a new airworthiness directive (AD), amendment 39–9924, to read as follows:

97–03–19 BOEING: Amendment 39–9924. Docket 95–NM–226–AD. Supersedes AD 92–16–17, Amendment 39–8327.

Applicability: Model 747–100, –200, and –300 series airplanes equipped with an off-wing, two-piece escape slide on Door 3; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 (e) 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, unless accomplished previously.

To prevent failure of the escape slide to deploy, which could delay and possibly jeopardize the successful emergency evacuation of an airplane, accomplish the following:

(a) Within 18 months after November 25, 1992 (the effective date of AD92–16–17, amendment 39–8327), perform an inspection of the door opening thrusters of the escape system in accordance with OEA Service Bulletin 2174200–25–013, dated July 29, 1991. Repeat this inspection thereafter at intervals not to exceed 20 months until the replacement required by paragraph (c) of this AD is accomplished.

Note 2: Inspections accomplished in accordance with OEA Service Bulletin 2174200–25–013, Revision 1, dated September 14, 1993; Revision 2, dated November 1, 1993; or Revision 3, dated January 13, 1994; are considered acceptable for compliance with the inspections specified in paragraph (a) of this AD.

(b) Within 18 months after November 25, 1992, inspect and modify the door latching mechanism of the escape slide compartment in accordance with Boeing Service Bulletin 747–25–2951, dated August 15, 1991.

Note 3: Inspections and modifications accomplished in accordance with Boeing Service Bulletin 747–25–2951, Revision 1, dated May 13, 1993; or Revision 2, dated September 30, 1993; are considered acceptable for compliance with the applicable action specified in paragraph (b) of this AD.

(c) Within 2 years after the effective date of this AD, replace the door opening thrusters having part number (P/N) 60B50077–14 or –17 with new thrusters having P/N 60B50077–19 in accordance with Boeing Service Bulletin 747–25–3073, dated September 21, 1995. Accomplishment of this replacement terminates the repetitive inspections required by this AD.

(d) As of 2 years after the effective date of this AD, only door opening thrusters having P/N 60B50077–19 shall be installed on any airplane.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(g) The inspections and modification shall be done in accordance with OEA Service Bulletin 2174200–25–013, dated July 29, 1991; and Boeing Service Bulletin 747–25–2951, dated August 15, 1991. The incorporation by reference of those documents was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of November 25, 1992 (57 FR 47987, October 21, 1992). The replacement shall be done in accordance with Boeing Service Bulletin 747–25–3073, dated September 21, 1995. The incorporation by reference of that document was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; and OEA Aerospace Inc., P.O. Box KK, Hwy. 12, Explosive Technology Road, Fairfield, California 94533–0659. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 19, 1997.

Issued in Renton, Washington, on January 31, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3027 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–69–AD; Amendment 39–9923; AD 97–03–18]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes, that requires replacement of the hubcap drive coupling of the main wheel with an improved coupling. This amendment is prompted by reports of unexpected decreases in the pressure of the main wheel brake due to incorrect engagement between the main wheel coupling and the wheel speed transducer, which can result in false signals being sent to the anti-skid control box. The actions specified by this AD are intended to prevent loss of brake effectiveness due to a decrease in the pressure of the main wheel brake.

DATES: Effective March 19, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5336; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A, SAAB 340B, and SAAB 2000 series airplanes was published in the Federal Register on September 4, 1996 (61 FR 46572). That action proposed to require replacement of the hubcap drive coupling of the main wheel with an improved coupling.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 235 Model SAAB SF340A and SAAB 340B series airplanes and 3 Model SAAB 2000 series airplanes of U.S. registry will be affected by this AD.

For Model SAAB SF340A and SAAB 340B series airplanes, it will take approximately 2 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $200 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Model SAAB 340A and SAAB 340B series airplanes is estimated to be $75,200, or $320 per airplane.

For Model SAAB 2000 series airplanes, it will take approximately 2 work hours per airplane to accomplish the required actions, at an average labor rate of $60 per work hour. Required parts will cost approximately $120 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators of Model SAAB 2000 series airplanes is estimated to be $720, or $240 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–03–18 SAAB AIRCRAFT AB: Amendment 39–9923. Docket 96–NM–69–AD.

Applicability: Model SAAB SF340A series airplanes having serial numbers 004 through 159 inclusive; Model SAAB 340B series airplanes having serial numbers 160 through 378 inclusive; and Model SAAB 2000 series airplanes having serial numbers 002 through 029 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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, unless accomplished previously.

To prevent loss of brake effectiveness due to a decrease in pressure of the main wheel brake, accomplish the following:

(a) Within 90 days after the effective date of this AD, replace each main wheel hubcap drive coupling having part number (P/N) 40–91115 with a main wheel hubcap drive coupling having P/N 40–91115, Rev. D, in accordance with Saab Service Bulletin SAAB 340–32–107, dated January 18, 1996 (for Model SAAB SF340A and SAAB 340B series airplanes), or Saab Service Bulletin SAAB 2000–32–019, dated January 18, 1996 (for Model SAAB 2000 series airplanes), as applicable.

Note 2: The Saab service bulletins reference Crane Hydro-Aire Division Service Bulletins 140–041–32–1 (for wheel hubcaps having part number 140–04120) and 140–159–32–1 (for wheel hubcaps having part number 140–15920), both dated December 21, 1995, as additional sources of service information for replacement of the hubcap drive coupling.

(b) As of the effective date of this AD, no person shall install on any airplane a main wheel hubcap drive coupling having P/N 40–91115 in a wheel hubcap having P/N 140–04120 (for Model SAAB SF340A and SAAB 340B series airplanes), or P/N 140–15920 (for Model SAAB 2000 series airplanes), as applicable.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

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

(e) The replacement shall be done in accordance with Saab Service Bulletin SAAB 340–32–107, dated January 18, 1996, or Saab Service Bulletin SAAB 2000–32–019, dated January 18, 1996, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 19, 1997.

Issued in Renton, Washington, on January 31, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3026 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–NM–02–AD; Amendment 39–9915; AD 97–03–09]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires repetitive checks to detect backlash in the elevator mechanical control system, and various follow-on actions. This amendment also provides for an optional terminating action for the repetitive check requirements. This amendment is prompted by a report indicating that corrosion was found on the pivot bolts and bushings of the backlash remover lever mechanism on the elevator booster control unit (BCU) of a Model F28 Mark 0100 series airplane. The actions specified by this AD are intended to prevent such corrosion, which could result in backlash in the elevator controls and reduced elevator control authority in the manual mode.

DATES: Effective March 19, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 19, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the Federal Register on March 17, 1995 (60 FR 14395). That action proposed to require repetitive checks to detect backlash in the elevator mechanical control system, and various follow-on actions. That action also proposed an optional terminating action for the repetitive check requirements.

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

Request To Defer Release of Final Rule

One commenter requests that the FAA defer the release of the final rule until a bolt replacement program can be developed to satisfactorily address the problems with corrosion. This commenter asserts that the proposed rule goes beyond what is needed to address the stated safety concern. Further, this commenter considers that, since both U.S. operators affected by this proposed rule already have instituted a maintenance program that includes applying corrosion inhibitor to the subject bolts, the FAA's interim safety objectives are being met. The commenter also notes that a similar problem of bolt corrosion occurred on the same system on a Fokker Model F28 series airplane, and the manufacturer simply recommended that a corrosion-resistant bolt be installed. The commenter maintains that, if the proposed rule is adopted without change, then the FAA will be mandating a very complex inspection program at operators' ''B''-check intervals, with little thought to actually correcting the unsafe condition. If there is a simple, cost-effective terminating action that could be introduced—other than the replacement of the elevator booster control unit (BCU) with an improved unit—then it should be considered prior to going forward with this AD.

The FAA does not concur with the commenter's request to delay the issuance of this AD until a ''bolt replacement program'' is developed, because such a ''program'' is already included in the AD as an optional terminating action. This AD provides for two optional actions, either of which could be accomplished in order to terminate the required repetitive inspections:

1. modification of the affected BCU by replacing the currently installed bolts with improved bolts that are corrosion-resistant; or

2. replacement of the currently installed BCU with a unit that already has the improved, corrosion-resistant bolts installed.

The FAA has provided the terminating actions as optional to operators, since the accomplishment of either terminating action is far more complicated and time-consuming than performing the required repetitive operational checks and inspections. For example, because it is physically impossible to replace one of the affected bolts while the BCU is still installed on the airplane, in order to perform either terminating action, the BCU must be removed; this procedure in itself is more labor-intensive that performing the required checks and inspections. However, the FAA maintains that the accomplishment of either action provided for in this AD—repetitive checks/inspections or terminating action—will adequately address the unsafe condition presented by corrosion.

The FAA cannot concur with the commenter's suggestion that the FAA's ''interim safety objectives are being met'' by operators' current practice of applying a corrosion inhibitor to the suspect bolts. The commenter provided no data to substantiate that the procedure will provide a level of safety equivalent to that provided by the actions required by this AD. However, under the provisions of paragraph (e) of the final rule, the FAA may approve requests for use of alternative methods of compliance if data are submitted to substantiate that such a method would provide an acceptable level of safety.

Request To Add ''Intermediate'' Step in Operational Check

One commenter requests that the proposal be revised to include the ''intermediate'' step of checking the position of the backlash remover lever, which is specified in the referenced Fokker Service Bulletin SBF100–27–052. This commenter notes that proposed paragraph (b), as written, would require an inspection of the elevator BCU backlash remover bolts for freedom of movement and corrosion if any backlash is detected during the operational check required by proposed paragraph (a). However, the referenced Fokker service bulletin specifies an intermediate step to inspect the position of the backlash remover to determine whether the bolt inspection is even necessary, or if troubleshooting for some other cause of the problem is necessary.

The FAA concurs with the commenter's request. While this ''intermediate'' step was not specified in the proposal, the FAA's intent was to require operators to accomplish all of the check and inspection procedures specified in Fokker Service Bulletin SBF100–27–052. The final rule has been revised to indicate that operators are to perform this intermediate step to determine if the bolt inspection is

necessary, rather than immediately performing the bolt inspection in all cases. Since this addition to the final rule is relieving in nature (i.e., operators may not have to accomplish a more complicated inspection immediately, as was proposed), it will not increase the economic burden on any operator, nor will it increase the scope of the AD.

Request To Allow Deferment of BCU Replacement Requirement

One commenter requests that the proposal be revised to include the option to defer the replacement of the elevator BCU prior to further flight if the backlash remover bolts are found to be frozen or corroded. The commenter states that the backlash remover bolts are neither torqued nor subjected to high shear loads; therefore, operators should not be required to remove the BCU prior to further flight, provided that the bolts can be freed and lubricated, and the backlash operational check is subsequently accomplished successfully. If removal and modification of the BCU (in accordance with Fokker Service Bulletin SBF100–27–061) could be deferred so that operators could schedule it during a regular maintenance interval, the amount of downtime and additional expenses could be minimized.

The FAA concurs with the commenter's request. If the bolt having part number NAS6204C22D can be freed so that it rotates and slides freely, and is lubricated; and if the backlash operational check is subsequently accomplished and is successful; then the FAA agrees that the replacement of the elevator BCU can be deferred somewhat. The FAA considers an appropriate deferral interval to be 10 days. Paragraph (b) of the final rule has been revised to specify this deferral provision.

However, for the bolt having part number NAS6204C13D, the FAA has determined that its replacement cannot be deferred if it does not rotate and slide freely, or if there are any signs of corrosion; under those conditions, that bolt must be replaced prior to further flight. The FAA considers this action both appropriate and warranted, since that bolt is readily accessible on the airplane.

Request To Add Optional Repetitive Inspections

One commenter requests that the proposal be revised to include the option to conduct periodic inspections of the backlash remover mechanism and to apply corrosion preventative lubrication on the subject backlash remover bolts at 1,800-flight cycle intervals. The commenter requests that operators be permitted to accomplish these actions in lieu of the proposed operational checks to detect backlash. This commenter does not consider the proposed backlash check from the flight deck to be a good solution to the problem of corroded or frozen backlash remover lever bolts because:

1. the check is subjective, since it requires a sense of feel that may vary from person to person; and

2. the check procedures are ill-defined in the referenced Fokker Service Bulletin SBF100–27–052.

In addition, this commenter states that the Fokker service bulletin does not provide any instructions that will prevent the existing bolts from corroding.

This commenter, a U.S. operator, indicates that it already has implemented a program that includes periodic inspection and lubrication of the subject bolts at 1,800-flight cycle intervals; the commenter considers its program to be a more proactive approach to addressing the unsafe condition.

The FAA does not concur with the commenter's request. In consultation with Fokker and the Netherlands airworthiness authority (RLD), the FAA has determined that the operational check is not ''subjective,'' as suggested by the commenter: there will be a clear indication of backlash if the mechanism is stuck, and the referenced Fokker service bulletin provides objective standards of approximately 2 inches of freeplay. In addition, the commenter has not provided any technical data to prove that inspection and lubrication of the bolts at 1,800-flight cycle intervals will provide at least the same level of safety as that provided by the operational check at 500-flight cycle intervals. While an inspection and lubrication may help to prevent sticking of the mechanism, it may not provide the necessary safety margins. Paragraph (e) of the final rule, however, does provide for the use of alternative methods of compliance with the AD, provided that sufficient justification is presented to the FAA.

Further, the FAA agrees that Fokker Service Bulletin SBF100–27–052 does not provide instructions to prevent corrosion, other than inspection and lubrication of the bolts whenever backlash is detected during the operational check. However, this AD provides for two optional terminating actions for the checks: either modification of the existing BCU by replacing the currently-installed bolts with corrosion-resistant bolts (as described in Fokker Service Bulletin SBF100–26–061); or by replacement of the affected elevator BCU with a unit that already has corrosion-resistant bolts installed. Such replacement of the bolts positively addresses the problem of galvanic corrosion.

Conclusion

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

Cost Impact

The FAA estimates that 112 Fokker Model F28 Mark 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,720, or $60 per airplane.

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

Regulatory Impact

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

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

Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–03–09 FOKKER: Amendment 39–9915. Docket 95–NM–02–AD.

Applicability: Model F28 Mark 0100 series airplanes; equipped with Menasco Aerospace Elevator Booster Control Unit (BCU) having part number (P/N) 23400–3 or P/N 23400–5 with serial numbers MC–001 through MC–288 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) 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, unless accomplished previously.

To prevent backlash in the elevator controls and reduced elevator control authority in the manual mode, accomplish the following:

(a) Within 500 flight cycles or 60 days after the effective date of this AD, whichever occurs first, perform an operational check to detect backlash in the elevator mechanical control system, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–052, Revision 1, dated March 29, 1994. If no backlash is detected, repeat the check thereafter at intervals not to exceed 500 flight cycles or 60 days, whichever occurs first.

(b) If any backlash of the elevator mechanical control system is detected during any operational check required by paragraph (a) of this AD, prior to further flight, perform an inspection to determine whether the backlash remover lever and pistons are in the proper position, in accordance with Part 2 (paragraph I.) of Fokker Service Bulletin SBF100–27–052, Revision 1, dated March 29, 1994.

(1) If the backlash remover lever and pistons are in the proper position: Prior to further flight, perform appropriate trouble-shooting procedures in accordance with the Airplane Maintenance Manual.

(2) If the backlash remover lever and pistons are not in the proper position: Prior to further flight, perform an inspection to determine whether the elevator booster control unit (BCU) bolts, having part numbers (P/N) NAS6204C22D and P/N NAS6204C13D, rotate and slide freely; and to detect corrosion on the bolts of the backlash remover lever mechanism; in accordance with Part 2 (paragraph J.) of the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–052, Revision 1, dated March 29, 1994.

(i) If no anomaly is detected, prior to further flight, perform appropriate trouble-shooting procedures in accordance with the Airplane Maintenance Manual.

(ii) Except as provided by paragraph (b)(2)(iii) of this AD, if any anomaly is detected, prior to further flight, replace the elevator BCU or bolts, as applicable, with serviceable parts, in accordance with the service bulletin.

(iii) If any anomaly is detected, replacement of the elevator BCU or the bolt having P/N NAS6204C22D, as applicable, may be deferred for a period of 10 days, provided that the three conditions specified below are met:

(A) The bolt having P/N NAS6204C22D can be freed so that it rotates and slides freely; and

(B) That bolt is lubricated subsequent to the inspection; and

(C) An operational check, as specified in paragraph (a) of this AD, is accomplished subsequent to lubrication and is successful.

Note 2: The deferral provision of paragraph (b)(2)(iii) of this AD does *not* apply to the bolt having P/N NAS6204C13D. Replacement of that part-numbered bolt, when necessary, cannot be deferred.

(c) Terminating action for the repetitive check and inspection requirements of this AD consists of the accomplishment of the actions specified in either paragraph (c)(1) or (c)(2) of this AD:

(1) Modification of the affected elevator BCU having P/N 23400–3 or –5, in accordance with Fokker Service Bulletin SBF100–27–061, dated March 2, 1994; or

(2) Replacement of any affected elevator BCU having P/N 23400–3 or –5 with a unit having a serial number other than MC–001 through MC–288 inclusive, in accordance with the Airplane Maintenance Manual.

(d) As of the effective date of this AD, no person shall install in any airplane a Menasco Aerospace BCU having P/N 23400–3 or P/N 23400–5 with serial numbers MC–001 through MC–288, inclusive.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

(g) The actions shall be done in accordance with Fokker Service Bulletin SBF100–27–052, Revision 1, dated March 29, 1994; and Fokker Service Bulletin SBF100–27–061, dated March 2, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(h) This amendment becomes effective on March 19, 1997.

Issued in Renton, Washington, on January 28, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2608 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 97–AGL–3]

Modification of Class D Airspace; Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies Class D airspace areas at Minot AFB and Minot International Airport, Minot, ND, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required.

DATES: *Effective date*. 0901 UTC, March 27, 1997.

Comment date. Comments must be received on or before February 27, 1997.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic

Division, Operations Branch, AGL–530, Docket No. 97–AGL–3, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. If the FAA receives no adverse comments in response to this action, this rule will become effective on the date specified in the **DATES** section. After the review, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace areas at Minot AFB and Minot International Airport, Minot, ND, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at these airports. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term ''airport traffic area'' and ''control zone,'' replacing them with the designation ''Class D airspace.'' The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D Airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify these Class D airspace areas in order to promote the safe and efficient handling of air traffic in these areas.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 General

* * * * *

AGL ND D Minot, ND [Revised]

Minot International Airport, ND
(Lat. 48°15′34″ N, long. 101°16′53″ W)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 4.2-mile radius of Minot International Airport. This Class D airspace area is effecting during the specific dates and times established in advance by a Notice to Airmen. The effective dates and time will thereafter be continuously published in the Airport/Facility Directory.

AGL ND D Minot AFB, ND [Revised]

Minot AFB, ND
(Lat. 48°24′56″ N, long. 101°21′28″ W)

That airspace extending upward from the surface to and including 4,200 feet MSL within a 4.5-mile radius of Minot AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines Illinois on January 17, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–3408 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AGL–1]

Modification of Class D Airspace; Mount Clemens, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This section modifies Class D airspace area at Mount Clemens, Selfridge Air National Guard Base, MI, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with the air traffic control tower is required.

DATES: *Effective date.* 0901 UTC, March 27, 1997.

Comment date. Comments must be received on or before February 27, 1997.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, Operations Branch, AGL–530, Docket No. 97–AGL–1, Federal Aviation

Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 E. Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, and was not preceded by notice and public procedures, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. If the FAA receives no adverse comments in response to this action, this rule will become effective on the date specified in the ''**DATES**'' section. After the review, if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace areas at Mount Clemens, Selfridge Air National Guard Base, MI, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at these airports. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term ''airport traffic area'' and ''control zone,'' replacing them with the designation ''Class D airspace.'' The former CZ was continuous, while the former ATA was contingent upon the operation of the air traffic control tower. The consolidation of the ATA and CZ into a single Class D Airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required.

The coordinate for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify these Class D airspace areas in order to promote the safe and efficient handling of air traffic in these areas.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 5000 General

* * * * *

AGL MI D Mount Clemens, MI [Revised]

Mount Clemens, Selfridge Air National Guard Base, MI
(Lat. 42°36′03″N, long. 82°50′14″W)
Selfridge TACAN
(Lat. 42°36′47″N, long. 82°49′55″W)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 4.3-mile radius of the Selfridge Air National Guard Base and within 1.5 miles each side of the Selfridge TACAN 191° radial extending from the 4.3-mile radius to 5.6 miles south of the airport, and within 1.3 miles each side of the ILS Localizer north course extending from the 4.3-mile radius to 5.7 miles north of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on January 17, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–3409 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–36]

Establishment of Class E Airspace; Hazard, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E airspace at Hazard, KY. A VOR/DME RWY 14 and a GPS RWY 14 Standard Instrument Approach Procedures (SIAPs) have been developed for Wendell H. Ford Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate these SIAPs and for instrument flight rules (IFR) operations at the airport. The operating status of the airport will change from FFR to include IFR operations concurrent with publication of these SIAPs.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On December 2, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace at Hazard, KY, (61 FR 63768). This action will provide adequate Class E airspace for IFR operations at Wendell H. Ford Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Hazard, KY, to accommodate a VOR/DME RWY 14 and a GPS RWY 14 SIAPs and for IFR operations at Wendell H. Ford Airport. The operating status of the airport will be changed from VFR to include IFR operations concurrent with publication of these SIAPs.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO FL E5 Hazard, KY [New]

Wendell H. Ford Airport, KY
(Lat. 37°23′16″ N, long. 83°15′43″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Wendell H. Ford Airport.

* * * * *

Issued in College Park, Georgia, on February 3, 1997.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–3501 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–35]

Establishment of Class E Airspace; Apalachicola, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class E airspace at Apalachicola, FL. A NDB RWY 13 and a NDB RWY 31 Standard Instrument Approach Procedures (SIAPs) have been developed for Apalachicola Municipal Airport. Controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate these SIAPs and for instrument flight rules (IFR) operations at the airport. The operating status of the airport will change from VFR to include IFR operations concurrent with publication of these SIAPs.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On December 2, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace at Apalachicola, FL, (61 FR 63766). This action will provide adequate Class E airspace for IFR operations at Apalachicola Municipal Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Apalachicola, FL, to accommodate a NDB RWY 13 and a NDB RWY 31 SIAPs and for IFR operations at Apalachicola Municipal Airport. The operating status of the airport will be changed from VFR to include IFR operations concurrent with publication of these SIAPs.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9d, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO FL E5 Apalachicola, FL [New]

Apalachicola Municipal Airport, FL
(Lat. 29°43′46″ N, long. 85°01′45″ W)

That airspace extending upward from 700 feet above the surface within a 7.7-mile radius of Apalachicola Municipal Airport.

* * * * *

Issued in College Park, Georgia, on February 3, 1997.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–3502 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–34]

Amendment to Class E Airspace; Eglin AFB, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Eglin AFB, FL. A GPS RWY 32 Standard Instrument Approach Procedure (SIAP) has been developed for Destin-Fort Walton Beach Airport, Destin, FL. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT:

Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On December 2, 1996, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by modifying Class E airspace at Eglin AFB, FL (61 FR 63767). This action would provide adequate Class E airspace for IFR operations at Destin-Fort Walton Beach Airport, Destin, FL.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Eglin AFB, FL. A GPS RWY 32 SIAP has been developed for Destin-Fort Walton Beach Airport, Destin, FL. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP and for IFR operations at the airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO FL E5 Eglin AFB, FL [Revised]

Eglin AFB, FL
(lat. 30°29′13″ N, long. 86°31′34″ W)
Eglin AF Aux No. 3 Duke Field
(lat. 30°39′07″ N, long. 86°31′23″ W)
Hurlburt Field
(lat. 30°25′44″ N, long. 86°41′20″ W)
Destin-Fort Walton Airport
(lat. 30°24′01″ N, long. 86°28′19″ W)
Fort Walton Beach Airport
(lat. 30°24′23″ N, long. 86°49′45″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Eglin AFB, Eglin AF Aux No. 3 Duke Field and Hurlburt Field, and within a 7.8-mile radius of Destin-Fort Walton Beach Airport; excluding that airspace within the Crestview, FL, Class E airspace area and a 1.5-mile radius of Fort Walton Beach airport.

* * * * *

Issued in College Park, Georgia, on February 3, 1997.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 97–3503 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–ASO–30]

Amendment to Class E Airspace; Deland, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at Deland, FL. An amendment to the NDB or GPS RWY 30 Standard Instrument Approach Procedure (SIAP) has been developed for Deland Muni-Sidney H. Taylor Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP.

EFFECTIVE DATE: 0901 UTC, May 22, 1997.

FOR FURTHER INFORMATION CONTACT: Benny L. McGlamery, Operations Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5570.

SUPPLEMENTARY INFORMATION:

History

On December 2, 1996, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by modifying Class E airspace at Deland, FL (61 FR 63765). This action would provide adequate Class E airspace for IFR operations at Deland Muni-Sidney H. Taylor Airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One letter objecting to the proposal was received. The commentor stated that operations at the Lafayette Landings Airport would be adversely affected by amending the Deland Class E airspace. The Lafayette Landings Airport lies under the current Deland Class E airspace, which is being extended from a 7-mile to a 7.6-mile radius of the Deland Muni-Sidney H. Taylor. Therefore, aircraft departing Lafayette Landings Airport that desire to operate clear of this Class E airspace will have to fly .6 of a mile further than they currently do to avoid this airspace. The FAA considers this insignificant in view of the safety required to accommodate aircraft executing SIAPs to Deland Muni-Sidney H. Taylor Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies Class E airspace at Deland, FL. An amendment to the NDB or GPS RWY 30 SIAP has been developed for Deland Muni-Sidney H. Taylor Airport. Additional controlled airspace extending upward from 700 feet above the surface (AGL) is needed to accommodate this SIAP.

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

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet above the surface of the earth.

* * * * *

ASO FL E5 Deland, FL [Revised]

Deland Muni-Sidney H. Taylor Field Airport, FL

(Lat. 29°04′00″ N, long. 81°17′03″ W)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Deland Muni-Sidney H. Taylor Field Airport, excluding that airspace within the Daytona Beach, FL Class E airspace area.

* * * * *

Issued in College Park, Georgia, on February 3, 1997.

Wade T. Carpenter,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 97–3504 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1217

RIN 2700–AC12

Duty-Free Entry of Space Articles

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is revising 14 CFR part 1217 to reflect the current import authority for the Agency, as proclaimed by the President on March 23, 1995, and to streamline and clarify NASA's internal procedures for the implementation of this authority.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: John F. Hall, Jr., Senior Attorney (Commercial), 202–358–2432.

SUPPLEMENTARY INFORMATION: On March 23, 1995, the President issued Proclamation 6780 (60 FR 15845), which included an extension and expansion of NASA's authority with respect to duty-free imports of articles for use by NASA and for the implementation of its international programs. NASA's previous duty-free certification authority expired by operation of law on December 31, 1994.

This final rule revises NASA's duty-free import regulation, found in 14 CFR part 1271, to reflect the broader duty-free import authority promulgated by the President, and additionally streamlines and clarifies the internal Agency procedures for implementation of this authority. In accordance with U.S. note 1 subchapter VIII of chapter 98, Harmonized Tariff Schedule of the United States (HTSUS), as revised by Proclamation 6780, only imports which are procurements for NASA will be subject to customs entry procedures; however, all imports for NASA's domestic and international programs, including procurements, may be certified for duty-free treatment. This rule also permits the issuance of duty-free import certificates by designated officials at NASA Field Centers.

Since this action is administrative in nature and involves Agency policy management procedures, no public comment period is required.

I certify that this action is not a ''significant regulatory action'' under Executive Order 12866.

List of Subjects in 14 CFR Part 1217

Customs duties and inspection, Space transportation and exploration.

For the reasons set out in the preamble, 14 CFR part 1217 is revised to read as follows:

PART 1217—DUTY-FREE ENTRY OF SPACE ARTICLES

Sec.
1217.100 Scope.
1217.101 Applicability.
1217.102 Background.
1217.103 Authority to certify.
1217.104 Certification forms.
1217.105 Procedures.
1217.106 Articles brought into the United States by NASA from space.

Authority: Sections 101 and 103 of Pub. L. 103–465, 108 Stat. 4814 and 4819; Proclamation No. 6780 of March 23, 1995, 60 FR 15845 (March 27, 1995).

§ 1217.100 Scope.

This part sets forth policy and procedures with respect to the use of the NASA's authority to certify to the U.S. Commissioner of Customs duty-free entry of articles into the United States for the use of NASA or for implementation of a NASA international program, including articles that will be launched into space, spare parts for such articles, ground support equipment, or uniquely associated equipment for use in connection with a NASA international program or launch service agreement. This Part also sets forth NASA's procedures with respect to the use of its authority to bring foreign-owned articles and articles from space into the customs territory of the United States, and describes the nonimport status of such articles.

§ 1217.101 Applicability.

This part applies to qualifying articles entered or withdrawn from warehouse for consumption in the customs territory of the United States, and to articles brought into the customs territory of the United States by NASA from space or from foreign country as part of the NASA international program.

§ 1217.102 Background.

In order to encourage and facilitate the use of NASA's launch services for the exploration and use of space, section 116 of Public Law 97–446 provided for the duty-free entry into the United States of certain articles imported by NASA for its space-related activities or articles imported by another person or entity for the purpose of meeting its obligations under a launch services agreement with NASA. Such articles were certified by NASA to the Commissioner of Customs for duty-free entry to be launched into space or space parts or necessary and uniquely associated support equipment for use in connection with a launch into space. This exemption from duty was provided for in Subheading 9808.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202). Also, HTSUS, Chapter VIII, U.S. note 1, pursuant to the same law, provided that return of articles by NASA from space to the United States would not be considered an importation, and similarly not be subject to a duty.

As a result of the Uruguay Round agreements of the 1994 General Agreement on Tariffs and Trade, this authority was revised and expanded in scope. It now provides that imports of articles for NASA's use and articles imported to implement NASA's international programs, including articles to be launched into space, parts thereof, ground support equipment, and uniquely associated equipment for use in connection with NASA's international programs and launch service agreements would be eligible for duty-free customs entry upon certification by NASA to the Commissioner of Customs. The revised authorities also provided, in U.S. note 1 to subchapter VIII of chapter 98 of the HTSUS, that articles brought into the customs territory of the United States by NASA from space or from a foreign country as part of a NASA's international programs would not be considered imports or subject to customs entry requirements.

§ 1217.103 Authority to certify.

(a) The following NASA officials, their deputies, and designees within their respective organizations are authorized, under the conditions described herein, to make the certification to the Commissioner of Customs required for the duty-free entry of space articles pursuant to subheading HTSUS 9808.00.80.

(1) The NASA Associate Administrator for Procurement is authorized to issue the certification for articles imported into the United States which are procured by NASA or by other U.S. Government agencies, or by U.S. Government contractors or subcontractors when title to the articles is or will be vested in the U.S. Government pursuant to the terms of the contract or subcontract. Requests for certification should be sent to: Office of Procurement, Attn: HK/Director, Contract Management Division, National Aeronautics and Space Administration, Washington, DC 20546.

(2) The NASA Associate Administrator for External Relations is authorized to issue the certification for articles imported into the United States pursuant to international agreements. Requests for certification should be sent to: Office of External Relations, Attn: ID/Manager, International Technology Transfer Policy, National Aeronautics and Space Administration, Washington, DC 20546.

(3) The NASA Associate Administrator for Space Flight is authorized to issue the certification for articles imported into the United States by persons or entities under agreements other than those identified in paragraphs (a)(1) and (a)(2) of this section, including launch services agreements. Requests for certification should be sent to: Office of Space Flight, Attn: M/Director, Space Operations Utilization, National Aeronautics and Space Administration, Washington, DC 20546.

(b) Each certification by the officials identified in paragraphs (a)(1), (a)(2), and (a)(3) of this section shall receive the concurrence of the Office of the General Counsel.

(c) Subject to procedures established by the officials identified in paragraphs (a)(1), (a)(2), or (a)(3) of this section, as appropriate, the Center Procurement Officer or a Program Manager at a NASA Installation who is designated by an official identified in paragraphs (a)(1), (a)(2), or (a)(3) of this section may make the certification to the Commissioner of Customs required for the duty-free entry of space articles pursuant to subheading HTSUS 9808.00.80. Such procedures shall include the following requirements:

(1) All such certifications by designated Procurement Officers or Program Managers shall receive the concurrence of the Chief Counsel of the issuing NASA Installation; and

(2) All such certifications by designated Procurement Officers or Program Managers shall be promptly reported to an official identified in paragraphs (a)(1), (a)(2), or (a)(3) of this section, as appropriate.

§ 1217.104 Certification forms.

To the extent an authorized NASA official approves a request for certification, that official shall sign a certificate in the following form:

(a) For articles procured by NASA, a Customs Service Form CF 7501 (Entry Summary) shall be completed, and the following certification shall be used:

Articles for the National Aeronautics and Space Administration

Item 9808.00.80, Harmonized Tariff Schedule of the United States

Program: _____

I hereby certify that the articles identified in [*attached invoice*] are being imported for the use of the National Aeronautics and Space Administration (NASA) in accordance with 9808.00.80, Harmonized Tariff Schedule of the United States.

Name _____

Date _____

(b) For articles imported by NASA to implement international programs of NASA to which NASA will take title, or which remain the property of foreign entities under such programs, no entry is required pursuant to U.S. note 1 to HTSUS subchapter VIII of chapter 98. For such articles, the following certification shall be used:

Articles for Use in an International Program of the National Aeronautics and Space Administration

Item 9808.00.80, Harmonized Tariff Schedule of the United States

Program: _____

Foreign Owner(s) (if applicable): _____

In accordance with subheading 9808.00.80 and U.S. note 1 to subchapter VIII of chapter 98, Harmonized Tariff Schedule of the United States, I hereby certify that the above-described shipment is being brought into the customs territory of the United States as part of an international program of the National Aeronautics and Space Administration (NASA). No CF 7501 entry is required for this shipment. All articles contained in this shipment are, and shall remain, the property of NASA or of the foreign entities identified above. Except for articles consumed in the execution of the above-described Program, none of these articles will be made available for sale or other disposition to persons or institutions not directly involved in the Program identified above.

Name _____

Date _____

(c) A blanket certificate for a series of imports under a specific NASA international program or procurement is authorized but shall require written verification by a NASA official designated by a Director of a receiving NASA Installation that the articles received meet the conditions of the certificate. The blanket certificate shall be in the form of the certifications set forth in paragraphs (a) or (b) of this section, as appropriate, but shall include the following paragraph at the end thereof:

Before this certification is used to obtain duty-free entry of these articles, a cognizant NASA official at the receiving NASA Installation, who is designated by the Installation Director, shall verify in writing that specifically identified articles to be entered on a particular date are the articles described in this certificate or its attachments. This verification and this certification shall be presented to the U.S. Customs Service at the time entry for the particular articles is sought.

Name _____

Date _____

With respect to articles represented to be: procurements by NASA; or imports to implement international programs of NASA to which NASA will take title, or foreign-owned articles for use in a NASA international program, the NASA official issuing the blanket certificate shall review the proposed articles and approve their eligibility for duty-free entry. A description of these articles shall either be referred to in the blanket certificate and provided in Form CF 7501 (Entry Summary) for procurements or attached to the certificate for imports to implement NASA international programs, as appropriate.

§ 1217.105 Procedures.

(a) Requests for certification shall be forwarded to an appropriate NASA official or designee as provided for in § 1217.103 of this part.

(b) Each request for certification shall be accompanied by:

(1) A proposed certificate as provided for in § 1217.104 of this part;

(2) The information and documentation required by 19 CFR 10.102(a), including invoice documentation or a description of covered articles; and

(3) The anticipated date of entry of entry and port of entry for each article. If the article is to be transported in bond from the port of arrival to another port of entry in the United States, identify both ports.

(c) The signed certificate and its attachment(s) will be forwarded to the NASA Installation responsible for duty-free entry of the materials, unless issued at such Installation by an authorized official in accordance with § 1217.103(c) of this part. These documents shall be presented to an appropriated Customs official at the port(s) of entry. The procedures specified in 19 CFR 10.102 will be followed by the NASA Installation in obtaining duty-free entry at the Customs port(s) of entry. The NASA Installation should ensure that, at the time the articles are to be released after Customs entry, the custody of the imported articles is transferred directly from the carrier or from the U.S. Customs Service to the NASA Installation, its agent, or the launch service customer in the case of a Launch and Associated Services Agreement.

(d) If articles procured under contract by NASA are imported prior to compliance with these procedures and it is essential that the articles be released from Customs custody prior to such compliance, the procedures outlined in 19 CFR 10.101 may be followed by cognizant NASA officials to secure the release of the articles from Customs custody. To the extent applicable, the procedures in § 1217.105 of this part shall be followed when time permits to obtain duty-free entry for the articles released from Customs custody.

§ 1217.106 Articles brought into the United States by NASA from space.

Pursuant to U.S. note 1 subchapter VIII of chapter 98, HTSUS, articles brought into the customs territory of the United States by NASA from space shall not be considered an importation, and no certification or entry of such materials through U.S. Customs shall be required. This provision is applicable to articles brought to the U.S. from space whether or not the articles were launched into space aboard a NASA vehicle.

Daniel S. Goldin,

Administrator.

[FR Doc. 97–3415 Filed 2–11–97; 8:45 am]

BILLING CODE 7510–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–38246; File No. S7–30–95]

RIN 3235–AG66

Order Execution Obligations

AGENCY: Securities and Exchange Commission.

ACTION: Revised compliance dates; exemptive order.

SUMMARY: The Securities and Exchange Commission is revising the compliance dates and is providing exemptive relief to responsible brokers and dealers, electronic communications networks, exchanges, and associations with respect to certain Nasdaq securities to be phased-in under Rule 11Ac1–4 (''Limit Order Display Rule'') and amendments to Rule 11Ac1–1 (''ECN Amendment'') (cumulatively ''Order Execution Rules'').

DATES: Effective: February 5, 1997. *Compliance Dates:* Compliance with the Order Execution Rules shall continue to be required with respect to exchange-listed securities and the 50 Nasdaq securities that were phased-in on January 20, 1997. The phase-in schedule with respect to the next 100 Nasdaq securities shall be as follows: (1) 50 Nasdaq securities shall be phased-in on February 10, 1997; (2) an additional 50 Nasdaq securities shall be phased-in on February 24, 1997.

Exemptive Relief: The Commission is exempting responsible brokers and dealers, electronic communications networks, exchanges, and associations, until April 14, 1997, from the requirements of the Order Execution Rules with respect to the Nasdaq securities not phased-in under such rules as of February 24, 1997.

FOR FURTHER INFORMATION CONTACT: Betsy Prout Lefler, Special Counsel, Gail Marshall-Smith, Special Counsel, or David Oestreicher, Special Counsel, (202) 942–0158, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1996, the Securities and Exchange Commission (''Commission'') adopted Rule 11Ac1–4, the ''Limit Order Display Rule,'' and amendments to Rule ''Ac1–1, the ''ECN Amendment,'' to require OTC market makers and exchange specialists to display certain customer limit orders, and to publicly disseminate the best prices that the OTC market maker or exchange specialist has placed in certain electronic communications networks (''ECNs''), or to comply indirectly with the ECN Amendment by using an ECN that furnishes the best market maker and specialist prices therein to the public quotation system.

On January 20, 1997, the Order Execution Rules became effective. As of that date, compliance with the rules became mandatory for all exchange-traded securities and 50 Nasdaq securities. Compliance with the rules for the remaining Nasdaq securities is to be completed in accordance with a schedule established by the Commission.[1] Under the previously announced schedule, compliance with the Order Handling Rules would have been required with respect to another 100 Nasdaq securities on February 7, 1997, and another 850 Nasdaq securities on February 28, 1997. In addition, on March 28, 1997, compliance would have been required with respect to all remaining Nasdaq securities under the ECN Rule, and with respect to another 1500 Nasdaq securities under the Limit Order Display Rule. Thereafter, compliance under the Limit Order Display Rule was to be phased-in over several months.

The Commission has been closely monitoring the implementation of the Order Execution Rules, and recently received two letters from representatives of numerous industry participants (''Industry Letters'') requesting that the Commission adopt a more conservative schedule for implementing the Order Execution Rules.[2] Accordingly, the Commission has determined that it is appropriate to modify the schedule to provide a more gradual phase-in to allow market participants more time to adapt to the Order Execution Rules.[3] The new schedule is as follows: On February 10, 1997, 50 Nasdaq securities, and on February 24, 1997, an additional 50 Nasdaq securities, shall be phased-in for compliance under the Order Execution Rules.[4] Furthermore, in response to the Industry Letters, the Commission is exempting responsible brokers and dealers, electronic communications networks, exchanges, and associations, until April 14, 1997, from the requirements of the ECN Amendment with respect to all Nasdaq securities not phased-in as of February 24, 1997, and from the requirements of the Limit Order Display Rule with respect to the 2350 Nasdaq securities that will not be phased-in as of February 24, 1997. Under the prior schedule, all Nasdaq securities would have been phased-in by March 28, 1997 for compliance with the requirements of the ECN Amendment. Likewise, 850 of these securities would have been phased-in on February 28, and another 1500 on March 28, 1997, for compliance with the Limit Order Display Rule.

The Commission believes it is imperative to continue to phase-in implementation of the Order Execution Rules with respect to additional Nasdaq securities. The Commission has granted exemptive relief to monitor operation of the rules carefully, and will develop a further phase-in schedule for the Nasdaq securities not phased-in as of February 24, 1997.

The Commission finds that the modifications of the compliance dates described above, and the exemptive relief provided herein to responsible brokers and dealers, electronic communications networks, exchanges, and associations are consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30(a)(28), (61), and (62).

Dated: February 5, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–3432 Filed 2–11–97; 8:45 am]

BILLING CODE 8010–01–M

[1] *See* Securities Exchange Act Release Nos. 37619A (September 6, 1997) (''Adopting Release''), 37972 (November 22, 1996), 38110 (January 2, 1997), and 38139 (January 8, 1997). The Commission notes that a broker-dealer's duty of best execution discussed in the Adopting Release applies whether or not the security has been phased-in under the Order Execution Rules.

[2] *See* letter from Bernard L. Madoff, Securities Industry Association, to Richard R. Lindsey, dated January 30, 1997, and letter from John N. Tognino, Securities Traders Association, to Richard R. Lindsey, dated January 31, 1997.

[3] The Commission also amended subsection (a)(25)(ii) of the Quote Rule, thereby expanding the coverage of the Quote Rule to all exchange-traded securities. Thereafter, the Commission determined that it was appropriate to make this aspect of the amendments effective April 10, 1997. *See* Securities Exchange Act Release No. 38110, *supra* note 1. The present order does not change that date and, therefore, the effective date of subsection (a)(25)(ii) of the Quote Rule remains April 10, 1997.

[4] Currently, compliance with the Order Handling Rules is required for 50 of the 1000 Nasdaq securities with the highest average daily trading volume. These 50 securities have been identified by Nasdaq. Similarly, Nasdaq is to identify the next two groups of 50 stocks to be phased-in under the Order Handling Rules.

17 CFR Part 240

[Release No. 34–38245; File No. S7–21–93]

RIN 3235–AF91

Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending its broker-dealer record preservation rule to allow broker-dealers to employ, under certain conditions, electronic storage media to maintain records required to be retained. The amendments reflect a recognition of technological developments that will provide economic as well as time-saving advantages for broker-dealers by expanding the scope of recordkeeping options while at the same time continuing to require broker-dealers to maintain records in a manner that preserves their integrity. The Commission is also issuing an interpretation of its record preservation rule relating to the treatment of electronically generated communications.

EFFECTIVE DATE: The amendments become effective April 14, 1997.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director (202/942–0132), Peter R. Geraghty, Assistant Director (202/942–0177) or Barbara A. Stettner, Staff Attorney (202/942–0734), Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION

I. Introduction

On July 9, 1993, the Commission issued a release (''Proposing Release'') requesting comment on proposed amendments to its broker-dealer record

preservation rule, Rule 17a–4,[1] that would allow broker-dealers to employ, under certain conditions, optical storage technology.[2] The proposed amendments also would codify a staff no-action position that allows broker-dealers to use microfiche as a storage medium.[3] Simultaneous with the issuance of the Proposing Release, the Division of Market Regulation (''Division''), with the concurrence of the Commission, issued a no-action letter allowing broker-dealers to utilize optical storage technology immediately, under certain conditions.[4] Based on the comments received and the experience gained by the Commission under the no-action letter, the Commission is adopting the proposed amendments with certain changes discussed herein.

Set forth below is a summary of the proposed amendments, a summary of the comment letters received in response to the Proposing Release, a description of the final rule amendments, and an interpretation relating to the retention of electronically generated communications. The Commission is also providing notice of a staff related no-action position regarding other recordkeeping requirements under the Securities Exchange Act of 1934 (''Exchange Act'').

The Commission's Proposal

The Commission proposed to amend its record retention rule, Rule 17a–4, to expand broker-dealer record retention options by permitting broker-dealers to use optical storage technology for information required to be maintained under these rules. The Proposing Release described optical storage technology as storage technology which ''allows for digital data recording in a non-rewriteable, non-erasable format, such as write once, read many (''WORM'') * * *. Non-rewriteable optical storage records digital information by employing a laser heat source to burn a pattern on a metallic film on a disk surface that can hold billions of bytes of data.''

In the Proposing Release, the Commission noted the importance for recordkeeping of ready access, reliability, and permanence of records. Therefore, the proposed rule included safeguards against data erasure, provisions for immediate verification of the stored material, and requirements for back-up facilities. Specifically, the conditions included requirements that broker-dealers using optical disk storage systems employ non-rewriteable, non-erasable technology that verifies automatically the quality and accuracy of the optical storage recording process, duplicate in a separate optical disk all information preserved and maintained by means of optical storage technology, serialize the original and duplicate optical disks, and time-date the information placed on the optical disks. In addition, to facilitate full access to records during examinations by the self-regulatory organizations (''SROs'') and the Commission, broker-dealers would be required to index the optical disks and place the index on optical disk, and would be required to have the capability to readily reproduce records kept on optical disks in any medium acceptable under the final rule amendment, as required by the SROs and the Commission.

The Proposing Release also solicited comment regarding the adequacy of optical disk technology to preserve handwritten records or records that contain handwritten text, given the difficulties associated with detecting alterations made to handwritten text preserved through optical disk technology.[5]

The Commission received 13 comment letters in response to the Proposing Release.[6] Several commenters explained that the description of optical storage technology in the Proposing Release included only one specific type of writing technology known as ablative writing,[7] and requested clarification that the final rule would apply to other forms of optical disk technology that met the requirements of the rule. In addition, a few commenters objected to limiting the acceptable storage medium to optical disk technology and recommended that the rule apply to other electronic storage media, including optical tape.[8] More recently, the SIA requested clarification as to whether the Commission considers CD–ROM to be a form of optical disk technology.[9] Commenters that addressed the issue of the adequacy of optical disk technology in preserving handwritten records or records that contain handwritten text objected to any restrictions on the types of records broker-dealers can maintain using optical storage technology.

II. Description of Rule Amendments

A. Scope of Permissible Electronic Storage Media

In the Proposing Release, the Commission did not intend the definition of optical storage technology to include only an ablative methodology of storage. The Commission recognizes that other methods of electronic storage technology exist, including optical tape and CD–ROM, which are available in a WORM, non-rewriteable version.[10] The Commission is adopting a rule today which, instead of specifying the type of storage technology that may be used, sets forth standards that the electronic storage media must satisfy to be considered an acceptable method of storage under Rule 17a–4. Specifically, because optical tape, CD–ROM, and certain other methods of electronic storage are available in WORM and can provide the same safeguards against data manipulation and erasure that optical disk provides, the final rule clarifies that broker-dealers may employ any electronic storage media that meets the conditions set forth in the final rule.[11]

B. Handwritten Records

In the Proposing Release, the Commission expressed concern and requested comment regarding the use of optical disk technology to preserve

[1] 17 CFR 240.17a–4. Rule 17a–4 sets forth the records to be preserved by certain exchange members, brokers, and dealers.

[2] Securities Exchange Act Release No. 32609 (July 9, 1993), 58 FR 38092 (July 15, 1993).

[3] Letter from Nelson S. Kibler, Assistant Director, Division of Market Regulation, SEC to Robert F. Price, Alex. Brown & Sons (November 3, 1979).

[4] Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC to Michael D. Udoff, Chairman, *Ad Hoc* Record Retention Committee, Securities Industry Association (''SIA'') (June 18, 1993).

[5] In response to these concerns, the Division's no-action letter permitted optical storage of all paper records, including handwritten records, except those records required to be made under paragraphs (a)(6) and (a)(7) of Rule 17a–3 (proprietary and customer order tickets).

[6] The comment letters are available for public inspection and copying in the Commission's public reference room located at 450 Fifth Street, NW., Washington, DC. (File No. S7–21–93).

[7] Ablative technology means that, by use of a laser, a pattern is burned onto a metallic film on an optical disk. Other methods of optical disk technology utilize a laser to record information onto the optical disk, but unlike ablative technology, the laser does not necessarily ''burn'' a pattern onto the disk.

[8] The SIA commented that optical tape provides the same safeguards against data erasure and manipulation as optical disk provides but allows for storage of greater amounts of data. Letter from Michael D. Udoff, Chairman, *Ad Hoc* Record Retention Committee of the SIA to Jonathan G. Katz, Secretary, SEC (September 30, 1993).

[9] Letter from Mark A. Egert, Assistant General Counsel, SIA to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC (February 15, 1996) (arguing that CD–ROMs are simply one of several different optical disk sizes that are commercially available.)

[10] The Commission understands that additional methods also available in a WORM, non-rewritable version include, for example, alloying, bubble-forming, moth-eye (Plasmon), phase-change, dye/polymer, and magneto-optic.

[11] The amendment the Commission is adopting today also permits the use of ''micrographic media'' which is defined to include microfilm or microfiche, or any similar media, which codifies an earlier Commission staff no-action position. *See* Letter from Nelson S. Kibler, *supra* note 3.

handwritten records and records containing handwritten text. As indicated in the Proposing Release, the Commission's primary concern was that, from the standpoint of examinations and enforcement of the securities laws, optical disk images (as well as microfilm or microfiche images) make it difficult to detect forgery and alterations made to handwritten text.

The Commission recognizes that microfilm is a form of record retention for handwritten records that has been permitted since 1970, and the Commission understands few broker-dealers currently keep documents in hard copy or paper format. The Commission's experience since 1970 relating to the retention of handwritten records on microfilm has generally been positive. The Commission further understands that many of the larger broker-dealers no longer create traditional order tickets (with or without handwritten notations) because such broker-dealers enter most orders directly through electronic systems which automatically retain an electronic record of the trade entry.

In view of the existing use of microfilm and microfiche for record retention, the Commission believes that allowing preservation of handwritten records in electronic storage media would not significantly increase the difficulty of detecting forgery or alterations on these records. Accordingly, the Commission is permitting storage of handwritten records and records containing handwritten text using electronic storage media meeting the requirements set forth in the final rule adopted today.[12] Nonetheless, in the future, if difficulties arise in detecting abuses in handwritten records stored in electronic format, the Commission may revisit this issue both with regard to electronic storage media, as well as microfilm and microfiche.[13]

C. Creation of a Duplicate Record

The Proposing Release would have required a broker-dealer to copy all of the information contained on an original disk onto a separate, duplicate disk. The SIA commented that broker-dealers should be permitted to store the duplicate record on any medium acceptable under Rule 17a–4. The SIA explained that clearing firms frequently have to provide copies of records to their correspondent firms that may not have optical disk technology. Therefore, according to the SIA, clearing firms may be obligated to maintain certain records in another media for the correspondents' use.[14] The Commission agrees that it is appropriate to permit storage of the duplicate record on any medium acceptable under Rule 17a–4, and accordingly, the final amendments reflect this change.[15]

D. Audit System Requirement

The Proposing Release would have required a broker-dealer to ''have in place an audit system providing for accountability regarding all access to records maintained and preserved using optical storage technology and any changes made to every original and duplicate optical disk.'' Commenters sought clarification as to whether this provision requires maintenance of a log of all persons who have the capability or authority to access optical disks, or maintenance of a log indicating each instance where data is added to a disk. The rule adopted by the Commission today requires an audit system to be utilized only when records required to be maintained under Rule 17a–4 are being entered or when any additions to existing records are made. Therefore, an audit record is not required when a record is accessed but cannot be altered by the reader.

E. Third Party Down-Load Provider

The Proposing Release would require broker-dealers to have arrangements with at least one third party that has the ability to download information from the broker-dealer's electronic storage system to another acceptable medium. The third party must submit undertakings to the SRO for the broker-dealer indicating that it agrees to promptly furnish information necessary for the Commission's staff and its designees to download information from a broker-dealer's electronic storage system to another acceptable medium, and take reasonable steps to provide access to information contained on a broker-dealer's electronic storage system. The Commission is adopting this requirement substantially as proposed.

F. Escrow Agent

Under the Proposing Release, broker-dealers would be required to keep current all information necessary to download records and indices stored on optical disks. Alternatively, broker-dealers who use outside service bureaus to preserve records could place in escrow and keep current a copy of the information necessary to access the format (i.e., the logical layout) of the optical disks and to download records stored on optical disks. This condition was intended to ensure access to information preserved on optical disks when the broker-dealer is no longer operational, when the broker-dealer refuses to cooperate with investigative efforts of the Commission or the SROs, or when the optical disk has not been properly indexed. The SIA commented that they believed this requirement duplicated the required third party undertaking in the proposed amendments. The third party undertaking was intended to act as a back-up to the escrow requirement, and therefore the Commission does not agree that it would be unnecessary and duplicative to require broker-dealers to keep or escrow the information necessary to download records from optical disk. Accordingly, the final rule adopted today includes such proposed requirement.

III. Staff No-Action Position

The Commission also is providing notice that the staff of the Division will not recommend enforcement action to the Commission if broker-dealers, transfer agents, and clearing agencies fulfill their record retention and preservation requirements set forth in the following rules under the Exchange Act by using electronic storage media as permitted by the final amendments to Rule 17a–4(f) described herein:

Rule 3a51–1 (17 CFR 240.3a51–1)
Rule 15a–6 (17 CFR 240.15a–6)
Rule 15c1–7 (17 CFR 240.15c1–7)
Rule 15c2–5 (17 CFR 240.15c2–5)
Rule 15c2–11 (17 CFR 240.15c2–11)
Rule 15c3–1 (17 CFR 240.15c3–1)
Rule 15c3–3 (17 CFR 240.15c3–3)
Rule 15g–3 (17 CFR 240.15g–3)
Rule 15g–4 (17 CFR 240.15g–4)
Rule 15g–5 (17 CFR 240.15g–5)

[12] *But see infra* note 16 and accompanying text for certain limited exceptions.

[13] Recently, the Commission published its views with respect to the use of electronic media by broker-dealers, transfer agents, and investment advisers to deliver information as required under the Exchange Act and the Investment Advisers Act of 1940. Securities Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996) (''May Interpretive Release''). As the Commission noted in the May Interpretive Release, the staff of the Division also reminds broker-dealers, transfer agents, and clearing agencies of their responsibilities to prevent, and the potential liability associated with, unauthorized transactions. In this regard, broker-dealers, transfer agents, and clearing agencies should have reasonable assurance that information preserved by means of electronic storage media, including customer signatures, is authentic. *See id.* at note 29.

[14] *See* Letter from Michael D. Udoff, *supra* note 8.

[15] Another issue raised by several commenters concerns the time at which the duplicate must be created. Broker-dealers will be permitted to wait to make the duplicate until the original optical disk is full, provided that broker-dealers maintain the duplicate data on another acceptable medium such as paper or micrographic media until it creates the duplicate optical disk.

Rule 15g–6 (17 CFR 240.15g–6)
Rule 17a–2 (17 CFR 240.17a–2)
Rule 17a–5 (17 CFR 240.17a–5)
Rule 17a–6 (17 CFR 240.17a–6)
Rule 17a–7 (17 CFR 240.17a–7)
Rule 17a–8 (17 CFR 240.17a–8)
Rule 17f–1 (17 CFR 240.17f–1)
Rule 17f–2 (17 CFR 240.17f–2)
Rule 17Ad–6 (17 CFR 240.17Ad–6)
Rule 17Ad–10 (17 CFR 240.17Ad–10)
Rule 17Ad–11 (17 CFR 240.17Ad–11)
Rule 17Ad–13 (17 CFR 240.17Ad–13)
Rule 17Ad–15 (17 CFR 240.17Ad–15)

The staff of the Division believes that the recordkeeping requirements under Exchange Act Rules 15g–2 and 15g–9 [16] should not be met by means of electronic storage media, and the records required by such rules should be maintained and preserved in paper format for the prescribed time period. Rules 15g–2 and 15g–9 require broker-dealers to obtain from a customer prior to effecting transactions in penny stocks (1) a manually signed acknowledgement of the receipt of a risk disclosure document, (2) a written agreement to transactions involving penny stocks, and (3) a manually signed and dated copy of a written suitability statement. Because the Commission, in the May Interpretative Release, did not permit the use of electronic media to satisfy the requirements of Rules 15g–2 and 15g–9, the staff of the Division believes it would not be appropriate to permit the storage of records required by such rules using electronic storage media.[17]

IV. Electronic Communications

Finally, the Commission is aware that many questions have been raised regarding the applicability of Rule 17a–4(b)(4) to electronic mail communications (''e-mail'') and Internet communications. In the May Interpretive Release, the Commission discussed its beliefs regarding the adaptation of SRO supervisory review requirements governing communications with customers to accommodate the use of electronic communications by broker-dealers. The Commission recommended that the SROs work with broker-dealers with respect to the adaptation of such rules and recommended that the SRO rules concerning the supervisory requirements for electronic communications ''should be based on the content and audience of the message and not merely the electronic form of the communication.'' [18]

The Commission understands that broker-dealers use e-mail and the Internet to communicate important information relating to the broker-dealer's business internally, to customers, and to the general public. The Commission is also aware that many broker-dealers use such electronic systems to communicate about issues unrelated to the business of the broker-dealer. Consistent with the Commission's recommendation to the SROs regarding the appropriate standard for prior supervisory review for electronic communications, the Commission believes that for record retention purposes under Rule 17a–4, the content of the electronic communication is determinative, and therefore broker-dealers must retain only those e-mail and Internet communications (including inter-office communications) which relate to the broker-dealer's ''business as such.''

V. Summary of Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act, which became effective on January 1, 1981, imposes procedural steps applicable to agency rulemaking that has a ''significant economic impact on a substantial number of small entities.'' [19] The Chairman of the Commission has certified pursuant to the Regulatory Flexibility Act that the final amendments to Rule 17a–4 will not have a significant economic impact on a substantial number of small entities because the amendments do not alter the regulatory requirements for broker-dealers using currently accepted media for record retention purposes (i.e., paper, microfilm, or microfiche). A copy of the certification is attached to this release as Appendix A.

VI. Paperwork Reduction Act

In connection with the Proposing Release, on August 12, 1993, notice was published in the Federal Register [20] that, pursuant to the Paperwork Reduction Act of 1980 (''Old PRA''), [21] the Commission had submitted to the Office of Management and Budget (''OMB'') request for approval of the proposed amendments to Rule 17a–4. No comments were received with respect to the notice. The OMB control number, 3235–0279, was originally issued in 1993 and was reauthorized on June 30, 1996. Comment was sought with respect to the reauthorization and no comment was received. [22] The OMB number was issued pursuant to the Old PRA, prior to the amendment of such act in 1995.

The Proposing Release included certain requirements that would be unique to broker-dealers which chose to use optical storage systems and which qualified as collections of information under the Old PRA. The final rule amendments do not contain substantive modifications to the collections of information originally set forth in the Proposing Release. The collection of information is in accordance with the clearance requirements of 44 U.S.C. 3507. The final amendments clarify that broker-dealers may use any electronic storage media that meets the requirements of the rule. Since the final rule amendment expands the scope of recordkeeping options and does not alter the options currently permitted under the rule, broker-dealers may chose to continue to store information using paper, microfilm, or microfiche, or may chose to employ electronic storage media as permitted by the final rule amendments. If broker-dealers chose the electronic storage media option, then compliance with the collection of information requirement is mandatory.

A. Collection of Information Under Rule 17a–4

Under the final rule amendments, users of electronic storage media must have in place an audit system that provides for accountability regarding inputting of records required to be maintained and preserved pursuant to

[16] 17 CFR 240.15g–2 and 240.15g–9.

[17] *See* May Interpretive Release at note 50.

[18] *See id.* at note 5. The Commission notes that the New York Stock Exchange, Inc. (''NYSE'') has submitted a proposal to modify its supervisory rules which will require prior supervisory review of those communications with the general public and customers which include advertisements, market letters, sales literature, and similar types of communications, as well as research reports. The proposal also requires members to develop reasonable procedures for review of registered representatives' communications with the public relating to their business. *See* File No. SR–NYSE–96–26.

[19] Although Section 601(b) of the Regulatory Flexibility Act defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term ''small entity'' for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18452 (January 28, 1982), 47 FR 5215 (February 4, 1982). A broker-dealer is a ''small business'' or ''small organization'' under Rule 0–10 if the broker-dealer (i) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17–5(d) or, if not required to file such statements, a broker-dealer that had total net capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (ii) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in 17 CFR 240.0–10.

[20] 58 FR 42992 (August 12, 1993).

[21] 44 U.S.C. 3501 et seq.

[22] 61 FR 14586 (April 2, 1996).

Rules 17a–3 and 17a–4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby. Although the Commission is not specifying the contents of each audit system, data automatically or otherwise stored (in the computer or in hard copy) regarding inputting of records and changes to existing records will be part of that system. The Commission envisions that names of individuals actually inputting records and making particular changes, and the identity of documents changed and the identity of new documents created, are the kind of information that automatically would be collected pursuant to the audit system requirement. The results of the audit system must be available for examination by the staffs of the Commission and the appropriate SROs and must be preserved for the time required for the audited records.

In addition, the entity employing the electronic storage media must organize and index all information maintained on both original and duplicate electronic storage media, and each index must be duplicated. The entity employing the technology must also maintain, keep current, and provide promptly upon request by the Commission or SROs all information necessary to access records and indexes stored on electronic storage media, or escrow and keep current a copy of the physical and logical file format, the field format of all different information types written on the electronic storage media and the source code, together with appropriate documentation and information necessary to access records and indexes.

The recordkeeping requirements described above are unlikely to prove burdensome to users because the recordkeeping requirements are specifically tied to the design and use of electronic storage media. To the extent that the final rule amendments create any burden on users, however, such burden should be small, even negligible, relative to the reduced recordkeeping burden that will result from broker-dealers' ability to use electronic storage media.

B. Proposed Use of the Information

The information contained in the records required to be preserved by those subject to Rule 17a–4 will be used by examiners and other representatives of the Commission and the SROs to ensure that broker-dealers are in compliance with applicable financial responsibility, antifraud, and antimanipulation rules as well as other rules and regulations of the Commission and the SROs. The collections of information generally will not be made publicly available. The ultimate purpose of the final amendment is the protection of investors.

VII. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly section 17(a)(1) thereof, 15 U.S.C. 78q(a)(1), the Commission is adopting amendments to § 240.17a–4 of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Final Rule

In accordance with the foregoing, Title 17, chapter II, part 240 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934.

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.17a–4 is amended by revising paragraph (f) to read as follows:

§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

* * * * *

(f) The records required to be maintained and preserved pursuant to §§ 240.17a–3 and 240.17a–4 may be immediately produced or reproduced on ''micrographic media'' (as defined in this section) or by means of ''electronic storage media'' (as defined in this section) that meet the conditions set forth in this paragraph and be maintained and preserved for the required time in that form.

(1) For purposes of this section:

(i) The term *micrographic media* means microfilm or microfiche, or any similar medium; and

(ii) The term *electronic storage media* means any digital storage medium or system and, in the case of both paragraphs (f)(1)(i) and (f)(1)(ii) of this section, that meets the applicable conditions set forth in this paragraph (f).

(2) If electronic storage media is used by a member, broker, or dealer, it shall comply with the following requirements:

(i) The member, broker, or dealer must notify its examining authority designated pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) prior to employing electronic storage media. If employing any electronic storage media other than optical disk technology (including CD–ROM), the member, broker, or dealer must notify its designated examining authority at least 90 days prior to employing such storage media. In either case, the member, broker, or dealer must provide its own representation or one from the storage medium vendor or other third party with appropriate expertise that the selected storage media meets the conditions set forth in this paragraph (f)(2).

(ii) The electronic storage media must:

(A) Preserve the records exclusively in a non-rewriteable, non-erasable format;

(B) Verify automatically the quality and accuracy of the storage media recording process;

(C) Serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and

(D) Have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under this paragraph (f) as required by the Commission or the self-regulatory organizations of which the member, broker, or dealer is a member.

(3) If a member, broker, or dealer uses micrographic media or electronic storage media, it shall:

(i) At all times have available, for examination by the staffs of the Commission and self-regulatory organizations of which it is a member, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images and for producing easily readable images.

(ii) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission or its representatives may request.

(iii) Store separately from the original, a duplicate copy of the record stored on any medium acceptable under § 240.17a–4 for the time required.

(iv) Organize and index accurately all information maintained on both original and any duplicate storage media.

(A) At all times, a member, broker, or dealer must be able to have such indexes available for examination by the staffs of the Commission and the self-

regulatory organizations of which the broker or dealer is a member.

(B) Each index must be duplicated and the duplicate copies must be stored separately from the original copy of each index.

(C) Original and duplicate indexes must be preserved for the time required for the indexed records.

(v) The member, broker, or dealer must have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to §§ 240.17a–3 and 240.17a–4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby.

(A) At all times, a member, broker, or dealer must be able to have the results of such audit system available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.

(B) The audit results must be preserved for the time required for the audited records.

(vi) The member, broker, or dealer must maintain, keep current, and provide promptly upon request by the staffs of the Commission or the self-regulatory organizations of which the member, broker, or broker-dealer is a member all information necessary to access records and indexes stored on the electronic storage media; or place in escrow and keep current a copy of the physical and logical file format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with the appropriate documentation and information necessary to access records and indexes.

(vii) For every member, broker, or dealer exclusively using electronic storage media for some or all of its record preservation under this section, at least one third party (''the undersigned''), who has access to and the ability to download information from the member's, broker's, or dealer's electronic storage media to any acceptable medium under this section, shall file with the designated examining authority for the member, broker, or dealer the following undertakings with respect to such records:

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission (''Commission''), its designees or representatives, upon reasonable request, such information as is deemed necessary by the Commission's or designee's staff to download information kept on the broker's or dealer's electronic storage media to any medium acceptable under Rule 17a–4.

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the broker's or dealer's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained and preserved by the broker or dealer pursuant to Rules 17a–3 and 17a–4 under the Securities Exchange Act of 1934 in a format acceptable to the Commission's staff or its designee. Such arrangements will provide specifically that in the event of a failure on the part of a broker or dealer to download the record into a readable format and after reasonable notice to the broker or dealer, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, as the Commission's staff or its designee may request.

* * * * *

By the Commission.

Dated: February 5, 1997.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Flexibility Act Certification

I, Arthur Levitt, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the final amendments to Rule 17a–4 set forth in Securities Exchange Release No. 34–38245 will not have a significant economic impact on a substantial number of small entities. Specifically, the amendments do not alter the regulatory requirements for broker-dealers using currently accepted media for record retention purposes (i.e., paper, microfilm, or microfiche). Instead, the amendments expand the record retention media options by allowing broker-dealers to utilize certain electronic storage media to store records required under 17 CFR 240.17a–3 and 240.17a–4. Accordingly, the amendments will not change the impact of current regulatory record preservation requirements on a substantial number of small entities.

Dated: January 31, 1997.

Arthur Levitt,

Chairman.

[FR Doc. 97–3426 Filed 2–11–97; 8:45 am]

BILLING CODE 8010–01–P

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17 CFR Part 240

[Release No. 34–38248; File No. S7–7–94]

RIN 3235–AG14

Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is amending Rule 15c3–1 under the Securities Exchange Act of 1934 (''Exchange Act''), the net capital rule, to permit broker-dealers to employ theoretical option pricing models in determining net capital requirements for listed options and related positions. Alternatively, broker-dealers may elect a strategy-based methodology. The amendments are intended to simplify the net capital rule's treatment of options for capital purposes and more accurately reflect the risk inherent in broker-dealer options positions.

EFFECTIVE DATE: The amendments become effective September 1, 1997.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director (202) 942–0131, Peter R. Geraghty, Assistant Director (202) 942–0177, or Louis A. Randazzo, Special Counsel (202) 942–0191, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is adopting amendments to Rule 15c3–1 under the Exchange Act to permit broker-dealers to employ theoretical option pricing models to calculate required net capital for listed options and the related positions that hedge those options. In adopting these amendments, the Commission is continuing its process of revising the net capital rule that was contemplated when the Commission solicited comments on a range of capital related issues in 1993.[1] The amendments being adopted today were proposed in initial form in March of 1994 and would allow broker-dealers to use an options pricing model to determine capital charges for listed options and related positions.[2] Simultaneously with the Commission's proposal, the Division of Market Regulation (''Division'') issued a no-action letter allowing broker-dealers to utilize the options pricing approach immediately.[3] Based on the experience gained by the Commission under the no-action letter, and the nature of the comments received during the public comment period, the Commission is

[1] Securities Exchange Act Release No. 32256 (May 4, 1993), 58 FR 27486 (May 10, 1993) (''Concept Release'').

[2] Securities Exchange Act Release No. 33761 (March 15, 1994), 59 FR 13275 (March 21, 1994) (''Proposing Release'').

[3] Letter from Brandon Becker, Division of Market Regulation, SEC to Mary L. Bender, First Vice President, CBOE and Timothy Hinkas, Vice President, The Options Clearing Corporation (''OCC'') (March 15, 1994) (''1994 No-Action Letter'').

adopting the proposed amendments with certain changes discussed herein. The rules will become effective on September 1, 1997; however, broker-dealers that desire to apply the rule before the effective date may do so.

A. The Net Capital Rule Generally

The Commission adopted its first net capital rule in 1942.[4] The rule requires that every registered broker-dealer maintain certain specified minimum levels of net capital. The primary purpose of the rule is to protect the customers of a broker-dealer from losses that can be incurred upon the broker-dealer's failure. Rule 15c3–1 requires registered broker-dealers to maintain sufficient liquid assets to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal legal proceeding. The rule prescribes different required minimum levels based upon both the method a firm adopts in computing its net capital and the type of securities business it conducts. A firm engaging in a general securities business (which would allow the firm to clear and carry customer accounts) must maintain a minimum net capital level of the greater of $250,000 or 6⅔ percent of its liabilities (with certain exclusions), or if the firm chooses the alternative method, the greater of $250,000 or 2 percent of its customer-related receivables. The different minimum levels of net capital for firms based on categories of business activity are designed to address the perceived risk in the broker-dealers' business. For example, if a broker-dealer carries no customer accounts and does not engage in certain specified activities, it can maintain as little as $5,000 in net capital.

Under the net capital rule, a broker-dealer takes its net worth, computed in accordance with generally accepted accounting principles, deducts certain illiquid assets (such as goodwill), certain percentages from its proprietary securities or commodities inventory, and adds back certain liabilities to arrive at net capital. This number is then compared to its requirement to determine compliance. Much of the rule itself is comprised of the haircut deductions which account for the market and other risks inherent in a trading business. The Commission believes the net capital rule has performed its customer protection function well over the years, has enabled the Commission and the self-regulatory organizations (''SROs'') to identify financial problems at early stages, and has allowed the Commission and the SROs to perform self-liquidations of failing securities firms without both customer loss and the need for proceedings under the Securities Investor Protection Act of 1970.[5]

Currently, the net capital rule provides two basic capital treatments for option positions held by broker-dealers. The first approach, which is set forth in Appendix A to Rule 15c3–1, was designed for firms clearing their proprietary listed option and related positions, and assumes that the option will be exercised or held to expiration. The second approach, which is set forth in Rule 15c3–1(c)(2)(x), is a premium-based approach. Both methodologies of computing charges provide for lower haircuts for certain risk offsetting positions held by broker-dealers, although the premium-based approach recognizes more types of offsetting positions and gives value for the portion of the premium which is related to time.

B. The Development of the Options Pricing Approach to Capital

In 1973, Fischer Black and Myron Scholes introduced a formula to calculate the value of European style options. The Black-Scholes formula assumes that the primary factors affecting the price of an option are: the value of the underlying asset, the exercise price of the option, the volatility of the underlying asset, the risk-free rate of interest, and the remaining time to expiration. Subsequent to the development of the Black-Scholes formula, the Cox-Ross-Rubinstein binomial pricing formula was developed. By calculating different probable option values at various intervals, the formula is able to more easily incorporate dividends, the term structure of the yield curve, and the early exercise feature of American style options. Other models which are based on the Cox-Ross-Rubinstein formula have since been developed, including OCC's Theoretical Intermarket Margining System (''TIMS''), which is used to measure the market risk associated with participants' positions and to establish clearing house margin requirements.

The sharp market breaks in 1987 and 1989 made it imperative for the Commission to review the adequacy of the current options haircut methodology. The Chicago Board Options Exchange (''CBOE'') and OCC formed a task force to determine whether a more rigorous and predictive approach to haircuts could be developed. As noted, the current methodology requires that positions be allocated to specific recognized strategies which are then haircut at the prescribed levels. The aggregate haircut for a class, or product group in the case of indexes, is the sum of the haircuts calculated for each individually identified strategy. CBOE and OCC believed that the current strategy-based approach did not effectively recognize the risk reduction of offsetting positions within a class or product group, and therefore such approach required excessive amounts of capital to maintain such offsetting positions. In addition, CBOE and OCC maintained that the haircuts associated with short, unhedged, out-of-the-money options were an insufficient measure of capital adequacy with respect to rapid, material changes in market prices. At that time, OCC had been utilizing an options pricing model to establish clearing house margin requirements. In addition, traders and risk managers had been using options pricing models in the development of trading strategies and the management of market risk. Thus, the task force determined to explore the impact of haircuts calculated through the use of an options pricing model.

CBOE and OCC conducted a preliminary study which compared haircut and account equity data obtained from three options market-maker clearing firms with position risk calculated using a derivation of TIMS for a three month time frame in late 1990. Current haircuts and equity were compared to the maximum loss under TIMS per class or product group for each market-maker account. The preliminary study disclosed that haircuts would be reduced for well-hedged, strategy-diverse positions, and increased for unhedged positions. The study further disclosed that the subject clearing firms maintained sufficient capital to continue in capital compliance under the new approach. Based upon the results of this study, the Division invited CBOE and OCC to propose a formal pilot program specifically designed for calculating haircuts for listed options on currencies, equities, and securities and futures indexes.

The Division, CBOE, and OCC agreed upon the criteria to be used in the pilot program, and OCC staff developed the software and performed the operations

[4] The section 8(b) of the Securities Exchange Act that was adopted in 1934 contained a rudimentary net capital ratio requirement for members of national securities exchanges and broker-dealers conducting business through members. In 1942, the Commission adopted its first net capital rule. Section 8(b) was repealed by section 5(2) of the Securities Act Amendments of 1975, which also required the adoption of the uniform net capital rule applicable to all broker-dealers.

[5] 15 U.S.C. 78aaa *et seq.*

to calculate the risk-based haircuts. TIMS was used to project prices. Projected price moves were calculated based upon the closing underlying asset price for each day plus and minus moves at ten equidistant data points over a range of market movements. The greatest loss at any one of these points would become the haircut. The volatility implied from the closing price of the options series was used for the calculation of each projected price for that series. To account for liquidation risk, a minimum charge of ⅛ point per option contract was applied when the haircut for the class or product group reflected little or no market exposure.

The results of the pilot program were consistent with earlier findings in that accounts having primarily hedged positions reflected significant haircut reductions; unhedged portfolios received higher capital charges. Based in part on this experience, the Commission issued the Proposing Release for comment.

C. The Commission's Proposal

The proposed amendments provided that, with respect to each option series[6] it clears, OCC would collect certain information on a daily basis.[7] Using this information and TIMS, OCC would measure the implied volatility for each option series. After measuring the implied volatility for each option series, OCC would input to the model the resulting implied volatility for each option series. For each option series, the model would calculate theoretical prices at 10 equidistant valuation points within a range consisting of an increase or a decrease of the following percentages of the daily market price of the underlying instrument:

(i) +(−) 15% for equity securities with a ready market, narrow-based indexes, and non-high-capitalization diversified indexes,[8]

(ii) +(−) 6% for major market currencies,[9]

(iii) +(−) 10% for high-capitalization diversified indexes,[10] and

(iv) +(−) 20% for currencies other than major market currencies.

After the model calculated the theoretical gain/loss valuations, OCC would provide the valuations to broker-dealers. Broker-dealers would download this information into a spreadsheet from which the broker-dealer would calculate the profit/loss for each of its proprietary and market-maker options positions.[11] The greatest loss at any one valuation point would be the haircut.[12]

Depending upon the type of positions a broker-dealer sought to offset, a percentage of a position's gain at any one valuation point would offset another position's loss at the same valuation point. The proposed amendments allowed the following offsets: (1) within any portfolio type involving the same underlying stock, index, or currency, 100% of a position's gain at any one valuation point would offset another position's loss at the same valuation point; (2) between qualified stock baskets (provided the stock basket represented no less than 90% of a high-capitalization diversified index's capitalization or 100% of the capitalization of a narrow diversified index) offset by index options, or futures, or futures options on the same underlying index, 95% of gains would offset losses at the same valuation point; (3) among high-capitalization diversified index options, futures, and futures options, 90% of the gain on one high-capitalization index position in the same product group would offset the loss on a position on a different high-capitalization diversified index at the same valuation point; and (4) among non-high-capitalization diversified index options, futures, and futures options, 75% of the gain on one non-high-capitalization diversified index position would offset the loss on a different non-high-capitalization diversified index at the same valuation point.

Under the proposed amendments, required deductions were: (1) the amount of losses at any of the 10 equidistant valuation points representing the largest theoretical loss after applying the permissible offsets; or (2) a minimum charge equal to ¼ of a point[13] times the multiplier for each options contract (or $25.00 per option contract assuming that option contract covers 100 shares) and each related instrument within the option's class or product group, or $25 for each option on a major market foreign currency; plus (3) in the case of portfolio types involving index options and related instruments offset by a qualified stock basket, a minimum charge of 5% of the market value of the qualified stock basket for high-capitalization indexes, whether diversified or narrow-based; or (4) in the case of portfolio types involving index options and related instruments offset by a qualified stock basket, a minimum charge of 10% of the market value of the qualified stock basket for diversified non-high-capitalization indexes.

In proposing the amendments, the Commission recognized that certain broker-dealers may not want to, or may not find it cost effective to use an options pricing methodology because of their limited dealings in options. Accordingly, the proposed amendments also included an alternative strategy-based haircut methodology that generally followed, but was more limited than, the haircut approach embodied in the current rule.

Under the current rule, a broker-dealer that carries accounts of listed options specialists must take a charge against capital as of the close of business each day even though the broker-dealer does not know the level of the charges until the following day. The proposed amendments provided broker-

[6] An option series includes option contracts of the same type (either a call or a put) and exercise style covering the same underlying instrument with the same exercise price, expiration date, and number of underlying units. The Commission notes that for the purposes of the final amendments, the term listed option includes listed warrants.

[7] Under the proposed rule, OCC would collect the following information: (1) the dividend streams for the underlying securities, (2) interest rates (either the current call rate or the Eurodollar rate for the maturity date which approximates the expiration date of the option), (3) days to expiration, and (4) closing underlying security and option prices from various vendors.

[8] In order to avoid confusion with the designation of indexes for margin or futures eligibility, the final amendments and the remainder of this release refer to ''broad-based'' indexes as ''diversified'' indexes.

[9] The major market currencies are: Deutsche Mark, British Pound, Swiss Franc, French Franc, Canadian Dollar, Japanese Yen and European Currency Unit.

[10] The Commission indicated in the Proposing Release that underlying price movement assumptions for the proposed theoretical pricing model should be consistent with the volatility assumptions currently incorporated in the net capital rule.

[11] For those broker-dealers which choose to use TIMS but do not obtain a computer interface with OCC, OCC has developed a dial-up service by which such broker-dealers may obtain, on a daily basis, theoretical gains and losses. Other third-party vendors would presumably offer a similar service. Any such dial-up service may be a more practical option for those broker-dealers that do not find it economically feasible to maintain a computerized interface with a third-party source, but that do not wish to apply the alternative strategy-based methodology, as discussed below.

[12] The spreadsheet would be programmed to compute a minimum haircut charge and identify the greater of the computed or minimum charge as the haircut. For example, assume a portfolio consisting of IBM common stock and various puts and calls on IBM common stock with different strikes and expiration dates. OCC would re-price each option position assuming that the price of the IBM common stock had moved up or down by a maximum of 15%, at 10 valuation points (*i.e.*, −15%, −12%, −9%, −6%, −3%, +3%, +6%, +9%, +12%, +15%). The single, maximum net loss amount at any one of the 10 valuation points would become the haircut for the portfolio.

[13] As noted earlier, the pilot program applied a minimum haircut of ⅛ of a point. Pursuant to a recommendation by CBOE and OCC, the Proposing Release increased the minimum charge to ¼ of a point per option contract. The Commission believed this increase was appropriate to account for liquidation and decay risk in options prices in situations where application of the proposed amendments resulted in little or no charge.

dealers with additional time by which to take the capital charge. Specifically, the proposed amendments provided that broker-dealers could adjust their net worth by deducting as of noon of the next business day the charges computed as of the prior business day. In addition, the proposed amendments provided that the required deductions could be reduced by the deposit of funds or securities by noon of the next business day.

D. Summary of Comments

The Commission received ten comment letters in response to the Proposing Release.[14] The comments, in general, were supportive of the Commission's proposal. Most commenters, however, suggested that, in addition to TIMS, the Commission permit the use of other pricing models.[15] In addition, some commenters suggested that the Commission allow the use of theoretical pricing models in connection with over-the-counter (''OTC'') options and positions in U.S. Treasury securities.

The commenters also suggested that the underlying price assumption for high-capitalization diversified indexes be reduced and that the rule permit implied volatility inputs to fluctuate within certain parameters. In addition, a few commenters suggested that the minimum charge of ¼ of a point per option contract be reduced. These issues, as well as others, are discussed below.

II. Description of Rule Amendments

A. Use of TIMS Versus Other Pricing Models

In the Proposing Release and under the 1994 No-Action Letter, broker-dealers were required to use the OCC TIMS system as the exclusive means of determining theoretical options prices. While TIMS is a theoretically sound options pricing methodology, it is not the only recognized methodology in the marketplace. Other models, using different formulae, are also capable of arriving at legitimate results. In response to the comments and based on additional experience with models, the Commission is removing the requirement that TIMS be used. The final rule permits the use of a model (other than a proprietary model) maintained and operated by any third-party source and approved by an examining authority designated pursuant to Section 17(d) of the Exchange Act (''DEA''). The DEA shall submit to the Commission for consideration a description of its methods for approving models.[16] The model must consider at a minimum the following factors in pricing the option: (1) the current spot price of the underlying asset; (2) the exercise price of the option; (3) the remaining time until the option's expiration; (4) the volatility of the underlying asset; (5) any cash flows associated with ownership of the underlying asset that can reasonably be expected to occur during the remaining life of the option; and (6) current information about interest rates. Any such approval of a model by a DEA must include appropriate provisions relating to the obligations of the third-party vendor to supply timely and accurate information to the broker-dealers. Once a model has been approved by a DEA, broker-dealers may use the model in order to calculate haircuts. For purposes of this rule, the TIMS system as operated by OCC will be deemed to be an approved model for a period of two years from the effective date of these amendments. OCC, however, should clarify its vendor status by appropriate DEA approval.

In addition to the commenters' suggestions that the final amendments permit broker-dealers to utilize theoretical pricing systems other than TIMS, certain commenters argued that the Commission should permit the use of internal proprietary models for both listed products and OTC options. The staff of the Division is preparing a separate release which will propose for comment further amendments to the net capital rule to permit the use of proprietary models to value listed options.

B. Implied Volatilities

The TIMS model uses implied options volatilities to calculate theoretical prices of options. It was suggested that because TIMS does not alter implied volatilities as the theoretical price of the option changes, the model overlooks an important element that could have a major effect on capital requirements. In fact, requiring alteration of the implied volatilities would cause numerous additional computations without substantial benefits given the wide range in assumed underlying price movements. The Commission notes, however, that the amendments have been liberalized and permit the use of differing options pricing models. The properties of each model can then be evaluated during the model approval process established in the amendments.

C. Underlying Price Movement Assumptions

The proposed amendments included underlying price movement assumptions for the theoretical pricing model that are consistent with the volatility assumptions currently incorporated in the net capital rule. The Commission believes that requiring the model to ''shock'' the portfolio in the amounts currently incorporated into the net capital rule is necessary to ensure consistent treatment of options and the underlying positions. Since the amendments permit broker-dealers to take haircuts on equities after taking into consideration options on those equities, broker-dealers with limited options positions might seek to apply the assumptions to all of their positions (both equities and options) if the options pricing amendments utilized assumptions that were less robust than those currently in the net capital rule for the underlying positions. If this were the case, broker-dealers could potentially obtain more favorable treatment on their equity positions than currently contemplated by the net capital rule.

The Commission notes that the 1994 No-Action Letter contained a reduction in the underlying price movements for non-clearing specialists and market-makers to +(−)4½% for major market foreign currency positions, +(−)10% for non-high-capitalization diversified indexes, and +6(−8)% for high-capitalization diversified indexes. In that letter, the Division expressly declined to extend this position to other broker-dealers.[17] The concession for market-makers and non-clearing specialists was based upon the important role that non-clearing specialists and market-makers perform in maintaining fair and orderly markets. The Commission is incorporating the reduced requirements for market-makers into the final rule in light of these considerations, however, this concession expires two years from the effective date of the amendments unless

[14] The comment letters are available for public inspection and copying in the Commission's public reference room located at 450 Fifth Street, N.W., Washington, D.C. 20549 (File No. S7–7–94).

[15] Some commenters suggested the use of broker-dealer proprietary models or the Chicago Mercantile Exchange's Standard Portfolio Analysis System (''SPAN'') which is used by many futures exchanges to calculate margin requirements. Letter from Jeffrey Bernstein, Chairman, Capital Committee of the Securities Industry Association (''SIA'') to Jonathan G. Katz, Secretary, SEC (September 16, 1994), and Letter from Thomas R. Donovan, President and Chief Executive Officer, Chicago Board of Trade to Jonathan G. Katz, Secretary, SEC (May 13, 1994).

[16] The Commission notes that any such third-party source, including OCC, may charge broker-dealers a fee for the services they provide in connection with these amendments.

[17] *See* 1994 No-Action Letter, *supra* note 3, at note 5.

it can be demonstrated by the non-clearing specialists and market-makers that retention of reduced capital requirements is in the public interest. Therefore, the Commission is adopting the minimum price movements substantially as proposed.

Similarly, some commenters suggested that the +(−)10% price move assumption for high-capitalization diversified indexes (such as the S&P 500) was too high and should be reduced. During the time the 1994 No-Action Letter has been in effect using a +(−)10% assumption, there does not appear to have been any evidence of liquidity or execution problems in the option markets from application of this assumption. The Commission notes that this assumption is intended to cover the risks of uncovered, out-of-the-money option positions. Accordingly, the amendment retains the +(−)10% underlying assumption for high-capitalization diversified indexes.

D. Permissible Offsets

The proposed amendments permitted specified offsets between differing categories of instruments. The rule being adopted today maintains the concept of specifying offsets, but with a few significant changes. With respect to the offset between qualified stock baskets, the Commission received one comment which contended that rather than requiring that a basket contain a certain minimum amount of stock to be considered a qualified stock basket, the rule should permit a broker-dealer to convert every basket into a qualified stock basket by taking a haircut on the missing or excess stocks, depending on whether too little or too much of a stock was in the basket.

The Commission believes that the better approach is to maintain the stock basket capitalization requirement. The purpose of the minimum capitalization requirement is to ensure that a broker-dealer has a sufficient number of stocks that match those in the index so that the stocks correlate with the index. The Commission, however, believes that a decrease in the capitalization requirement is appropriate. Accordingly, under the rule amendment, to be a qualified stock basket, the basket must represent no less than 50% of a diversified index's capitalization and, for a narrow-based index, the basket must represent no less than 95% capitalization. The proposed amendments allowed offsets only between the same type of indexes and related positions. Commenters suggested that offsets be allowed between different diversified index product groups, and the Commission agrees it is appropriate to permit offsets for positions among different diversified index product groups. The groupings and netting allowances are set forth below.

In addition, questions have arisen regarding the methodology that should be used to designate indexes as high-capitalization diversified or non-high capitalization diversified for purposes of the rule. Set forth below is a list of those indexes which are to be treated as high capitalization diversified or non-high capitalization diversified, and the appropriate offsets. The offsets designated in the groupings are based on historical correlations. The Commission recognizes that this approach does not provide for the treatment of new indexes, however, the Commission intends to issue a release which will set forth generic guidelines for adding and deleting indexes (and designating appropriate offsets) for purposes of the net capital rule.

- U.S. Market Group A (i) Institutional Index (''XII''), (ii) Major Market Index (''XMI''), (iii) S&P 100 Index (''OEX''), (iv) S&P 500 Index (''SPX''), (v) New York Stock Exchange Composite Index (''NYA''), (vi) Big-Cap Sector Index (''MKT''), and (vii) PHLX US Top 100 Index (''TPX''). A 90% offset is permitted between classes within this product group, an 85% offset with U.S. Market Group B, and a 50% offset with the non-high capitalization diversified U.S. Market Product Group and the U.S. NASD Market Group.
- U.S. Market Group B (i) S&P Barra Growth Index, and (ii) S&P Barra Value Index. An 80% offset is permitted within this product group, an 85% offset with U.S. Market Group A, and a 50% offset with the non-high capitalization diversified U.S. Market Product Group and the U.S. NASD Market Group.
- Japan Market Group A (i) Japan Index (''JPN''), (ii) CBOE Nikkei 300 Index (''NIK''), and (iii) the Nikkei 225 Index (''NK''). A 90% offset is permitted within this product group.
- Japan Market Group B consists of the CBOE Japanese Export Warrant Index.
- European Market Product Group consists of the EuroTop 100 Index (''TOP'').
- United Kingdom Market Product Group consists of the Financial Times Exchange Index (''FT–SE'').

The following indexes are designated non high-capitalization diversified market indexes:

- U.S. Market Product Group (i) MidCap Index (''MID''), (ii) Russell 2000 Index (''RUT''), (iii) Value Line Index (''VLE''), (iv) Wilshire 250 Index (''WSX''), and (v) the S&P 600 Smallcap Index (''SML''). A 75% offset is permitted within this product group, and a 50% offset with the U.S. NASD Market Group and with high-capitalization diversified U.S. Market Groups A and B.
- U.S. NASD Market Group (i) NASDAQ 100 Index (''NDX''), and (ii) National OTC Index (''XOC''). A 75% offset is permitted within this product group and a 50% offset with the U.S. Market Product Group and with high-capitalization diversified U.S. Market Groups A and B.
- Mexican Market Product Group consists of the Index of Prices and Quotations (''IPC'').

The following indexes are designated narrow-based index options within the following sector product groups.

- Bank Sector Product Group (i) S&P Banking Index (''BIX''), and (ii) PHLX KBW Bank Index (''BKX''). A 90% offset is permitted within this product group.
- Technology Sector Product Group (i) Morgan Stanley High Tech 35 Index (''MSH''), (ii) PSE Technology Index (''PSE''), (iii) CBOE Technology Index (''TXX''), (iv) AMEX Computer Technology Index (''XCI''), (v) Goldman Sachs Technology Index (''GSTI'') Composit Index (''GTC''), (vi) GSTI Hardware Index (''GHA''), (vii) GSTI Multimedia Network Index (''GIP''), and (viii) GSTI Software Index (''GSO''). A 75% offset is permitted within this group. In addition, the PSE may be offset 75% with the U.S. NASD Market Group.
- Internet Product Group (i) CBOE Internet Index, (ii) AMEX Internet Index, and (iii) GSTI Internet Index (''GIN''). A 75% offset is permitted within this group.
- Oil Product Group (i) CBOE Oil Index (''OIX''), and (ii) AMEX Oil and Gas Index (''XOI''). A 90% offset is permitted within this product group.
- Gold Product Group (i) CBOE Gold Index (''GOX''), and (ii) PHLX Gold/Silver Index (''XAU''). A 90% offset is permitted within this product group.
- Semiconductor Product Group (i) PHLX Semiconductor Index (''SOX''), and (ii) GSTI Semiconductor Index (''GSM''). A 90% offset is permitted within this product group.
- Semiconductor Product Group (General) All remaining narrow-based indexes. No offset is permitted within this product group.

E. Minimum Charges

The minimum charge specified in the rule is designed to account for liquidation and decay risk in the prices of long and short options in those

instances in which applications of the theoretical pricing methodology results in little or no capital requirement. One commenter noted that the use of a minimum charge of a ¼ of a point was a fair method of estimating the liquidation risk of out-of-the-money options. Another commenter indicated that the impact of the minimum charge was to cause spreads for out-of-the-money calls and puts to expand because market-makers are reluctant to sell these options.

Thus far, there is no evidence that these concerns have been borne out, however, the Commission intends to monitor the impact of the amendments and whether these concerns arise in fact. In the meantime, the Commission believes that the minimum charge should be retained as proposed. The rule as adopted, therefore, requires a minimum charge of ¼ of a point or $25.00 per option contract assuming that the basic equity option contract covers 100 shares. To the extent that an option or futures contract exceeds the size of a basic option contract, the minimum charge will be increased by the additional percentage amount of underlying units. For example, an option or a futures contract on the S&P 500 Index covers 500 shares (rather than 100 shares for a basic equity option contract) and therefore the minimum charge would be $125.00 (5×$25.00).

In addition to the ¼ of a point minimum charge, the proposed amendments required an additional deduction of 10% for each qualified stock basket of non-high-capitalization diversified indexes, and 5% for each qualified stock basket of high-capitalization diversified and narrow-based indexes for those positions hedging an options or futures contract subject to the minimum charge. In response to concerns that, in the case of non-high-capitalization indexes, the 10% charge was excessive, the Commission believes it is appropriate to decrease this charge to 7.5%. For high-capitalization indexes, the proposed 5% charge will be adopted.

F. Alternative Strategy-Based Methodology

The proposed amendments provided that broker-dealers could elect to use the alternative strategy-based method for calculating haircuts. One commenter contended that the alternative strategy-based methodology contained in the proposal, because it contained very few simple strategies, would impose haircuts on a trading book which are larger than the haircuts in the current rule. The commenter recommended that the Commission explore the possibility of adopting a strategy-based calculation that would include common strategies currently used by firms.

The Commission notes that the new rule is designed in part to eliminate the complicated overlay of strategies and interpretations that developed out of the necessity to accommodate all dealer options strategies. To attempt to recognize many classes of strategies in the alternative section would result in a return to the system the Commission is revising today. Hence, the Commission believes that a simple strategy-based alternative should be retained in the rule. Limiting the alternative to simple strategies will tend to encourage firms with any options positions of substance to utilize the pricing model methodology. Because the recognized strategies in the alternative section are minimal, limited hedges will be recognized with the result that a book of any significance will incur larger charges under the strategy-based method than the options pricing methodology. This will provide an economic incentive for firms active in options to develop the capability to use up-to-date modelling techniques.

G. Clearing Firm Capital Deposits

The net capital rule requires broker-dealers carrying the accounts of listed options specialists to take capital charges reflecting haircuts required due to specialists' trading activity. The capital rule historically has required the clearing firm to take the required charge as of the close of business each day to ensure it has sufficient capital to open the next morning. However, the carrying firm generally will not know the full extent of its requirements as to its specialists until that next morning. Generally, clearing firms will seek to bring in money, either from the specialist or from elsewhere during the morning. This is a conservative charge considering the rule's usual acceptance of allowing time for margin calls. To remedy this, the proposal allowed the clearing firm until noon to obtain funds or arrange financing. All of the commenters who addressed the issue supported it; accordingly, the Commission is adopting the provision with the clarification that ''noon'' is determined according to the local time where the carrying firm has its headquarters. In any event, this provision will not be available for a market-maker account in deficit.

III. Technical Amendments to the Rule

As noted in the Proposing Release, in connection with the adoption of the amendments, the Commission is making the following technical amendments to the net capital rule necessitated by the new amendments and to codify a long-standing staff interpretation:

A. Deletion of Paragraph (a)(7) of the Net Capital Rule

As previously stated, the net capital rule, as it currently is written, contains two haircut methodologies, the premium-based approach set forth in Rule 15c3–1(c)(2)(x) and the approach embodied in Appendix A to Rule 15c3–1. Currently, pursuant to the provisions of paragraph (a)(7) of the net capital rule, the premium-based approach is available to a clearing firm if its business is limited almost exclusively to effecting (either directly or as agent) and clearing market-making transactions in listed options.

The final rule deletes paragraph (a)(7) of the net capital rule. The Commission believes that this provision is no longer necessary because the final rule eliminates the distinction between the premium-based approach set forth in 15c3–1(c)(2)(x) and the approach set forth in Appendix A to 17 CFR 240.15c3–1.

B. Steps To Be Taken by a Broker-Dealer Carrying the Account of an Option Market-Maker When Equity in That Account is Insufficient to Cover Haircuts

Pursuant to an interpretation letter,[18] carrying broker-dealers may extend credit in a market-maker account even when haircuts for that account exceed the equity in the account.[19] This interpretation is conditioned upon the carrying broker-dealer taking a charge against its capital to the extent that the equity in the market-maker's account is insufficient to cover the haircuts. The amendments incorporate this interpretation into the net capital rule.

IV. Summary of the Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act, which became effective on January 1, 1981, imposes procedural steps applicable to agency rule making which has a ''significant economic impact on a substantial number of small entities.'' [20]

[18] Letter from Lee A. Pickard, Director, Division of Market Regulation, SEC, to Joseph W. Sullivan, President, CBOE (April 8, 1977).

[19] Currently, paragraph (c)(2)(x)(F) of Rule 15c3–1 provides that, if the haircuts for a particular market-maker's account exceed the equity in the account, the carrying broker-dealer may not extend further credit to the market-maker unless the carrying broker-dealer requires the additional deposit of sufficient equity to eliminate the net capital charge.

[20] Although Section 601(b) of the Regulatory Flexibility Act defines the term ''small entity,'' the

Continued

The Commission has prepared a Final Regulatory Flexibility Analysis (''Analysis'') in accordance with 5 U.S.C. § 604 regarding the amendments. The Analysis states that the Commission did not receive any comments concerning the Initial Regulatory Flexibility Analysis.

The Analysis notes that the amendments implement a haircut methodology which employs a mathematical formula to determine the theoretical value of options. The purpose of the amendments is to make haircuts more accurately reflect the risks associated with dealer option positions than is possible under the current rule and to simplify the net capital rule's treatment of options for capital purposes. The amendments permit the use of a model (other than a proprietary model) maintained and operated by a third-party source, including OCC, and approved according to the terms of the amendments. The amendments will impact approximately 247 ''small entities'' which are subject to the provisions of Rule 15c3–1 and have listed options positions insofar as they would be required to implement a computer interface with a third-party vendor in order to receive reliable data to calculate haircuts. The Commission recognizes, however, that some broker-dealers with very limited options positions might find it cost prohibitive to install such computerized interface with a model provider. In order to reduce the economic impact on these broker-dealers, the amendments include an alternative haircut methodology that is based on the basic options strategies used by broker-dealers, and is similar to the approach used in the current rule.

The Analysis also states that no federal securities laws duplicate, overlap, or conflict with the amendments, and adds that the Commission does not believe any less burdensome alternatives are available to accomplish the objectives of the amendments. In addition, the Analysis notes that the staff carefully considered the possibility that smaller broker-dealers who elect the strategy-based approach may receive more severe haircut treatment than under the current rule because the strategy-based approach under the amendments is limited to a few very simple strategies. Because the Commission intended to eliminate the complicated overlay of strategies and interpretations that developed under the former rule to accommodate all dealer options strategies, and because smaller broker-dealers which elect the alternate approach will not be required to incur the costs associated with adopting a new system to employ models, the Commission believes the amendments should have a minimal adverse impact on small businesses or small organizations. As such, the amendments contain no additional reporting, recordkeeping, or other compliance requirements. For additional information, a copy of the Analysis may be obtained by contacting Peter Geraghty (202/942–0177) or Louis A. Randazzo (202/942–0191), Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549.

V. Paperwork Reduction Act

The text of the amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[21] Broker-dealers subject to the rule are required to notify the Commission and the appropriate designated examining authority whenever their level of net capital falls below a prescribed level for any period exceeding three business days, and whenever there is a liquidating deficit in a specialist's market-maker account. These same notification obligations exist under the present rule before adoption of the amendments.[22] Consequently, the amendment does not change the PRA collection of information requirements or burden under Rule 15c3–1. The Commission recently received an extension from the Office of Management and Budget (''OMB'') for the collection of information requirements contained in Rule 15c3–1. The title of the collection of information is ''Net Capital Requirements for Brokers and Dealers, Rule 15c3–1.'' The OMB control number is 3235–0200. The Commission also reminds brokers and dealers subject to the amendments about their related recordkeeping obligations under Rule 17a–4.

VI. Statutory Analysis

Pursuant to the Securities Exchange Act of 1934 and particularly Section 15(c)(3), (15 U.S.C. 78o(c)(3)) thereof, the Commission is adopting amendments to § 240.15c3–1 of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Final Rule

In accordance with the foregoing, Title 17, chapter II, part 240 of the Code of Federal Regulations is amended as follows:

Part 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.15c3–1 is amended by removing and reserving paragraph (a)(7).

3. Section 240.15c3–1 is amended by adding an undesignated center heading before paragraph (c)(2)(x) and revising paragraph (c)(2)(x) to read as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

* * * * *

(c) * * *

(2) * * *

Brokers or Dealers Carrying Accounts of Listed Options Specialists

(x)(A) With respect to any transaction of a specialist in listed options, who is either not otherwise subject to the provisions of this section or is described in paragraph (c)(2)(vi)(N) of this section, for whose specialist account a broker or dealer acts as a guarantor, endorser, or carrying broker or dealer, such broker or dealer shall adjust its net worth by deducting as of noon of each business day the amounts computed as of the prior business day pursuant to § 240.15c3–1a. The required deductions may be reduced by any liquidating equity that exists in such specialist's market-maker account as of that time and shall be increased to the extent of any liquidating deficit in such account. Noon shall be determined according to

statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term ''small entity'' for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions are set forth in Rule 0–10, 17 CFR 240.0–10. *See* Securities Exchange Act Release No. 18452 (January 28, 1982), 47 FR 5215 (February 4, 1982). A broker-dealer is a ''small business'' or ''small organization'' under Rule 0–10, if the broker-dealer (i) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17–5(d) or, if not required to file such statements, a broker-dealer that had total net capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (ii) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in 17 CFR 240.0–10.

[21] 44 U.S.C. § 3501 *et seq.*

[22] *See* Rule 15c3–1(c)(2)(x).

the local time where the broker or dealer is headquartered. In no event shall excess equity in the specialist's market-maker account result in an increase of the net capital of any such guarantor, endorser, or carrying broker or dealer.

(B) *Definitions.* (*1*) The term *listed option* shall mean any option traded on a registered national securities exchange or automated facility of a registered national securities association.

(*2*) For purposes of this section, the equity in an individual specialist's market-maker account shall be computed by:

(*i*) Marking all securities positions long or short in the account to their respective current market values;

(*ii*) Adding (deducting in the case of a debit balance) the credit balance carried in such specialist's market-maker account; and

(*iii*) Adding (deducting in the case of short positions) the market value of positions long in such account.

(C) No guarantor, endorser, or carrying broker or dealer shall permit the sum of the deductions required pursuant to § 240.15c3–1a in respect of all transactions in specialists' market-maker accounts guaranteed, endorsed, or carried by such broker or dealer to exceed 1,000 percent of such broker's or dealer's net capital as defined in § 240.15c3–1(c)(2) for any period exceeding three business days. If at any time such sum exceeds 1,000 percent of such broker's or dealer's net capital, then the broker or dealer shall:

(*1*) Immediately transmit telegraphic or facsimile notice of such event to the Division of Market Regulation in the headquarters office of the Commission in Washington, D.C., to the district or regional office of the Commission for the district or region in which the broker or dealer maintains its principal place of business, and to its examining authority designated pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) (''Designated Examining Authority''); and

(*2*) Be subject to the prohibitions against withdrawal of equity capital set forth in § 240.15c3–1(e) and to the prohibitions against reduction, prepayment, and repayment of subordination agreements set forth in paragraph (b)(11) of § 240.15c3–1d, as if such broker or dealer's net capital were below the minimum standards specified by each of those paragraphs.

(D) If at any time there is a liquidating deficit in a specialist's market-maker account, then the broker or dealer guaranteeing, endorsing, or carrying listed options transactions in such specialist's market-maker account may not extend any further credit in that account, and shall take steps to liquidate promptly existing positions in the account. This paragraph shall not prevent the broker or dealer from, upon approval by the broker's or dealer's Designated Examining Authority, entering into hedging positions in the specialist's market-maker account. The broker or dealer also shall transmit telegraphic or facsimile notice of the deficit and its amount by the close of business of the following business day to its Designated Examining Authority and the Designated Examining Authority of the specialist, if different from its own.

(E) Upon written application to the Commission by the specialist and the broker or dealer guaranteeing, endorsing, or carrying options transactions in such specialist's market-maker account, the Commission may approve upon specified terms and conditions lesser adjustments to net worth than those specified in § 240.15c3–1a.

* * * * *

4. Section 240.15c3–1a is revised to read as follows:

§ 240.15c3–1a Options (Appendix A to 17 CFR 240.15c3–1).

(a) *Definitions.* (1) The term *unlisted option* shall mean any option not included in the definition of listed option provided in paragraph (c)(2)(x) of § 240.15c3–1.

(2) The term *option series* refers to listed option contracts of the same type (either a call or a put) and exercise style, covering the same underlying security with the same exercise price, expiration date, and number of underlying units.

(3) The term *related instrument* within an option class or product group refers to futures contracts and options on futures contracts covering the same underlying instrument. In relation to options on foreign currencies a related instrument within an option class also shall include forward contracts on the same underlying currency.

(4) The term *underlying instrument* refers to long and short positions, as appropriate, covering the same foreign currency, the same security, or a security which is exchangeable for or convertible into the underlying security within a period of 90 days. If the exchange or conversion requires the payment of money or results in a loss upon conversion at the time when the security is deemed an underlying instrument for purposes of this Appendix A, the broker or dealer will deduct from net worth the full amount of the conversion loss. The term underlying instrument shall not be deemed to include securities options, futures contracts, options on futures contracts, qualified stock baskets, or unlisted instruments.

(5) The term *options class* refers to all options contracts covering the same underlying instrument.

(6) The term *product group* refers to two or more option classes, related instruments, underlying instruments, and qualified stock baskets in the same portfolio type (see paragraph (b)(1)(ii) of this section) for which it has been determined that a percentage of offsetting profits may be applied to losses at the same valuation point.

(b) The deduction under this Appendix A to § 240.15c3–1 shall equal the sum of the deductions specified in paragraphs (b)(1)(v)(C) or (b)(2) of this section.

Theoretical Pricing Charges

(1)(i) *Definitions.*

(A) The terms *theoretical gains and losses* shall mean the gain and loss in the value of individual option series, the value of underlying instruments, related instruments, and qualified stock baskets within that option's class, at 10 equidistant intervals (valuation points) ranging from an assumed movement (both up and down) in the current market value of the underlying instrument equal to the percentage corresponding to the deductions otherwise required under § 240.15c3–1 for the underlying instrument (See paragraph (a)(1)(iii) of this section). Theoretical gains and losses shall be calculated using a theoretical options pricing model that satisfies the criteria set forth in paragraph (a)(1)(i)(B) of this section.

(B) The term *theoretical options pricing model* shall mean any mathematical model, other than a broker-dealer proprietary model, approved by a Designated Examining Authority. Such Designated Examining Authority shall submit the model to the Commission, together with a description of its methods for approving models. Any such model shall calculate theoretical gains and losses as described in paragraph (a)(1)(i)(A) of this section for all series and issues of equity, index and foreign currency options and related instruments, and shall be made available equally and on the same terms to all registered brokers or dealers. Its procedures shall include the arrangement of the vendor to supply accurate and timely data to each broker-dealer with respect to its services, and the fees for distribution of the services. The data provided to brokers or dealers shall also contain the minimum requirements set forth in paragraphs (b)(1)(v)(C) of this section and the

product group offsets set forth in paragraphs (b)(1)(v)(B) of this section. At a minimum, the model shall consider the following factors in pricing the option:

(*1*) The current spot price of the underlying asset;
(*2*) The exercise price of the option;
(*3*) The remaining time until the option's expiration;
(*4*) The volatility of the underlying asset;
(*5*) Any cash flows associated with ownership of the underlying asset that can reasonably be expected to occur during the remaining life of the option; and
(*6*) The current term structure of interest rates.

(C) The term *major market foreign currency* shall mean the currency of a sovereign nation whose short-term debt is rated in one of the two highest categories by at least two nationally recognized statistical rating organizations and for which there is a substantial inter-bank forward currency market. For purposes of this section, the European Currency Unit (ECU) shall be deemed a major market foreign currency.

(D) The term *qualified stock basket* shall mean a set or basket of stock positions which represents no less than 50% of the capitalization for a high-capitalization or non-high-capitalization diversified market index, or, in the case of a narrow-based index, no less than 95% of the capitalization for such narrow-based index.

(ii) With respect to positions involving listed options in a single specialist's market-maker account, and, separately, with respect to positions involving listed option positions in its proprietary or other account, the broker or dealer shall group long and short positions into the following portfolio types:

(A) Equity options on the same underlying instrument and positions in that underlying instrument;

(B) Options on the same major market foreign currency, positions in that major market foreign currency, and related instruments within those options' classes;

(C) High-capitalization diversified market index options, related instruments within the option's class, and qualified stock baskets in the same index;

(D) Non-high-capitalization diversified index options, related instruments within the index option's class, and qualified stock baskets in the same index; and

(E) Narrow-based index options, related instruments within the index option's class, and qualified stock baskets in the same index.

(iii) Before making the computation, each broker or dealer shall obtain the theoretical gains and losses for each options series and for the related and underlying instruments within those options' class in each specialist's market-maker account guaranteed, endorsed, or carried by a broker or dealer, or in the proprietary or other accounts of that broker or dealer. For each option series, the theoretical options pricing model shall calculate theoretical prices at 10 equidistant valuation points within a range consisting of an increase or a decrease of the following percentages of the daily market price of the underlying instrument:

(*A*) +(−)15% for equity securities with a ready market, narrow-based indexes, and non-high-capitalization diversified indexes;
(*B*) +(−)6% for major market foreign currencies;
(*C*) +(−) 20% for all other currencies; and
(*D*) +(−)10% for high-capitalization diversified indexes.

(iv)(A) As to non-clearing option specialists and market-makers, the percentages of the daily market price of the underlying instrument shall be:

(*1*) +(−) 4½% for major market foreign currencies; and
(*2*) +6(−)8% for high-capitalization diversified indexes.
(*3*) +(−) 10% for a non-clearing market-maker, or specialist in non-high capitalization diversified index product group.

(B) The provisions of this paragraph (b)(1)(iv) shall expire two years from September 1, 1997, unless otherwise extended by the Commission.

(v)(A) The broker or dealer shall multiply the corresponding theoretical gains and losses at each of the 10 equidistant valuation points by the number of positions held in a particular options series, the related instruments and qualified stock baskets within the option's class, and the positions in the same underlying instrument.

(B) In determining the aggregate profit or loss for each portfolio type, the broker or dealer will be allowed the following offsets in the following order, provided, that in the case of qualified stock baskets, the broker or dealer may elect to net individual stocks between qualified stock baskets and take the appropriate deduction on the remaining, if any, securities:

(*1*) First, a broker or dealer is allowed the following offsets within an option's class:

(*i*) Between options on the same underlying instrument, positions covering the same underlying instrument, and related instruments within the option's class, 100% of a position's gain shall offset another position's loss at the same valuation point;

(*ii*) Between index options, related instruments within the option's class, and qualified stock baskets on the same index, 95%, or such other amount as designated by the Commission, of gains shall offset losses at the same valuation point;

(*2*) Second, a broker-dealer is allowed the following offsets within an index product group:

(*i*) Among positions involving different high-capitalization diversified index option classes within the same product group, 90% of the gain in a high-capitalization diversified market index option, related instruments, and qualified stock baskets within that index option's class shall offset the loss at the same valuation point in a different high-capitalization diversified market index option, related instruments, and qualified stock baskets within that index option's class;

(*ii*) Among positions involving different non-high-capitalization diversified index option classes within the same product group, 75% of the gain in a non-high-capitalization diversified market index option, related instruments, and qualified stock baskets within that index option's class shall offset the loss at the same valuation point in another non-high-capitalization diversified market index option, related instruments, and qualified stock baskets within that index option's class or product group;

(*iii*) Among positions involving different narrow-based index option classes within the same product group, 90% of the gain in a narrow-based market index option, related instruments, and qualified stock baskets within that index option's class shall offset the loss at the same valuation point in another narrow-based market index option, related instruments, and qualified stock baskets within that index option's class or product group;

(*iv*) No qualified stock basket should offset another qualified stock basket; and

(*3*) Third, a broker-dealer is allowed the following offsets between product groups: Among positions involving different diversified index product groups within the same market group, 50% of the gain in a diversified market index option, a related instrument, or a qualified stock basket within that index option's product group shall offset the

loss at the same valuation point in another product group;

(C) For each portfolio type, the total deduction shall be the larger of:

(*1*) The amount for any of the 10 equidistant valuation points representing the largest theoretical loss after applying the offsets provided in paragraph (b)(1)(v)(B) if this section; or

(*2*) A minimum charge equal to 25% times the multiplier for each equity and index option contract and each related instrument within the option's class or product group, or $25 for each option on a major market foreign currency with the minimum charge for futures contracts and options on futures contracts adjusted for contract size differentials, not to exceed market value in the case of long positions in options and options on futures contracts; plus

(*3*) In the case of portfolio types involving index options and related instruments offset by a qualified stock basket, there will be a minimum charge of 5% of the market value of the qualified stock basket for high-capitalization diversified and narrow-based indexes; and

(*4*) In the case of portfolio types involving index options and related instruments offset by a qualified stock basket, there will be a minimum charge of 7½% of the market value of the qualified stock basket for non-high-capitalization diversified indexes.

Alternative Strategy Based Method

(2) A broker or dealer may elect to apply the alternative strategy based method in accordance with the provisions of this paragraph (b)(2).

(i) *Definitions.* (A) The term *intrinsic value* or *in-the-money amount* shall mean the amount by which the exercise value, in the case of a call, is less than the current market value of the underlying instrument, and, in the case of a put, is greater than the current market value of the underlying instrument.

(B) The term *out-of-the-money amount* shall mean the amount by which the exercise value, in the case of a call, is greater than the current market value of the underlying instrument, and, in the case of a put, is less than the current market value of the underlying instrument.

(C) The term *time value* shall mean the current market value of an option contract that is in excess of its intrinsic value.

(ii) Every broker or dealer electing to calculate adjustments to net worth in accordance with the provisions of this paragraph (b)(2) must make the following adjustments to net worth:

(A) Add the time value of a short position in a listed option; and

(B) Deduct the time value of a long position in a listed option, which relates to a position in the same underlying instrument or in a related instrument within the option class or product group as recognized in the strategies enumerated in paragraph (b)(2)(iii)(D) of this section; and

(C) Add the net short market value or deduct the long market value of listed options as recognized in the strategies enumerated in paragraphs (b)(2)(iii)(E)(*1*) and (*2*) of this section.

(iii) In computing net capital after the adjustments provided for in paragraph (b)(2)(ii) of this section, every broker or dealer shall deduct the percentages specified in this paragraph (b)(2)(iii) for all listed option positions, positions covering the same underlying instrument and related instruments within the options' class or product group.

Uncovered Calls

(A) Where a broker or dealer is short a call, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for such option reduced by its out-of-the-money amount, to the extent that such reduction does not operate to increase net capital. In no event shall this deduction be less than the greater of $250 for each short call option contract for 100 shares or 50% of the aforementioned percentage.

Uncovered Puts

(B) Where a broker or dealer is short a put, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for such option reduced by its out-of-the-money amount, to the extent that such reduction does not operate to increase net capital. In no event shall the deduction provided by this paragraph be less than the greater of $250 for each short put option contract for 100 shares or 50% of the aforementioned percentage.

Long Positions

(C) Where a broker or dealer is long puts or calls, deducting 50 percent of the market value of the net long put and call positions in the same options series.

Certain Security Positions With Offsetting Options

(D)(*1*) Where a broker or dealer is long a put for which it has an offsetting long position in the same number of units of the same underlying instrument, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for the long offsetting position, not to exceed the out-of-the-money amount of the option. In no event shall the deduction provided by this paragraph be less than $25 for each option contract for 100 shares, provided that the minimum charge need not exceed the intrinsic value of the option.

(*2*) Where a broker or dealer is long a call for which it has an offsetting short position in the same number of units of the same underlying instrument, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for the short offsetting position, not to exceed the out-of-the-money amount of the option. In no event shall the deduction provided by this paragraph be less than $25 for each option contract for 100 shares, provided that the minimum charge need not exceed the intrinsic value of the option.

(*3*) Where a broker or dealer is short a call for which it has an offsetting long position in the same number of units of the same underlying instrument, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for the offsetting long position reduced by the short call's intrinsic value. In no event shall the deduction provided by this paragraph be less than $25 for each option contract for 100 shares.

Certain Spread Positions

(E)(*1*) Where a broker or dealer is short a listed call and is also long a listed call in the same class of options contracts and the long option expires on the same date as or subsequent to the short option, the deduction, after adjustments required in paragraph (b) of this section, shall be the amount by which the exercise value of the long call exceeds the exercise value of the short call. If the exercise value of the long call is less than or equal to the exercise value of the short call, no deduction is required.

(*2*) Where a broker or dealer is short a listed put and is also long a listed put in the same class of options contracts and the long option expires on the same date as or subsequent to the short option, the deduction, after the adjustments required in paragraph (b) of this section, shall be the amount by which the exercise value of the short put exceeds the exercise value of the long put. If the exercise value of the long put is equal to or greater than the

exercise value of the short put, no deduction is required.

(c) With respect to transactions involving unlisted options, every broker or dealer shall determine the value of unlisted option positions in accordance with the provision of paragraph (c)(2)(i) of § 240.15c3–1, and shall deduct the percentages of all securities positions or unlisted options in the proprietary or other accounts of the broker or dealer specified in this paragraph (c). However, where computing the deduction required for a security position as if the security position had no related unlisted option position and positions in unlisted options as if uncovered would result in a lesser deduction from net worth, the broker or dealer may compute such deductions separately.

Uncovered Calls

(1) Where a broker or dealer is short a call, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the current market value of the security underlying such option reduced by any excess of the exercise value of the call over the current market value of the underlying security. In no event shall the deduction provided by this paragraph be less than $250 for each option contract for 100 shares.

Uncovered Puts

(2) Where a broker or dealer is short a put, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the current market value of the security underlying the option reduced by any excess of the market value of the underlying security over the exercise value of the put. In no event shall the deduction provided by this paragraph be less than $250 for each option contract for 100 shares.

Covered Calls

(3) Where a broker or dealer is short a call and long equivalent units of the underlying security, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the current market value of the underlying security reduced by any excess of the current market value of the underlying security over the exercise value of the call. No reduction under this paragraph shall have the effect of increasing net capital.

Covered Puts

(4) Where a broker or dealer is short a put and short equivalent units of the underlying security, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the current market value of the underlying security reduced by any excess of the exercise value of the put over the market value of the underlying security. No such reduction shall have the effect of increasing net capital.

Conversion Accounts

(5) Where a broker or dealer is long equivalent units of the underlying security, long a put written or endorsed by a broker or dealer and short a call in its proprietary or other accounts, deducting 5 percent (or 50 percent of such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the current market value of the underlying security.

(6) Where a broker or dealer is short equivalent units of the underlying security, long a call written or endorsed by a broker or dealer and short a put in his proprietary or other accounts, deducting 5 percent (or 50 percent of such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the market value of the underlying security.

Long Options

(7) Where a broker or dealer is long a put or call endorsed or written by a broker or dealer, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1) of the market value of the underlying security, not to exceed any value attributed to such option in paragraph (c)(2)(i) of § 240.15c3–1.

By the Commission.

Dated: February 6, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–3479 Filed 2–11–97; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGDO1–95–171]

RIN 2115–AE47

Drawbridge Operation Regulations; Passaic River, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the Routes 1 & 9 (Lincoln Highway) Bridge, mile 1.8, the Point-No-Point Railroad Bridge, mile 2.6, both in Newark, New Jersey, and the Route 7 (Rutgers Street) Bridge, mile 8.9, in Belleville, New Jersey which cross the Passaic River. The change will provide openings on signal if at least four hours notice is given. This change was requested by the Consolidated Rail Corporation (CONRAIL) and New Jersey Department of Transportation (NJDOT) because of the limited openings of these bridges. This action will relieve the bridge owners of the burden of having personnel constantly available to open the bridges and should provide for the reasonable needs of navigation. Other changes remove redundant requirements that are included in the Part 117 general operating regulations, provide maximum allowable time delays for specific railroad bridge openings, remove unnecessary language, and reorder the paragraphs for clarity and consistency.

EFFECTIVE DATE: March 14, 1997.

ADDRESSES: Documents referred to in this preamble are available by writing to the First Coast Guard District, Bridge Branch at Bldg. 135A, Governors Island, New York 10004–5073. The telephone number is (212) 668–7994.

FOR FURTHER INFORMATION CONTACT: Gary Kassof, Chief, Bridge Branch, (212) 668–7021.

SUPPLEMENTARY INFORMATION:

Regulatory History

On June 21, 1996, the Coast Guard published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulations; Passaic River, New Jersey'' in the Federal Register (61 FR 31881). The Coast Guard received three comments on the notice of proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Routes 1 & 9 (Lincoln Highway), Point-No-Point Railroad, and Route 7 (Rutgers Street) Bridges have respective vertical clearances, when in the closed position, of 40′, 16′, and 8′ above mean high water (MHW). All three bridges had previously been required to open on signal. This rule will permit these bridges to open on signal if at least four hours notice is given.

Due to the closure of the River Oil Terminal in August, 1992, requests for openings of bridges across the Passaic River have decreased. For the years 1992, 1993, and 1994, the Routes 1 & 9 (Lincoln Highway) Bridge opened 95, 35 and 29 times, respectively, for vessel transits; the Point-No-Point Bridge opened 243, 145 and 124 times; the Route 7 (Rutgers Street) Bridge opened 129, 161 and 169 times. The previous regulations are being changed to provide

CONRAIL and NJDOT relief from having an operator in constant attendance at the bridges since there is limited demand for bridge openings.

Discussion of Comments and Changes

Three comments were received in response to the notice of proposed rulemaking. Two offered no objection; the other from the City of Newark Department of Engineering wanted assurances that no openings would be permitted at the Route 1 & 9 bridge during rush hours. The City of Newark provided no evidence and made no assertion that there is presently any interruption to vehicular traffic under the existing rule. The new rule, which requires four hours for openings, provides no greater potential for interrupting vehicular traffic than the existing rule. Should excessive vehicle congestion ever occur at this bridge, the City of Newark may petition the Coast Guard for an amendment to this rule. Due to vessel draft requirements and the need for certain vessels to transit during specific tidal stages, openings will be granted during rush hours, if proper advance notice is given.

To provide consistency with Coast Guard regulatory practice, proposed paragraph 117.739(a)(2) is amended to delete manpower, communications and maintenance requirements for the New Jersey Transit crew operation. The requirement for two qualified operators is changed to ''adequate number of operators'', and requirements regarding the number of vehicles, type of communications and deployment of crew members are deleted. In addition, the requirement for ''adequate security measures'' is deleted.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, is unnecessary. This conclusion is based on the fact that this rule will not prevent mariners from passing through the bridges as long as they provide four hours advance notice. Currently, two facilities in Newark, New Jersey, national Fuels and W.A. Steamlines, receive some of their product by barge. During the winter months, National Fuels occasionally receives heating oil crude by barge in anticipation of demand for home heating fuel. Similarly, W.A. Steamlines sometimes has gasoline delivered by barge to increase its reserves in the winter months. Since these deliveries are scheduled well in advance, the advance notice requirement will have minimal impact on these facilities. Small marinas located along the Passaic River provide dockage for less than 100 recreational vessels, many transiting the drawbridges without requiring openings. Considering the recreational nature of these trips, an advance notice requirement will have a minimal impact on recreational boating facilities and recreational boaters.

Small Entities

The Coast Guard has considered the economic impact of this rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). For the reasons discussed in the Regulatory Evaluation above, the Coast Guard has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, (as revised by 60 FR 32197, June 20, 1995), this rule promulgates operating regulations for drawbridges and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulation

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

PART 117—[AMENDED]

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

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

2. Section 117.739 is revised to read as follows:

§ 117.739 Passaic River.

(a) The following requirements apply to all bridges in this section across the Passaic River:

(1) The owners of these bridges shall provide, and keep in good legible condition, clearance gauges with figures not less than twelve (12) inches high designed, installed and maintained according to the provisions of § 118.160 of this chapter.

(2) New Jersey Transit Rail Operations' (NJTRO) roving crews shall consist of an adequate number of operators to ensure NJTRO bridges are operated according to the requirements of this section.

(b) The draw of the Routes 1 & 9 (Lincoln Highway) Bridge, mile 1.8, at Newark, shall open on signal if at least four hours notice is given.

(c) The draw of CONRAIL's Point-No-Point Railroad Bridge, mile 2.6, at Newark, shall open on signal if at least four hours notice is given to the CONRAIL Movement Desk. After the signal to open is given, the opening may be delayed no more than ten minutes.

(d) The draw of the Jackson Street Bridge, mile 4.6, at Harrison, shall open on signal; except that notice must be given before 2:30 a.m. for openings between 3 a.m. and 8:30 a.m. and before 2:30 p.m for openings between 4:30 p.m. and 7 p.m.

(e) The draw of Amtrak's Dock Bridge, mile 5.0, at Harrison, shall open on signal; except that from 7:20 a.m. to 9:20 a.m. and 4:30 p.m. to 6:50 p.m., Monday through Friday except federal holidays, the draw need not be opened. At all other times, an opening may be delayed no more than ten minutes, unless the drawtender and the vessel operator, communicating by radiotelephone, agree to a longer delay.

(f) The draw of the Bridge Street Bridge, mile 5.6, at Harrison, shall open on signal; except that notice must be given before 2:30 a.m. for openings between 3 a.m. and 8:30 a.m. and before 2:30 p.m. for openings between 4:30 p.m. and 7 p.m.

(g) The draw of the NJTRO Newark-Harrison (Morristown Line) Bridge, mile 5.8, at Harrison, New Jersey shall open on signal if at least one hour advance notice is given to the drawtender at Upper Hack Bridge mile 6.9, across the Hackensack River at Secaucus, N.J. In the event the HX drawtender is at the Lower Hack Bridge, mile 3.4 on the

Hackensack River, at Jersey City then up to an additional half hour delay in opening is permitted. After the signal to open is given, the opening may be delayed no more than ten minutes. From 7:15 a.m. to 9 a.m. and from 4:30 p.m. to 6:50 p.m., Monday through Friday except federal holidays, the draw need not open.

(h) The draw of the Route 280 (Stickel Memorial) Bridge, mile 5.8, at Harrison, shall open on signal if at least eight hours notice is given. In an emergency, the draw shall open as soon as possible but not more than two hours after the opening request.

(i) The draw of the Clay Street Bridge, mile 6.0, at Harrison, shall open on signal; except that notice must be given before 2:30 a.m. for openings between 3 a.m. and 8:30 a.m. and before 2:30 p.m. for openings between 4:30 p.m. and 7 p.m.

(j) The draw of the Route 7 (Rutgers Street) Bridge, mile 6.9, at Belleville, shall open on signal if at least four hours notice is given.

(k) The draw of the NJTRO (West Arlington) Bridge, mile 8.0, at Kearney, shall open on signal from 7 a.m. to 11 p.m. if at least eight hours notice is given. After the signal to open is given, the opening may be delayed no more than ten minutes. From 11 p.m. to 7 a.m., the draw need not be opened.

(l) The draw of the Avondale Bridge, mile 10.7, at Lyndhurst, shall open on signal; except that notice must be given before 2:30 a.m. for openings between 3 a.m. and 8:30 a.m. and before 2:30 p.m. for openings between 4:30 p.m. and 7 p.m.

(m) The draw of the NJTRO Bridge, mile 11.7, at Lyndhurst, shall open on signal from 8 a.m. to 4 p.m. if at least six hours notice is given. After the signal to open is given, the opening may be delayed no more than ten minutes. From 4 p.m. to 8 a.m., the draw need not be opened.

(n) The draw of the Route 3 Bridge, mile 11.8, at Rutherford, shall open on signal if at least six hours notice is given.

(o) The draw of the Douglas O. Mead (Union Avenue) Bridge, mile 13.2, at Rutherford, shall open on signal; except that:

(1) From 4 p.m. to 8 a.m., the draw shall open if at least eight hours notice is given; and

(2) On Christmas and New Year's Day, the draw shall open if notice is given prior to 4 p.m. the day prior.

(p) The draw of the following bridges need not be opened for the passage of vessels:

(1) Gregory Avenue Bridge, mile 14.0, at Wallington.

(2) Second Street Bridge, mile 14.7, at Wallington.

(3) West Eighth Street Bridge, mile 15.3, at Garfield.

Dated: January 28, 1997.

J.L. Linnon,

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

[FR Doc. 97–3484 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300452; FRL–5585–1]

RIN 2070–AB78

Bifenthrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of the insecticide bifenthrin in or on the raw agricultural commodities broccoli and cauliflower in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of bifenthrin on broccoli and cauliflower in California. This regulation establishes a maximum permissible level for residues of bifenthrin in these foods pursuant to section 408(l)(6) of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and be revoked automatically without further action by EPA on January 31, 1998.

DATES: This regulation becomes effective February 12, 1997. This regulation expires and is revoked automatically without further action by EPA on January 31, 1998. Objections and requests for hearings must be received by EPA on April 14, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300452], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the document control number, [OPP–300452], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket number [OPP–300452]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8347, e-mail: collantes.margarita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the insecticide bifenthrin, (2-methyl[1,1′-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in or on broccoli at 0.1 parts per million (ppm) and cauliflower at 0.05 ppm. These tolerances will expire and be revoked automatically without further action by EPA on January 31, 1998.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect

immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities were discussed in detail in the final rule establishing a tolerance for an emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemptions for Bifenthrin on Broccoli and Cauliflower and FFDCA Tolerances

The California Department of Pesticide Regulations requested a specific exemption for use of bifenthrin on broccoli, cabbage, cauliflower, rapini, leaf lettuce and head lettuce to control the silverleaf whitefly. California indicates that it still does not have material that will provide them with satisfactory late season control of the silverleaf whitefly. The registrant (Bayer Inc.) for the registered alternative product imidacloprid Admire/Provado does not want growers to use imidacloprid throughout the growing season in order to eliminate any potential that the silverleaf whitefly may develop a resistant gene to imidacloprid. When used as a combination, Imidacloprid and bifenthrin allowed the growers to maintain the ability to grow a marketable crop in 1993 and 1994. Without the use of bifenthrin, the Applicant claims that growers will suffer significant economic loss this growing season.

Upon review of the economic data submitted for this application, the expected net revenue for cabbage, head and leaf lettuce, each fall inside the range of the respective historical variations, implying that no significant economic loss would occur. However, the net revenue for cauliflower and broccoli fall outside of the historical range of variations of net revenue and are therefore expected to result in significant economic losses and an urgent non-routine situation.

As part of its assessment of these applications for emergency exemptions, EPA assessed the potential risks presented by residues of bifenthrin on broccoli and cauliflower. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemptions only after concluding that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. These tolerances for bifenthrin will permit the marketing of broccoli and cauliflower, treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although these tolerances will expire and be revoked automatically without further action by EPA on January 31, 1998, under FFDCA section 408(l)(5), residues of bifenthrin not in excess of the amount specified in the tolerances remaining in or on broccoli and cauliflower after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether bifenthrin meets the requirements for registration under FIFRA section 3 for use on broccoli or cauliflower or whether a permanent tolerance for bifenthrin for these crops would be appropriate. This action by EPA does not serve as a basis for registration of bifenthrin by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any States other than those listed above to use this product on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for bifenthrin, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many

adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered by EPA to pose no appreciable risk.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or Margin of Exposure (MOE) calculation based on the appropriate NOEL) may be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Bifenthrin is already registered by EPA for numerous food and feed uses, as well as residential use (ornamentals, houseplants, turf, pets and inside domestic dwellings). At this time, EPA is not in possession of a registration application for bifenthrin on broccoli or cauliflower. However, a petition tolerance for these uses is expected in 1997. Based on information submitted to the Agency thus far, EPA has sufficient data to assess the hazards of bifenthrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of bifenthrin on broccoli at 0.1 ppm and cauliflower at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity.* Based on the available chronic toxicity data, EPA's Office of Pesticide Programs (OPP) has established the RfD for bifenthrin at 0.015 milligrams(mg)/kilogram(kg)/day. The RfD for bifenthrin is based on a 1–year feeding study in dogs with a NOEL of 1.5 mg/kg/day and an uncertainty factor of 100. Intermittent tremors was the effect observed at the Lowest Effect Level (LEL) of 3 mg/kg/day.

2. *Acute toxicity.* Based on available acute toxicity data, OPP has determined that the NOEL of 1 mg/kg/day from the oral developmental toxicity study in rats should be used to assess risk. The maternal effects observed at the LEL of 2 mg/kg/day was based on tremors from day 7 to 17 of dosing. This acute dietary endpoint will determine acute dietary risks to all subgroups of the population.

3. *Short-term toxicity.* OPP has determined that a short- and intermediate-term risk assessment is appropriate for occupational and residential routes of exposure. OPP recommends that the same NOEL of 1 mg/kg/day, taken from the above acute rat developmental oral toxicity study be used for these MOE residential calculations. A dermal penetration of 20 percent (similar to other pyrethroids) should be employed for worker MOE calculations. OPP did not identify an inhalation exposure intermediate-term hazard.

4. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), the Carcinogenicity Peer Review Committee (CPRC) has classified bifenthrin as a Group C chemical, possible human carcinogen, based on urinary bladder tumors in mice, but did not recommended assignment of a Q_{1*}, instead recommended the RfD approach. Based on CPRC's recommendation that the RfD approach be used to assess dietary cancer risk, a quantitative dietary risk assessment was not performed. Human health risk concerns due to long-term consumption of bifenthrin residues are adequately addressed by DRES chronic exposure analysis using the RfD.

B. Aggregate Exposure

Tolerances for residues of bifenthrin in or on food/feed commodities are currently expressed in terms of the combined residues of the insecticide bifenthrin [2-methyl[1,1′-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate (40 CFR 180.442(b)) expressed in or on certain raw agricultural commodities ranging from 0.05 ppm in eggs to 10.0 ppm in dried hops.

For the purpose of assessing chronic dietary exposure from bifenthrin, EPA assumed tolerance level residues and 100 percent of crop treated refinements to estimate the TMRC from all the established existing food uses of bifenthrin. There are no livestock feed items associated with this section 18

request, so no additional livestock dietary burden will result from this section 18 registration. Therefore, no secondary residues in meat, milk, poultry, and eggs are expected as a result of this use and existing meat, milk and poultry tolerances are adequate.

For the purpose of assessing acute dietary exposure from bifenthrin, EPA assumed anticipated residue data for most of the established existing food uses of bifenthrin. Although no livestock feed items are associated with this section 18 use, additional refinement of the acute milk residue values were performed for this section 18 in order to further define the acute risk estimate.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational (non-dietary) sources. Based on the available studies used in EPA's assessment of environmental risk, bifenthrin appears to be moderately persistent and not mobile. There are no established Maximum Concentration Level for residues of bifenthrin in drinking water. No health advisory levels for bifenthrin in drinking water have been established. The ''Pesticides In Groundwater Database'' (EPA 734–12–92–001, Sept. 1992), indicates that bifenthrin has not been monitored. Based on the available data and percentage of the RfD which is occupied (maximum of 55 percent for non-nursing infants with no anticipated residue or percent crop treated refinement), OPP does not anticipate that addition of risk from drinking water to the dietary burden would result in a TMRC that exceeds 100 percent of the RfD. Therefore, OPP concludes that potential bifenthrin residues in drinking water are not likely to pose a human health concern.

There are residential uses of bifenthrin and EPA acknowledges that there may be short- and intermediate-term non-occupational exposure scenarios. OPP has identified a toxicity endpoint for an intermediate-term residential risk assessment. However, no acceptable reliable exposure data to assess these potential risks are available at this time. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to aggregate non-occupational exposure with dietary exposure, the Agency will make its safety determination for this tolerance based on those factors which it can reasonably integrate into a risk assessment.

At this time, the Agency has not made a determination that bifenthrin and other substances that may have a common mode of toxicity would have cumulative effects. Given the time-limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to define common mode of toxicity, the Agency will make its safety determination for this tolerance based on those factors which it can reasonably integrate into a risk assessment. For purposes of this tolerance only, the Agency is considering only the potential risks of bifenthrin in its aggregate exposure.

C. Safety Determinations for U.S. Population

EPA has concluded that chronic dietary exposure to bifenthrin will utilize 23 percent of the RfD for the U.S. population. As mentioned before, EPA does not expect that chronic exposure from drinking water would result in an aggregate exposure which would exceed 100 percent of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to bifenthrin residues. For the acute population subgroup of concern, children (1 to 6 years old), the calculated MOE value is 50. MOE values under 100 exceed the Agency's level of concern for acute dietary exposure. Though the acute dietary risk assessment assumes anticipated residues for most commodities and is a relatively refined estimate of exposure, OPP expects that further refinement of the acute dietary risk assessment for children (1 to 6 years old) using the Monte Carlo model would result in an acceptable MOE. Use of the Monte Carlo methodology would allow incorporation of the range of expected residues for each commodity being evaluated, instead of point estimates, as well as consideration of percent crop treated refinements in the acute exposure analysis. Currently, 100 percent crop treated is assumed for every commodity evaluated in the analysis; this results in over estimation of acute dietary exposure from bifenthrin.

D. Determination of Safety for Infants and Children.

In assessing the potential for additional sensitivity of infants and children to residues of bifenthrin, EPA considered pre- and post-natal toxicity data in rabbits and rats. EPA notes that the developmental toxicity NOEL of 8.0 mg/kg/day highest dose tesed (HDT) demonstrates that there is no developmental (prenatal) effects in fetuses exposed to bifenthrin in rabbits. The developmental toxicity NOEL of 2.0 mg/kg/day HDT in rats indicated a slight increase in litters with hydroureter (distended ureter). In the absence of a dose-related finding of hydroureter in the rat developmental study and in the presence of similar incidences in the recent historical control data, the marginal findings of hydroureter in rat fetuses at 2.0 mg/kg/day [in the presence of maternal toxicity] is not considered a significant developmental finding nor is it considered to provide sufficient evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

In the 2–generation reproductive toxicity study in the rat, parental toxicity occurred as decreased body weight at 5.0 mg/kg/day with a NOEL of 3.0 mg/kg/day. There were no developmental [pup] or reproductive effects up to 5.0 mg/kg/day HDT. Therefore, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study. This finding suggests that post-natal development in pups is not more sensitive and that infants and children may not have a greater sensitivity to bifenthrin than adult animals.

EPA has concluded that the percent of the RfD that will be utilized by chronic dietary exposure to residues of bifenthrin ranges from 14 percent for nursing infants to 55 percent for non-nursing infants (<1 year old). However, this calculation assumes tolerance level residues for all commodities and is therefore an over-estimate of dietary risk. Refinement of the dietary risk assessment by using anticipated residue data would reduce dietary exposure. As mentioned before, the addition of potential exposure from bifenthrin residues in drinking water is not expected to result in an exposure which would exceed the RfD. EPA therefore concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to bifenthrin.

As mentioned above, dietary cancer concerns for infants and children are adequately addressed by the chronic exposure analysis using the RfD.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA concludes based on reliable data that said additional safety factor is unnecessary. Should an additional uncertainty factor be deemed appropriate, when

considered in conjunction with a refined exposure estimate, it is unlikely that the dietary risk will exceed 100 percent of the RfD. Therefore, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to bifenthrin residues.

V. Other Considerations

The metabolism of bifenthrin in plants and animals is adequately understood for the purposes of this tolerance. There are no Codex maximum residue levels established for residues of bifenthrin on brassica vegetables and lettuce. Adequate methods for purposes of data collection and enforcement of tolerance for bifenthrin residues are available. Method P–2132M (MRID# 416585–01), which was validated on celery, should be adequate for analysis of brassica vegetables and lettuce.

VI. Conclusion

Therefore, a tolerance in connection with the FIFRA section 18 emergency exemptions is established for residues of bifenthrin on broccoli at 0.1 ppm and cauliflower at 0.05 ppm. These tolerances will expire and be automatically revoked without further action by EPA on January 31, 1998.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 14, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

A record has been established for this rulemaking under docket control number [OPP–300452]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 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.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

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

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), 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) of the APA as amended.

List of Subjects in 40 CFR Part 180

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

Dated: January 30, 1997.

Penelope A. Fenner-Crisp,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180— [AMENDED]

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

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

2. In 180.442, by adding a new paragraph (c) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

* * * * *

(c) A time-limited tolerance is established for residues of the combined residues of the insecticide bifenthrin [2-methyl[1,1′-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. These tolerances are specified in the following table. These tolerances will expire and be automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/Revocation Date
Broccoli	0.1	January 31, 1998
Cauliflower	0.05	January 31, 1998

[FR Doc. 97–3380 Filed 2–11–97; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–266; FCC 96–491]

Cable Television Consumer Protection and Competition Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: In this Memorandum Opinion and Order, we adopt rule changes responsive to the decision of the court in *Time Warner Entertainment Co.* v. *FCC*, 56 F.3d 151 (D.C. Cir. 1995). In its decision, the court considered rules adopted by the Commission to implement rate regulation and related provisions of the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act''). The rules were largely affirmed by the court. In five discrete areas, however, the court reversed the Commission's implementing decisions and rules. The order is intended to conform the rules to the court's decision.

DATES: The amendments to 47 CFR Sections 76.905 and 76.921 shall become effective March 14, 1997, and the amendments to 47 CFR Sections 76.922 and 76.913 will become effective upon approval by the Office of Management and Budget of the information collection requirements, but no sooner than March 14, 1997. The Commission will publish a document at a later date establishing this effective date. Written comments by the public on the modified information collections are due April 14, 1997.

ADDRESSES: A copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to dconway@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information concerning this rulemaking contact Meryl S. Icove or Hugh Boyle, Cable Services Bureau, (202) 418–7200. For additional information concerning the information collections contained in this rulemaking contact Dorothy Conway at (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Memorandum Opinion and Order in MM Docket No. 96–266, FCC 96–491, adopted December 23, 1996 and released December 31, 1996. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (''ITS Inc.'') at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20017.

PAPERWORK REDUCTION ACT: This rulemaking contains modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collections contained in this rulemaking, as required by the Paperwork Reduction Act of 1995. Public comments are due April 14, 1997. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0561

Title: Section 76.913 Assumption of jurisdiction by the Commission.

Type of Review: Revision of existing collection.

Respondents: State, local and tribal governments.

Number of Respondents: 50.

Estimated Time Per Response: 8 hours.

Total Annual Burden: 400 hours.

Estimated costs per respondent: $500. Postage and stationery costs are estimated at an average of $10 per petition. 50 petitions × $10 = $500.

Needs and Uses: 76.913 permits local franchising authorities (''LFAs'') that are unable to meet certification standards to petition the Commission to regulate the rates for basic cable service and associated equipment of their respective franchisees. The Commission has amended its rules as follows: If the local franchising authority lacks the resources to administer rate regulation, its petition no longer must be accompanied by a demonstration that franchise fees are insufficient to fund any additional activities required to administer basic service rate regulation. Elimination of this requirement constitutes a modified information collection; all other requirements remain intact.

The information in the petitions is used by Commission staff to identify situations where it should exercise jurisdiction over basic service and equipment rates in place of a local franchising authority. If the information were not collected, the basic cable rates of some franchise areas not subject to effective competition would remain unregulated in contravention of the goals of the 1992 Cable Act.

OMB Approval Number: 3060–0607.

Title: Section 76.922 Rates for Basic Service Tiers and Cable Programming Tiers.

Type of Review: Revision of existing collection.

Respondents: Businesses and other for profit entities; State, local and tribal governments.

Number of Respondents: 2,200 operators filing gap period rate adjustments + 1,100 LFAs reviewing such adjustments + 25 small systems opting for the streamlined rate reduction process + 600 headend upgrade certifications = 3,925.

Estimated Time Per Response: 1–12 hours.

Total Annual Burden: 4,400 + 2,200 + 300 + 600 = 7,500 hours as explained below.

76.922(d)(3)(vii) contains a one-time only information collection requirement. We estimate that the average burden for operators to supply gap period data on their next rate adjustment filing will be 2 hours per filing and that there will be approximately 2,200 such filings made in the next year (1,100 filed with the Commission, 1,100 filed with LFAs). The burden to operators to file = 2,200 filings × 2 hours = 4,400 hours. The burden to LFAs to review this information is estimated to be an average of 2 hours per filing, therefore 1,100 filings reviewed by LFAs × 2 hours = 2,200 hours.

76.922(b)(5) streamlined rate reduction process. We estimate that 25 systems per year use this process. The average burden for undergoing all aspects of each streamlined rate reduction process (all rate calculation, notice and reporting requirements) is estimated to be 12 hours per respondent. 25 systems × 12 hours = 300 hours.

76.922(e)(7) headend upgrade certification process. Qualifying cable systems owned by small cable companies may certify their eligibility to use the Commission's headend upgrade incentive. The average burden to complete the certification process is estimated to be 1 hour. We estimate 600 certifications are currently filed per year. 600 certifications × 1 hour = 600 hours.

Estimated costs per respondent: $250 + $3,000 = $3,250 for all respondents as explained as follows. There are no costs incurred for gap period rate adjustments because they are made as part of regular rate adjustment filings. Postage and stationery costs are estimated at an average of $10 per each complete streamlined rate reduction process. 25 × $10 = $250. Postage and stationery costs are estimated at an average of $5 per each headend upgrade certification. 600 × $5 = $3,000.

Needs and Uses: 76.922(d)(3)(vii) has been amended to permit cable operators to adjust their current permissible rates to reflect the rates the operators would currently be charging if they had been permitted to include increases in external costs occurring between September 30, 1992 and their initial date of regulation (this period of time is also referred to as the ''gap period'') reduced by inflation increases already received with respect to those costs. The increase in rates due to external cost changes that occurred during the gap period shall be reflected in the cable operator's next rate adjustment filing in accordance with the Commission's current rules. The burden imposed by reporting gap period cost data is reported under this OMB control number 3060–0607 for the following reasons: 1) to avoid confusing this requirement as being an additional filing requirement, 2) because it is a temporary one-time only information collection, and 3) because neither of the Commission's cable rate adjustment forms [FCC Form 1210 approved under OMB control number 3060–0595 and FCC Form 1240 approved under OMB control number 3060–0601] have been modified to furnish this data.

All other information collection requirements contained in 76.922 and reported under this OMB control number 3060–0607 remain intact. Those requirements are found in 76.922(b)(5) (Streamlined rate reduction process) and 76.922(e)(7) (Headend upgrades).

76.922(b)(5) provides that an eligible small system that elects to use the streamlined rate reduction process must implement the required rate reductions and provide written notice of such reductions to local subscribers, the local franchising authority (''LFA''), and the Commission.

76.922(e)(7) permits qualified small systems and small systems owned by small multiple system operators to increase rates to recover the actual cost of the headend equipment required to add up to seven channels to Cable Programming Service Tiers (''CPSTs'') and single-tier systems, not to exceed $5,000 per additional channel. These rate increases may occur between January 1, 1995 and December 31, 1997, as a result of additional channels offered on those tiers after May 14, 1994. In order to recover costs for headend equipment pursuant to this paragraph, systems must certify to the Commission their eligibility to use this paragraph, and the level of costs they have actually incurred for adding the headend equipment and the depreciation schedule for the equipment.

Synopsis of Order

1. In this Memorandum Opinion and Order, we adopt rule changes responsive to the decision of the court in *Time Warner Entertainment Co.* v. *FCC*, 56 F.3d 151 (D.C. Cir. 1995). In its decision, the court considered rules adopted by the Commission to implement rate regulation and related provisions of the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act''). The rules were largely affirmed by the court. In five discrete areas, however, the court reversed the Commission's implementing decisions and rules. First, the court concluded that the Commission construed the term ''effective competition'' too narrowly in terms of the entities that could be counted as providing direct competition to existing cable operators. Second, the Commission erred in concluding that the requirement for a uniform rate structure applies to all systems, including those facing effective competition and not otherwise subject to rate regulation under the statute. Third, the Commission's conclusion that the statute's tier buy-through provision applies to systems subject to effective competition was found to conflict with the structure and the language of the statute. Fourth, the Commission was found to have exceeded its authority by establishing a presumption that franchising authorities seeking to cede the basic rate regulation function to the Commission could themselves fund rate regulation locally if they were collecting franchise fees. Fifth, the court vacated the Commission's rules relating to so-called gap period external costs. The following sections address each of these findings in relation to our previous decisions and rules.

2. *Effective Competition.* The 1992 Cable Act defined three types of systems that are subject to ''effective competition'' and therefore exempt from rate regulation: low penetration systems, competing provider systems, and municipal systems.[1] Effective competition resulting from a competing provider exists if the franchise area is—

(i) served by at least two unaffiliated multichannel video programming distributors each of which offers

[1] The definition of effective competition is found in 47 CFR § 543(l)(1). The Telecommunications Act of 1996 amends Section 543(l)(1) by adding a subsection (D), which contains a fourth test for effective competition. *See* Telecommunications Act of 1996, Section 301(b)(3). The Commission has incorporated this new test into its rules. *See* 47 CFR § 76.905(b)(4). *See also* Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, Order and Notice of Proposed Rulemaking (''Cable Act Reform''), CS Docket No. 96–85, FCC 96–154 (released April 9, 1996), 11 FCC Rcd 5937 (1996), 61 FR 19013 (April 30, 1996); 47 CFR § 76.1401. All references herein to Section 543(l)(1) do not include this amendment.

comparable video programming to at least 50 percent of the households in the franchise area; and

(ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15 percent of the households in the franchise area * * *.

On review, the court concluded that, although the Commission's definition of competing providers was theoretically sound, it conflicted with the plain language of the statute, and Congress did not limit the 15% threshold in Section 543(l)(1)(B)(ii) to those cable systems that satisfy the requirements of Section 543(l)(1)(B)(i).

3. In response to the court's decision we are amending the rules relating to the definition of effective competition as reflected below. With this change in place, a demonstration of ''competing provider'' effective competition requires only evidence that the franchise area is served by at least two unaffiliated multichannel video programming distributors each of which offers comparable video programming to at least 50% of the households in the franchise area and that the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds 15% of the households in the franchise area.

4. *Uniform Rate Structure*. Section 543(d)[2] provides:

A cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system.

The Commission initially determined that the focus of this uniform rate structure provision was properly ''on regulated systems in regulated markets,'' that is, systems that did not face effective competition as defined by the 1992 Cable Act. On reconsideration, however, the Commission decided that the uniform rate structure provision applied not only to regulated systems, but also to systems subject to effective competition and otherwise exempt from rate regulation under the 1992 Cable Act. The Commission reasoned that the harms targeted by the uniform rate provision—''charging different subscribers different rates with no economic justification and unfairly undercutting competitors' prices''—exist equally in areas where ''effective competition'' exists.

5. The court concluded the latter interpretation conflicts with the language and legislative purpose of the 1992 Cable Act. Because it found that Section 543(d) regulates rates within the meaning of Section 543(a)(2), the court concluded that the Commission's uniform rate structure regulation was contrary to the statute insofar as it applied to cable operators subject to ''effective competition.'' The court stated that, by requiring competitive systems to charge uniform rates, the Commission undermined a hallmark purpose of the 1992 Cable Act, which is to allow market forces to determine the rates charged by cable systems that are subject to ''effective competition'' as defined by Congress.

6. Section 310(b)(2) of the Telecommunications Act of 1996 amended Section 543(d) by adding, inter alia, the following language to the end of that section:

This subsection does not apply to (1) a cable operator with respect to the provision of cable service over its cable system in any geographic area in which the video programming services offered by the operator in that area are subject to effective competition, * * *.

The Commission has amended its rules to reflect this statutory amendment, and in so doing has complied with the court's decision with respect to the uniform rates requirement.

7. *Tier Buy-through*. In an order, the Commission concluded that the tier buy-through provision applies not only to regulated systems, but also to systems subject to ''effective competition'' and thus not subject to rate regulation under the 1992 Cable Act. The court found that the Commission's interpretation of the tier buy-through provision was not permissible under the 1992 Cable Act. In response to the court's decision, we are amending our rules as reflected in below to provide that the tier buy-through requirement applies only to systems not subject to effective competition.

8. *Franchising Authorities/Franchise Fees*. The Commission, reasoning that some franchising authorities might wish to have basic rates regulated but lack the legal power or resources to do so at the local level, concluded that its general mandate to ''ensure that the rates for the basic service tier are reasonable'' empowered it to regulate basic rates upon the request of such franchising authorities. Rather than requiring these franchising authorities to file a certification application that was intended to be denied in order to establish their lack of power or resources, the Commission decided to allow the authorities affirmatively to request federal regulation of basic rates. However, the Commission decided to require a showing that the franchising authority could not afford to regulate when a franchising authority that collects franchise fees claims financial incapacity. The Commission established a presumption that franchising authorities receiving franchise fees have the resources to regulate and required any franchising authority seeking to have the Commission exercise jurisdiction over basic rates to rebut this presumption with evidence showing why the proceeds of the franchise fees could not be used to cover the cost of rate regulation.

9. The court concluded, however, that the Commission erred in establishing this presumption because the presumption implies that the franchising authority must use any available franchise fees for purposes of rate regulation. In response to the court's decision, we will no longer establish a relationship between the franchising authority's ability to regulate and its franchise fee collection. The Commission will continue, however, to exercise authority over the basic tier in response to a franchising authority's request only when justified by a franchising authority's financial or legal inability to proceed on its own. We are amending our rules as reflected below to incorporate the court's decision regarding franchising authorities requests for Commission assumption of jurisdiction.

10 *External Costs Treatment*. The court held that the Commission's decision to preclude a rate adjustment designed to recover changes in external costs increases resulting from the period between September 30, 1992 and an operator's initial date of regulation was arbitrary and capricious. In response to the court's decision, we are amending our rules to permit operators to adjust their current permissible rates to reflect the rates the operators would currently be charging if they had been permitted to include increases in external costs occurring between September 30, 1992 and their initial date of regulation reduced by inflation increases already received with respect to those costs.

11. The operator will calculate an adjustment which will be incorporated into a Form 1210 or Form 1240, and which will be added to the operator's rate. To calculate the adjustment, the operator will use information from a previously filed Form 1200. A more detailed explanation of how to make the

[2] Section 301(b)(2) of the Telecommunications Act of 1996 amends Section 543(d). All references herein to Section 543(d) do not include this amendment.

adjustment is provided below. The general methodology is as follows: the operator should calculate and subtract (a) the ''average monthly external cost per subscriber per tier as of September 30, 1992, as adjusted for inflation through the initial date of regulation'' from (b) the ''average monthly external cost per subscriber per tier as of the initial date of regulation.'' To determine (a), the operator would increase the average monthly external cost per subscriber per tier as of September 30, 1992 by the same inflation factor as was applied in the calculation of initial maximum permitted rates. The difference between (a) and (b) is the allowed adjustment. When using Form 1210 or Form 1240 to reflect these adjustments, the operator shall disclose that the adjustment has been included in rates and shall provide its calculations.

Final Regulatory Flexibility Act Analysis.

12. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in MM Docket 92–266 and in several further notices of proposed rulemaking. The Commission therein sought written public comments on the proposals, including comments on the IRFAs, and addressed these comments in previous orders. See, e.g., 8 FCC Rcd 5631, 5978 (1993), 58 FR 29736 (May 21, 1993); 9 FCC Rcd 1164, 1253 (1993), 58 FR 46718 (September 2, 1993); 9 FCC Rcd 4119, 4249 (1994), 59 FR 17943 (April 15, 1994). This FRFA thus addresses the impact of regulations on small entitities only as adopted or modified in the action and not as adopted or modified in earlier stages of this rulemaking proceeding. The Commission's Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law No. 104–121, 110 Stat. 847.

13. Need and Purpose for Action: This action is taken to conform the Commission's rules to the court's decision in *Time Warner Entertainment Co.* v. *FCC*, 56 F.3d 151 (D.C. Cir. 1995).

14. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis: This order is adopted in direct response to a judicial remand and has been adopted without a further notice and comment cycle.

15. Description and Estimate of the Number of Small Entities Impacted: Cable Systems: SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company,'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the decisions and rules adopted in this *Memorandum Opinion and Order*. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

16. Municipalities: The term ''small governmental jurisdiction'' is defined as ''governments of * * * districts, with a population of less than fifty thousand.'' There are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. We note that any official actions with respect to cable systems will typically be undertaken by LFAs, which primarily consist of counties, cities and towns. Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states, which typically are not LFAs. Of the 38,978 counties, cities and towns, 37,566 or 96%, have populations of fewer than 50,000. Thus, approximately 37,500 ''small governmental jurisdictions'' may be affected by the rules adopted in this Memorandum Opinion and Order.

17. Reporting, Recordkeeping, and Other Compliance Requirements: The rules do not establish any filing requirements. However, an operator choosing to adjust its rates to account for changes in its external costs as permitted by the rule adopted here will have to make additional calculations in conjunction with the filing of its form. The franshising authority will review these calculations in conjunction with its review of the form. The rule will not require any additional special skills beyond any which are already needed in the cable rate regulatory context.

18. Steps Taken to Minimize the Economic Impact on Small Entities and Significant Alternatives Rejected: The rule changes adopted in this Order are required by the court's decision, and, if anything, they result in decreasing the regulatory burdens on cable operators. If the revised interpretation of the statutory definition of effective competition results in a system being subject to effective competition, then the system will not be subject to rate regulation. The amendment to the tier buy-through rule provides more flexibility for cable systems subject to effective competition. The requirement that the Commission not establish a relationship between the franchising authority's ability to regulate and its franchise fee collection may simplify the franchising authority's request that the Commission assume jurisdiction. The cable operator may choose whether or not to adjust its rate to account for changes in external costs as permitted by the rule. If a system is regulated and it chooses to adjust its rate, it can do so the next time it is scheduled to file a form.

19. Report to Congress: The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Memorandum Opinion and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

20. Accordingly, it is ordered that, pursuant to the authority contained in Section 4(i) and (j) and 303 of the Communications Act of 1934, as amended, and the Cable Television Consumer Protection and Competition Act of 1992, Public Law No. 102–385, Part 76 of the Commission Rules, 47 CFR Part 76, IS AMENDED as set forth below.

21. *It is further ordered* that the amendments to 47 CFR Sections 76.905 and 76.921 shall become effective March 14, 1997, and the amendments to 47 CFR Sections 76.922 and 76.913 will become effective upon approval by the Office of Managment and Budget of the information collection requirements, but no sooner than March 14, 1997.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.905 is amended by revising paragraph (f) to read as follows:

§ 76.905 Standards for identification of cable systems subject to effective competition.

* * * * *

(f) For purposes of determining the number of households subscribing to the services of a multichannel video programming distributor other than the largest multichannel video programming distributor, under paragraph (b)(2)(ii) of this section, the number of subscribers of all multichannel video programming distributors that offer service in the franchise area will be aggregated.

* * * * *

3. Section 76.913 is amended by revising paragraph (b)(1) to read as follows:

§ 76.913 Assumption of jurisdiction by the Commission.

* * * * *

(b) * * *

(1) The franchising authority lacks the resources to administer rate regulation.

* * * * *

4. Section 76.921 is revised to read as follows:

§ 76.921 Buy-through of other tiers prohibited.

(a) No cable system operator, other than an operator subject to effective competition, may require the subscription to any tier other than the basic service tier as a condition of subscription to video programming offered on a per channel or per program charge basis. A cable operator may, however, require the subscription to one or more tiers of cable programming services as a condition of access to one or more tiers of cable programming services.

(b) A cable operator not subject to effective competition may not discriminate between subscribers to the basic service tier and other subscribers with regard to the rates charged for video programming offered on a per-channel or per-program charge basis.

(c) With respect to cable systems not subject to effective competition, prior to October 5, 2002, the provisions of paragraph (a) of this section shall not apply to any cable system that lacks the capacity to offer basic service and all programming distributed on a per channel or per program basis without also providing other intermediate tiers of service:

(1) By controlling subscriber access to nonbasic channels of service through addressable equipment electronically controlled from a central control point; or

(2) Through the installation, noninstallation, or removal of frequency filters (traps) at the premises of subscribers without other alteration in system configuration or design and without causing degradation in the technical quality of service provided.

(d) With respect to cable systems not subject to effective competition, any retiering of channels or services that is not undertaken in order to accomplish legitimate regulatory, technical, or customer service objectives and that is intended to frustrate or has the effect of frustrating compliance with paragraphs (a) through (c) of this section is prohibited.

5. Section 76.922 is amended by revising paragraph (f)(4) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(f) * * *

(4) The starting date for adjustments on account of external costs for a tier of regulated programming service shall be the earlier of the initial date of regulation for any basic or cable service tier or February 28, 1994. Except, for regulated FCC Form 1200 rates set on the basis of rates at September 30, 1992 (using either March 31, 1994 rates initially determined from FCC Form 393 Worksheet 2 or using Form 1200 Full Reduction Rates from Line J6), the starting date shall be September 30, 1992. Operators in this latter group may make adjustment for changes in external costs for the period between September 30, 1992, and the initial date of regulation or February 28, 1994, whichever is applicable, based either on changes in the GNP–PI over that period or on the actual change in the external costs over that period. Thereafter, adjustment for external costs may be made on the basis of actual changes in external costs only.

* * * * *

This attachment will not be published in the Code of Federal Regulations.

Attachment

This adjustment may be made only to rates set under the benchmark methodology on the basis of rates in effect at September 30, 1992 (using either March 31, 1994 rates initially determined from FCC Form 393 Worksheet 2 or using Form 1200 Full Reduction Rates from Line J6). This is a one-time adjustment to rates and may be made on a FCC Form 1210 or FCC Form 1240. To adjust such rates to include fully the change in external costs occurring between September 30, 1992 and the initial date of regulation or February 28, 1994, whichever is earlier, the operator will make the adjustments pursuant to the procedure outlined below.

Step 1. Identify the average external cost per subscriber per tier as of the initial date of regulation or February 28, 1994, as applicable.

This information is found on Line B7 of Form 1200.

Step 2. Identify the average monthly external cost per subscriber per tier as of September 30, 1992.

This should be calculated using the same methodology used to determine the external cost per subscriber per tier on the initial date of regulation, and the operator shall therefore follow the instructions for Lines B2 through B7 on FCC Form 1200. In such case ''Beginning Date'' shall be considered to be September 30, 1992 for purposes of following these instructions.

Step 3. Determine the inflation factor applied in the calculation of initial maximum permitted rates to adjust for inflation for the period from September 30, 1992 to the initial date of regulation or February 28, 1994, as applicable.

If the rates being adjusted were determined on FCC Form 1200 based on rates in effect on September 30, 1992 under the FCC Form 1200 Full Reduction Methodology (i.e., the rates on both Line I18 and Line J6 of FCC Form 1200), the inflation factor applied is 3%. In determining Full Reduction Rates on FCC Form 1200, the September 30, 1992 rates were adjusted to September 30, 1993 (on Line G10) using 3%.

If the rates being adjusted were determined on FCC Form 1200 based on rates current at March 31, 1994 but initially determined on FCC Form 393 from September 30, 1992 rates (under the Worksheet 2 methodology), the inflation factor applied from September 30, 1992 to the initial date of regulation is the factor found on Line 401 of FCC Form 393. This is the factor used by the operator initially to set rates using FCC Form 393, unless a corrected factor was ordered by a regulatory authority. If the factor was corrected, the regulator-ordered factor for Line 401 shall be used.

Step 4. Adjust the amount from Step 2 by the factor identified in Step 3.

Step 5. Subtract the amount calculated in Step 4 from the amount determined in Step 1, i.e., from the average monthly external cost per subscriber per tier as of the initial date of regulation. The resultant amount is the permanent adjustment—a one-time average monthly per subscriber per tier adjustment to the operator's maximum permitted rate.

Step 6. Complete FCC Form 1210 or FCC Form 1240 in accordance with Commission rules and procedures for the applicable form, but include the adjustment calculated in Step 5.

If a FCC Form 1210 is used, the resultant adjustment amount from Step 5 should be added to the amount on Line J8 (Aggregate Full Reduction Rate) or, if transition rates are being adjusted, the adjustment should be added to the amounts on Lines I8 (Updated Transition Rate per Tier) and J8.

If a FCC Form 1240 is used, the resultant adjustment amount from Step 5 should be added to Line H9 (Maximum Permitted Rate for Projected Period).

Along with the FCC Form 1210 or FCC Form 1240 adjusted, the operator shall disclose that the adjustment has been included in rates and shall provide its calculations of the adjustment amount.

The operator shall provide the level of external cost adjustment disclosure shown in Module B, Line B2 through B14 of FCC Form 1200, except that it shall also disclose the adjustment for inflation applied to the average monthly external cost per subscriber per tier as of September 30, 1992.

[FR Doc. 97–3454 Filed 2–11–97; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 62, No. 29
Wednesday, February 12, 1997

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1496

RIN 0560–AF09

Procurement of Processed Agricultural Commodities for Donation Under Title II, Pub. L. 480

AGENCY: Commodity Credit Corporation, USDA

ACTION: Proposed Rule.

SUMMARY: This proposed regulation would revise Commodity Credit Corporation's (''CCC'') procedures for purchasing processed agricultural commodities for donation overseas under Title II of the Agricultural Trade Development and Assistance Act of 1954, as amended, (''Pub. L. 480''). This proposal would implement recent statutory changes and adopt a simpler and more efficient procurement process.

DATES: Written comments concerning this proposed rule must be submitted by April 14, 1997.

ADDRESSES: Comments must be sent to USDA/FSA, Procurement and Donations Division, Export Operations Branch, Rm. 5755-S, Mail Stop 0551, P.O. Box 2415, Washington DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Jeff Jackson, (202) 720–3995.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of rulemaking with respect to the subject matter of this rule.

Paperwork Reduction Act

The amendments to 7 CFR part 1496 set forth in this proposed rule do not contain additional information collections that require clearance by OMB under the provisions of 44 U.S.C. 35.

Executive Order 12372

This rule is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 46 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed under the Executive Order 12988, Civil Justice Reform. The rule would have pre-emptive effect with respect to any state or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The rule would not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

Background

General

Pursuant to Title II, Pub. L. 480, the United States donates agricultural commodities overseas to meet famine or other relief requirements, combat malnutrition, and promote economic development. This program is administered by the Agency for International Development (''A.I.D.''). A.I.D. donates commodities to foreign governments, intergovernmental organizations, or private relief agencies, commonly referred to as ''cooperating sponsors'' for the above purposes through agreements between A.I.D. and a cooperating sponsor.

CCC has the responsibility to acquire and make available the agricultural commodities needed to carry out agreements under Title II, Pub L. 480. CCC will either provide these commodities from its inventory or by purchases in the market. In addition to bearing the cost of the donated commodities, CCC is authorized to pay other related costs including packaging, processing, surveys, fumigation, transportation to ports of export, and ocean transportation costs. CCC does not contract for the ocean transportation services to ship the commodities. Cooperating sponsors or A.I.D. are responsible for contracting for ocean transportation of the commodities. Generally, A.I.D. will pay for the ocean freight charges incurred by it or a cooperating sponsor from funds advanced to A.I.D. from CCC.

Commodity Procurement

CCC will procure packaged commodities requested for Title II, Pub. L. 480 through a public solicitation for bids requesting offers to sell on an f.a.s. vessel or intermodal basis. CCC evaluates offers to sell commodities submitted pursuant to an invitation for bids on the general principle of ''lowest landed cost.'' This simply means that, in deciding which commodity offer to accept, CCC will consider both the price it would have to pay to acquire the commodity and the anticipated freight costs to ship the commodity to foreign destination. Regulations governing the bid evaluation process for the procurement of processed agricultural commodities for Title II, Pub. L. 480 appear at 7 CFR part 1496. In making a lowest landed cost analysis, CCC relies upon published tariff rates on file with the Federal Maritime Commission and current rate information furnished to the Kansas City Commodity Office by the ocean freight carriers. The most economical combination of commodity price and transportation rate will determine the commodity offer CCC accepts.

The ocean carriage of Title II, Pub. L. 480 commodities is subject to sections 901(b) and 901b of the Merchant Marine Act, 1936, 46 U.S.C. App. sections 1241(b) and 1241f, commonly referred to as the ''cargo preference laws.'' These provisions generally require that agencies involved in certain export programs, including Title II, Pub. L. 480, must assure that at least 75 percent of such ocean shipments are carried on U.S.-flag vessels to the extent they are available at fair and reasonable rates. CCC will decide if the commodity purchased is to be shipped on a U.S.-flag vessel after reviewing the various lowest landed cost options indicating the most economical means to achieve cargo preference requirements. This involves the use of only U.S.-flag vessel rates in the lowest landed cost analyses for that portion of the cargo to be shipped on U.S.-flag vessels.

As indicated above, CCC procures packaged commodities on a free along side (f.a.s.) vessel, or intermodal basis. These delivery terms do not include costs of ocean transportation. Since CCC does not contract for ocean transportation, CCC will notify the cooperating sponsor or A.I.D of the commodity offer accepted based upon its lowest landed cost analysis. The cooperating sponsor or A.I.D then issues its own invitation for bids for the procurement of transportation for commodities to which interested ocean carriers must respond. The cooperating sponsor or A.I.D must contract with a vessel to carry the commodity purchased at the rate used by CCC in making its lowest landed cost determination, or a lower rate. If CCC has determined that a quantity of cargo must be shipped on a U.S.-flag vessel to meet cargo preference requirements, the cooperating sponsor or A.I.D must contract with a U.S.-flag vessel carrier.

Maritime Security Act of 1996 (MSA)

Section 17 of the Maritime Security Act of 1996 (''MSA'') amended section 901b(c) of the Merchant Marine Act, 1936 (46 App. 1241f(c)) to mandate that CCC follow certain procedures in its purchasing process for packaged commodities. The new procedures are intended to correct a perceived unfairness to Great Lakes ports stemming from cargo preference requirements. Currently no U.S.-flag or foreign-flag carriers offer service at Great Lakes ports for this type of cargo. It is argued that CCC's purchase of commodities on the basis of lowest landed cost utilizing U.S.-flag vessel rates for the purpose of meeting cargo preference requirements in the most economical manner has the effect of drawing cargo away from Great Lakes ports because commodity offers for delivery to Great Lakes ports would not be considered at that point in the procurement process. In an effort to place Great Lakes ports on an equal footing with other coastal ranges, yet maintaining cargo preference requirements, section 17 of the MSA mandates a change in our purchasing process. Generally, CCC will now be required to initially evaluate all commodity offers received in response to a particular invitation on a lowest landed cost basis without regard to the flag of the vessels offering service. If that evaluation demonstrates that commodities offered for delivery at a particular Great Lakes port represents the lowest landed cost, CCC must purchase such commodities for delivery at that Great Lakes port. This purchasing requirement is applicable to up to 25 percent of the total annual tonnage of bagged, processed or fortified commodities furnished under Title II, Pub. L. 480.

CCC is still required to assure that, annually, at least 75 percent of the Title II cargo is shipped on U.S.-flag vessels. In implementing this requirement, CCC is free to purchase commodities on a lowest landed cost U.S.-flag vessel basis for cargo offered for delivery to any port or port range after the 25 percent Great Lakes quantity is reached.

The new provision requires that a number of issues be addressed. First, since CCC generally purchases Title II commodities on a monthly basis and it is impossible to determine in advance the quantity of commodities to be actually purchased, CCC cannot know, at any point in the year, when the 25 percent Great Lakes tonnage point is reached. Consequently, CCC proposes to administer the 25 percent requirement on a annual basis. In other words, beginning with the first purchase in each cargo preference year (April 1—March 31), 25 percent or more of the total monthly purchase may be allocated to Great Lakes port range on an overall lowest landed basis. This would allow CCC the flexibility to take advantage of seasonal and other surges in service offered through the Great Lakes ports during the course of the year.

Section 901b(c) of the Merchant Marine Act, 1936, as amended, now requires that CCC allocate to Great Lakes ports ''any cargoes for which it has'' the overall lowest landed cost, but does not define what may be considered as a Great Lakes port offer. Clearly, the lowest f.a.s. vessel offer for export from Great Lakes ports would qualify. A more difficult question involves intermodal-bridge-point (bridge-point) offers. In bridge-point movements, the commodity supplier is responsible for the transportation and related costs to deliver the commodity to the designated U.S. bridge-point location. The ocean transportation carrier becomes responsible for the cargo at the bridge-point location and must transport the commodities from that point and pay all related costs to deliver the commodity onboard the vessel. Such costs include car unloading, container stuffing (where applicable), etc. The bridge-point may not be within the confines of a port operation and the commodities may be loaded on a vessel at a port that is in a different part of the country than the bridge-point. This raises the issue of how bridge-point service should be considered when determining what are Great Lakes port offers.

Certain interests have suggested that the purpose of the recent amendment was to make-up for potential revenue and employment opportunities lost to the Great Lakes by virtue of the cargo preference requirements and that bridge-point-service that includes cargo handling; i.e., stuffing containers at Great Lakes ports contributes to this goal even if the cargo is ultimately exported from other ports. For this reason, it is suggested that any commodity offers for this type of service that represent the lowest landed cost should be viewed as Great Lakes cargo. On the other hand, if the commodities are not stuffed into transportation conveyances at the intermodal bridge-point at Great Lakes ports and the carrier merely takes risk of loss to the cargo, these interests suggest that the commodity offer should not be considered as a Great Lakes port range offer.

While there is certainly some merit to this analysis, the suggestion raises some administrative problems. If CCC were to adopt this suggestion, it appears that it would have to make some rather arbitrary decisions as to what constitutes a port area in order to determine whether a particular service facility is geographically part of a Great Lakes port. Also, the more inclusive definition could disrupt normal trade practices of an ocean transportation carrier. For example, a carrier that normally takes possession of the cargo at bridge-point (not within the confines of the port) because of certain economies would be forced to utilize a less favored facility. Furthermore, this interpretation could counteract efforts to generate more vessel calls at Great Lakes ports, because once the 25 percent annual cargo level is reached by considering service facilities as representing Great Lakes ports, CCC could begin to consider lowest landed costs on a U.S.-flag vessel basis. This could eliminate utilization of f.a.s. vessel offers in the Great Lakes.

For the above reasons, the proposed rule defines Great Lakes cargo as cargo offered for delivery f.a.s. vessel. However, CCC is particularly interested in receiving comments from all interested parties concerning this problem and will take them into consideration when formulating a final rule.

In addition to the above changes, CCC is proposing to clarify § 1496.5(b)(1) without any substantive change.

List of Subjects in 7 CFR Part 1496

Agricultural commodities; exports.

Accordingly, it is proposed that 7 CFR part 1496 be revised as follows:

PART 1496—PROCUREMENT OF PROCESSED AGRICULTURAL COMMODITIES FOR DONATION UNDER TITLE II, PUB. L. 480

1. The authority citation for part 1496 is revised to read as follows:

Authority: 7 U.S.C. 1721–1726a; 1731–1736g–2; 46 U.S.C. App. 1241(b), and 1241(f).

2. In § 1496.5, paragraphs (b)(1) and (f) are proposed to be revised to read as follows:

§ 1496.5 Consideration of bids.

* * * * *

(b)(1) *Availability of ocean service.* Prior to receipt of offers from commodity suppliers, CCC will review ocean freight information from available sources including but not limited to, trade journal newspapers, port publications, steamship publications in order to determine the availability of appropriate ocean service.

* * * * *

(f) *Great Lakes ports.* Commodities offered for delivery f.a.s. vessel Great Lakes port range that represent the overall (foreign and U.S. flag) lowest landed cost will be awarded on that basis and will not be evaluated on a lowest landed cost U.S.-flag basis unless CCC determines that 25 percent of the total annual tonnage of bagged, processed or fortified commodities furnished under Title II of Public Law 480 has been, or will be, transported from the Great Lakes port range during that fiscal year.

Signed at Washington, DC, on February 3, 1997.

Bruce R. Weber,

Acting Executive Vice President,Commodity Credit Corporation.

[FR Doc. 97–3370 Filed 2–11–97; 8:45 am]

BILLING CODE 3410–05–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule for power circuit breakers, disconnect switches, current and potential transformers, autotransformer, surge arresters.

SUMMARY: The Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Power Circuit Breakers, Disconnect Switches, Current and Potential Transformers, Autotransformer, Surge Arresters. The basis for a waiver of the Nonmanufacturer Rule for these products is that there are no small business manufacturers or processors available to supply these products to the Federal Government. The effect of a waiver would be to allow an otherwise qualified Nonmanufacturer to supply other than the product of a domestic small business manufacturer or processor on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this document is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before February 18, 1997.

ADDRESSES: David Wm. Loines, Procurement Analyst, U.S. Small Business Administration, 409 3rd Street S.W., Washington, DC 20416, Tel: (202) 205–6475.

FOR FURTHER INFORMATION CONTACT: David Wm. Loines, Procurement Analyst, (202) 205–6475, FAX (202) 205–7324.

SUPPLEMENTARY INFORMATION: Public law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set-aside for small businesses or the SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market. To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal Government within the last 24 months. The SBA defines ''class of products'' based on two coding systems. The first is the Office of Management and Budget Standard Industrial Classification Manual (SIC). The second is the Product and Service Code (PSC) established by the Federal Procurement Data System.

The Small Business Administration is currently processing a request for a waiver of the Nonmanufacturer Rule for Power Circuit Breakers (SIC 3613, PSC 5925), Disconnect Switches (SIC 3613, PSC 5930), Current and Potential Transformers (SIC 3612, PSC 5950), Autotransformer (SIC 3612, PSC 5950), Surge Arresters (SIC 3643, PSC 5920), and invites the public to comment or provide information on potential small business manufacturers for these products.

In an effort to identify potential small business manufacturers, the SBA has searched the Procurement Automated Source System (PASS) and Thomas Register, and the SBA will publish a notice in the Commerce Business Daily. The public is invited to comment or provide source information to SBA on the proposed waiver of the Nonmanufacturer Rule for these classes of products.

Dated: February 6, 1997.

Judith A. Roussel,

Associate Administrator for Government Contracting.

[FR Doc. 97–3457 Filed 2–11–97; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–12–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires repetitive inspections of the access doors to the midspar/spring beam fuse pins on all engine pylons to detect cracks on the external surface; repetitive inspections of each midspar/spring beam fuse pin to detect if it protrudes beyond its mating nut by a specified distance; and repair of any discrepancy found. The actions specified by that AD are intended to prevent migration of this fuse pin, which, if not detected and corrected in a timely manner, could result in failure of the engine pylon and consequent separation of the engine from the wing. This new action would increase the intervals between inspections of the access doors and each midspar/spring beam fuse pin, and consequently decrease the frequency of inspections. This proposal is prompted by new data provided the manufacturer indicating

that the reported migration of the fuse pin was apparently the result of an incorrectly installed nut.

DATES: Comments must be received by March 10, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Dow, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2771; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–12–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 23, 1996, the FAA issued AD 96–26–52, amendment 39–9868 (62 FR 302, January 3, 1997), which is applicable to certain Boeing Model 747 series airplanes. It requires repetitive detailed visual inspections of the access doors to the midspar/spring beam fuse pins on all engine pylons to detect cracks on the external surface, and repair, if necessary. In addition, the AD requires repetitive detailed visual inspections of each midspar/spring beam fuse pin to detect if it protrudes beyond its mating nut by a specified distance, and repair, if necessary.

That action was prompted by a report indicating that a fuse pin had migrated on an inboard spring beam fitting on the Number 1 engine pylon of a Boeing Model 747–400 airplane.

The requirements of that AD are intended to prevent migration of this fuse pin, which, if not detected and corrected in a timely manner, could result in failure of the engine pylon and consequent separation of the engine from the wing.

Actions Since Issuance of Previous Rule

Subsequent to the issuance of that AD, the manufacturer conducted an additional inspection and analysis of the fuse pin (and its mated self-locking nut) whose migration had been reported to the FAA, and which was pertinent to the incident that prompted the issuance of AD 96–26–52.

The manufacturer reports that, normally, when a self-locking nut is correctly installed, the last 2 to 3 threads of the nut will show signs of this installation. However, according to the data gathered from the recent inspection, no such signs were found associated with the nut that was used on the migrant fuse pin. Based on that observation and further testing, the manufacturer has concluded that the self-locking nut was incorrectly installed on the fuse pin that was the subject of the reported incident. The migration of that fuse pin was apparently attributed to the incorrect installation of its mating nut, and not to some other phenomenon.

FAA's Conclusions

The new information presented the by manufacturer have led the FAA to reconsider the current inspection requirements of AD 96–26–52. Based on these new data, as well as the fact that there have been no reported findings of discrepancies associated with the fuse pins as a result of the inspections required by AD 96–26–52, the FAA finds that the repetitive inspection intervals that are currently required by that AD may be unnecessarily conservative.

AD 96–26–52 currently requires that the inspections be conducted at intervals not to exceed 150 landings or 1,000 hours time-in-service, whichever occurs first. However, the FAA has determined that the repetitive interval can be extended to 1,000 landings or 18 months, whichever occurs first, without compromising safety. This interval would closely parallel regularly scheduled maintenance inspections (''C'' checks) for the majority of affected operators. Operators then will be able to conduct the inspections when the airplanes are located at a main base, where special equipment and trained personnel would be readily available, if necessary.

The FAA finds that inspections conducted at the revised interval will provide an acceptable level of safety and will ensure that any discrepancies are found and detected in a timely manner.

Further, this revised schedule will provide an effective program of regular inspections during the period prior to accomplishing the modifications of the nacelle strut and wing structure required by AD 95–13–05 [amendment 39–9285 (60 FR 33333, June 28, 1995), as corrected at 60 FR 35452, July 7, 1995] and AD 95–13–06 [amendment 39–9286 (60 FR 33338, June 28, 1995), as corrected at 60 FR 37500, July 20, 1995]. Once those modifications are accomplished, the inspections required by this AD are no longer necessary.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed action would revise AD 96–26–52. It would continue to require:

1. repetitive inspections of the access doors to the midspar/spring beam fuse pins on all engine pylons to detect cracks on the external surface;

2. repetitive inspections of each midspar/spring beam fuse pin to detect if it protrudes beyond its mating nut by a specified distance; and

3. repair of any discrepancy found.

However, this proposed action would revise the AD by increasing the intervals between the repetitive inspections to

1,000 landings or 18 months, whichever occurs first.

Cost Impact

There are approximately 459 Boeing Model 747 series airplanes of the affected design in the worldwide fleet, and the FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to accomplish each cycle of proposed inspections, at an average rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $10,560 per inspection cycle, or $240 per airplane, per inspection cycle. (By increasing the intervals between inspections, this proposed AD would result in inspections being conducted less frequently than is now required.)

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9868 (62 FR 302, January 3, 1997), and by adding a new airworthiness directive (AD), to read as follows:

BOEING: Docket 97–NM–12–AD. Revises AD 96–26–52, amendment 39–9868.

Applicability: Model 747 series airplanes having line numbers 1 through 1046, inclusive; certificated in any category; that meet all of the following criteria:

- Equipped with Pratt & Whitney Model PW4000 series engines, or General Electric Model CF6–80C2 series engines, or Rolls Royce Model RB211 series engines;
- On which fuse pins having part numbers 310U2301–101, –116, –117, or –120 (''third generation'' fuse pins) are installed at the midspar/spring beam fittings of the engine pylon; and
- On which the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2156 or Boeing Alert Service Bulletin 747–54A2157, as applicable, has not been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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, unless accomplished previously.

To prevent failure of the engine pylon and consequent separation of the engine from the wing, due to migration of the fuse pins installed at the midspar/spring beam fittings of the pylon, accomplish the following:

(a) Within 15 days after January 8, 1997 [the effective date of AD 96–26–52, amendment 39–9868), accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform a detailed visual inspection of the access doors to each midspar/spring beam fuse pin on each engine pylon to detect cracks on the external surface of the doors.

(i) If no cracking is detected during the inspection, repeat that inspection at intervals not to exceed 1,000 landings or 18 months, whichever occurs first.

(ii) If any cracking is detected during the inspection, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 1,000 landings or 18 months, whichever occurs first.

(2) Gain access through the aft fairing doors of each engine pylon to each midspar/spring beam fuse pin and its mating, self-locking nut, and perform a detailed visual inspection of each fuse pin to verify that at least one thread of the fuse pin protrudes beyond its mating, self-locking nut.

(i) If no discrepancy is detected during the inspection, repeat that inspection at intervals not to exceed 1,000 landings or 18 months, whichever occurs first.

(ii) If the inspection reveals that at least one thread does not protrude beyond its mating, self-locking nut, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 1,000 landings or 18 months, whichever occurs first.

(b) Accomplishment of the modification of the nacelle strut and wing structure in accordance with Boeing Alert Service Bulletin 747–54A2156, Revision 2, dated December 21, 1995, or earlier revisions (for airplanes equipped with General Electric Model CF6–80C2 series engines, or Pratt & Whitney PW4000 series engines); or Boeing Alert Service Bulletin 747–54A2157, Revision 2, dated November 14, 1996, or earlier revisions (for airplanes with Rolls Royce Model RB211 series engines); as applicable; constitutes terminating action for the repetitive detailed visual inspections required by paragraphs (a)(1) and (a)(2) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

Issued in Renton, Washington, on February 5, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3433 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–252–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Airbus Model A320 series airplanes, that currently requires revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to instruct the flight crew to maintain a flap setting of ''Configuration Full'' (CONF FULL) during landing. That AD was prompted by a report of severe control difficulties which occurred on approach with the flaps locked in CONF FULL and the landing gear down. This action would add a requirement for installation of a new, improved flight warning computer (FWC), which, when accomplished, would constitute terminating action for the AFM limitation. This action also would revise the applicability of the existing AD to include additional airplanes that are subject to the addressed unsafe condition. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane during approach when the flaps are locked in CONF FULL.

DATES: Comments must be received by March 24, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96-NM–252-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Charles Huber, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2589; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: Comments to Docket Number 96-NM–252-AD. The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–252–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 15, 1994, the FAA issued AD 94–20–02, amendment 39–9030 (59 FR 48563, September 22, 1994), applicable to all Airbus Model A320 series airplanes, to require revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to advise the flight crew to maintain ''Configuration Full'' (CONF FULL) during landing approaches. That action was prompted by a report of severe control difficulties which occurred on approach with the flaps locked in CONF FULL and the landing gear down. The requirements of that AD are intended to prevent severely reduced controllability of the airplane during approach.

In the preamble to AD 94–20–02, the FAA indicated that the actions required by that AD were considered ''interim action'' and that further rulemaking action was being considered. The FAA now has determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Actions Since Issuance of Previous Rule

Since the issuance of AD 94–20–02, the FAA has determined that Airbus Model A321 series airplanes may be subject to the same unsafe condition addressed by AD 94–20–02. Since the FWC installed on those airplanes is similar in design to those installed on Model A320 series airplanes, the same problems encountered on the Model A320 could potentially occur on the Model A321 as well.

Additionally, since issuance of AD 94–20–02, Airbus has developed an improved flight warning computer (FWC) that positively addresses the control difficulties addressed by AD 94–20–02. Installation of the FWC will ensure adequate controllability of the airplane during approach with the flaps locked in CONF FULL and the landing gear down.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–31–1080, Revision 01, dated July 12, 1996, which describes procedures for installation of a new, improved FWC that defines a new standard common to Airbus Model A320 and A321 series airplanes. Among other actions, the service bulletin describes modifications that correct certain FWC parts and that implement predictive windshear function capability. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this service bulletin as mandatory and issued French airworthiness directive 96–079–079(B), dated April 10, 1996, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation

Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 94–20–02. It would continue to require revising the AFM of Model A320 series airplanes to instruct the flight crew to maintain CONF FULL during landing approaches for Airbus Model A320 series airplanes.

This proposal also would require the same AFM revision for Airbus Model A321 series airplanes.

Additionally, this proposal would require installation of a new, improved FWC on all airplanes as terminating action for the AFM limitations. The previously required AFM revision must be removed after the new, improved FWC has been installed. The installation would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

There are approximately 109 Airbus Model A320 series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 94–20–02 (revision of the AFM) take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the actions currently required on U.S. operators is estimated to be $6,540, or $60 per airplane.

The new actions that are proposed in this AD action (installation of new, improved FWC) would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided to operators by the manufacturer at no cost. Based on these figures, the cost impact of the proposed requirements on U.S. operators of Model A320 series airplanes is estimated to be $19,620, or $180 per airplane.

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

None of the Model A321 series airplanes affected by this proposed action are on the U.S. Register. All of those airplanes that are included in the applicability of this proposal currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this proposed AD action. However, the FAA considers that inclusion of those airplanes in the applicability of this proposed rule is necessary to ensure that the unsafe condition is addressed in the event that any of these airplanes are imported and placed on the U.S. Register in the future.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9030 (59 FR 48563, September 22, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 96–NM–252–AD. Supersedes AD 94–20–02, Amendment 39–9030.

Applicability: Model A320 and A321 series airplanes, on which Airbus Modification 24612 or Airbus Service Bulletin A320–31–1080 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been otherwise 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, unless accomplished previously.

To prevent severely reduced controllability of the airplane during approach, accomplish the following:

(a) At the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the information specified in Airbus A320/A321 Flight Manual Temporary Revision 9.99.99/20, dated June 14, 1994.

Note 2: This may be accomplished by inserting a copy of Airbus A320/A321 Flight Manual Temporary Revision 9.99.99/20, dated June 14, 1994, in the AFM. When this temporary revision has been incorporated in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revisions is identical to that specified in Temporary Revision 9.99.99/20.

(1) For Model A320 series airplanes: Revise the AFM within 10 days after October 7, 1994 (the effective date of AD 94–20–02, amendment 39–9030).

(2) For Model A321 series airplanes: Revise the AFM within 10 days after the effective date of this AD.

(b) Within 6 months after the effective date of this AD, install a new, improved flight warning computer (FWC) in accordance with Airbus Service Bulletin A320–31–1080, Revision 01, dated July 12, 1996. Prior to

further flight after accomplishing this installation, remove the AFM revision required by paragraphs (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on February 5, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3434 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 96–NM–180–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe 125–1000A and Model Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Raytheon Model BAe 125–1000A and Model Hawker 1000 series airplanes. This proposal would require various modifications to increase the size of certain existing pressure venting areas and to add additional venting areas. This proposal is prompted by results of a design review of the requirements for certification of the cabin pressurization system. The actions specified by the proposed AD are intended to prevent inadequate venting of cabin pressure in the event of rapid decompression, which could cause failure or deformation of certain structural members, and consequent reduced controllability of the airplane.

DATES: Comments must be received by March 24, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–180–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number96–NM–180–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–180–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has reviewed results of a design review of requirements for certification of the cabin pressurization system on Raytheon Model BAe 125 and Model Hawker 1000 series airplanes. The Civil Aviation Authority (the airworthiness authority for the United Kingdom) and the manufacturer (Raytheon) conducted the design review, and determined that the existing venting between certain structural members is inadequate to provide rapid equalization of the pressure differential between the two sides of these members when rapid decompression occurs on one side of the member. Inadequate venting of cabin pressure, if not corrected, could cause failure or deformation of certain structural members, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Raytheon Service Bulletins:

1. Service Bulletin SB.21–151–25A683C, dated July 12, 1994 (Modification 25A683C), which describes procedures for installing a pressure relief flap in the rear luggage compartment of the bulkhead at frame 19. Installation of the pressure relief flap will limit the pressure differential across the rear luggage compartment in the event of rapid decompression of the airplane.

2. Service Bulletin SB.53–81–3661B, dated February 25, 1994 (Modification 253661B), which describes procedures to remove the fiberglass infill cover located outboard of the floor panels between frame 8 and frame 10B. This service bulletin also describes procedures to increase the existing size of the lightening holes in the rail web of the right-hand seat between frame 10B and frame 10D, and to add a third hole to increase the vent area. Additionally, the service bulletin describes procedures for installation of a new reinforcing plate for all three lightening holes. Accomplishment of this modification will ensure the structural integrity of the fuselage in the event of rapid decompression of the airplane.

3. Service Bulletin SB.53–76–3627A, dated February 25, 1994 (Modification

253627A), which describes procedures for adding two holes to the underfloor diaphragm at frame 10D (right-hand). Accomplishment of these procedures increases the vent area between the cabin and the right-hand underfloor area by 4 square inches. Accomplishment of this modification will ensure the continued structural integrity of the fuselage in the event of rapid decompression of the airplane.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require:

1. installing a pressure relief flap in the rear luggage compartment of the bulkhead at frame 19;

2. enlarging two lightening holes and adding one new lightening hole in the rail web of the right seat between frames 10B and 10D, and removing fiberglass fill from the right support structure between frame 8 and frame 10B; and

3. installing two new vent holes in the underfloor diaphragm of frame 10D (right hand).

The actions would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

The FAA estimates that 31 Model BAe 125–1000A and Model Hawker 1000 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 44 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $81,840, or $2,640 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company (Formerly Beech, Raytheon Corporate Jets, British Aerospace, Hawker Siddeley, et al): Docket 96–NM–180–AD.

Applicability: All Model BAe 125–1000A and Model Hawker 1000 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise 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 (b) 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.

Note 2: Raytheon Model BAe 125–1000B series airplanes are similar in design to the airplanes that are subject to the requirements of this AD and, therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which Model BAe 125–1000B series airplanes are approved for operation should consider adopting corrective action, applicable to those models, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadequate venting of cabin pressure in the event of rapid decompression, which could cause failure or deformation of certain structural members, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 8 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

Note 3: The manufacturer has advised that the modifications required by paragraphs (a)(2) and (a)(3) of this AD should be incorporated concurrently.

(1) Install a pressure relief flap in the rear luggage compartment of the bulkhead at frame 19 (Modification No. 25A683C), in accordance with Raytheon Service Bulletin SB.21–151–25A683C, dated July 12, 1994.

(2) Enlarge two lightening holes, and add one new lightening hole in the rail web of the right-hand seat between frames 10B and 10D, and remove the fiberglass infill cover located outboard of the floor panels between frame 8 and frame 10B (Modification SB.253661B), in accordance with Raytheon Service Bulletin SB.53–81–3661B, dated February 25, 1994.

(3) Install two new vent holes in the underfloor diaphragm of frame 10D (Modification 253627A), in accordance with Raytheon Service Bulletin SB.53–76–3627A, dated February 25, 1994.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

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

Issued in Renton, Washington, on February 5, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–3435 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 96–ANM–030]

Proposed Establishment of Class E Airspace; Craig, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would establish the Craig, Colorado, Class E airspace to accommodate a new Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to the Craig-Moffat Airport. Additionally, this proposed action would correct the airport name, and eliminate confusion, by removing the existing Class E5 airspace currently listed under the text header of Hayden, Colorado (Hayden, Craig-Moffat Airport). The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 28, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, ANM–530, Federal Aviation Administration, Docket No. 96–ANM–030, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James C. Frala, ANM–532.4, Federal Aviation Administration, Docket No. 96–ANM–030, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–ANM–030.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations Branch, ANM–530, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Craig, Colorado, to accommodate a new GPS SIAP to the Craig-Moffat Airport. Additionally, this proposed action would correct the airport name, and eliminate confusion, by removing the existing Class E5 airspace currently listed under the text header of Hayden, Colorado (Hayden, Craig-Moffat Airport). This proposed action would ensure that correct references to airports are made, as described in the Airport/Facility Directory, and to accurately distinguish between the classes of airspace associated with Craig, Colorado, and Hayden, Colorado. The coordinates for this airspace docket are based on North American Datum 83.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 6, 1996, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Hayden, CO [Removed]

* * * * *

ANM CO E5 Craig, CO [New]

Craig-Moffat Airport, CO
(Lat. 40°29′43″ N, long. 107°31′17″ W)
Hayden VOR/DME
(Lat. 40°31′12″ N, long. 107°18′18″ W)

That airspace extending upward from 700 feet above the surface within 4.3 miles each side of the Hayden VOR/DME 262° radial extending from the VOR/DME to 18.5 miles southwest of the VOR/DME; that airspace extending upward from 1,200 feet above the surface beginning at lat. 40°35′00″ N, long. 108°24′00″ W; to lat. 40°47′00″ N, long. 107°34′00″ W; to lat. 40°36′00″ N, long. 106°38′00″ W; to lat. 40°21′30″ N, long. 106°38′00″ W; to lat. 40°13′00″ N, long.

108°20′00″ W; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on January 24, 1997.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 97–3407 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 97–AWP–5]

Proposed Revision of Class E Airspace; San Francisco, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Class E airspace area at San Francisco. This action would revoke the surface area for Alameda NAS (Nimitz Field), CA. A review of airspace classification and air traffic procedures has made this action necessary. The intended effect of this action is to revoke controlled airspace since the purpose and the requirements for the surface area no longer exist at Alameda NAS (Nimitz Field), CA.

DATES: Comments must be received on or before March 15, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Operations Branch, AWP–530, Docket No. 97–AWP–5, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Operations Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AWP–5.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Operations Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested is being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace area at San Francisco, CA. This action would revoke the surface area for Alameda NAS (Nimitz Field), CA. A review of airspace classification and air traffic procedures has made this action necessary. The intended effect of this action is to revoke controlled airspace since the purpose and requirements for the surface area no longer exist at Alameda NAS (Nimitz Field), CA. Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E airspace.

* * * * *

San Francisco International, CA
(Lat 37°43′17″ N. long 122°13′15″ W)

That airspace extending upward from 700 feet above the surface bounded on the north by lat. 38°02′00″ N, on the east by long. 121°52′04″ W, on the south by Lat 37°30′00″ N, and on the west by a line extending from Lat, 37°30′00″ N, long 122°27′04″ W; to Lat 37°34′00″ N, long. 122°31′04″ W; to lat.

37°55′00″ N, long. 122°31′04″ W; to lat 38°02′00″ N, long, 122°40′04″ W. That the airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 38°02′00″ N, on the east by a line extending from lat 38°02′00″ N, long. 121°37′04″ W; to lat. 37°38′00″ N, long. 121°37′04″ W; to lat. 37°38′00″ N, long. 121°50′04″ W; to lat. 37°30′00″ W, long. 121°50′04″ W; on the south by lat. 37°30′00″ N, and on the west by the east edges of V–27 and V–199.

* * * * *

Issued in Los Angeles, California, on January 24, 1997.

Sabra W. Kaulia,

Assistant Manager, Air Traffic Division, Western Pacific Region.

[FR Doc. 97–3507 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 96–AWP–35]

Proposed Establishment of Class E Airspace; Fallbrook, CA; Correction

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects an error in the airspace description and allows for an extension of the comment period of a proposed notice of rulemaking that was published in the Federal Register on January 8, 1997, Airspace Docket No. 96–AWP–35.

DATES: Comments must be received on or before March 11, 1997.

FOR FURTHER INFORMATION CONTACT: William Buck, Airspace Specialist, Operations Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 725–6556.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 97–395, Airspace Docket No. 96–AWP–35, published on January 8, 1997, (62 FR 1072), revised the description of the Class E airspace area at Fallbrook, CA. An error was discovered in the airspace description for the Fallbrook, CA, Class E airspace area. This action corrects that error and extends the comment period until March 11, 1997.

Corrections to Proposed Notice of Rulemaking

Accordingly, pursuant to the authority delegated to me, the airspace description for the Class E airspace area at Fallbrook CA, as published in the Federal Register on January 8, 1997 (62 FR 1072), (Federal Register Document 97–395); page 1073, column 1 is corrected as follows:

§ 71.1 [Corrected]

By removing ''(Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area)'' and substituting ''(Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth).''

* * * * *

AWP CA E5 Fallbrook, CA [Corrected]

Fallbrook Community Airpark, CA
(Lat. 33°21′15″ N, long. 117°15′03″ W)

On page 1073, in the first column, the airspace description for Fallbrook, CA, is corrected to read as follows:

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Fallbrook Community Airpark and within 4 miles west and 5.3 miles east of the 014° bearing from the Fallbrook Community Airpark, extending from the 6-mile radius to 20.5 miles north of the airport, excluding the portion within the Camp Pendleton, CA, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on February 7, 1997.

Michael Lammes,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 97–3508 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

Surface Transportation Board

49 CFR Part 1111

[STB Ex Parte No. 527 (Sub-No. 1)]

Expedited Procedures for Processing Simplified Rail Rate Reasonableness Proceedings

AGENCY: Surface Transportation Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) issued a decision on December 31, 1996, in *Rate Guidelines—Non-Coal Proceedings*, Ex Parte No. 347 (Sub-No. 2), adopting simplified guidelines for determining the reasonableness of rail rates in proceedings where the Constrained Market Pricing guidelines cannot practicably be applied. The Board solicits comments on how the complaint and investigation procedures at 49 CFR Part 1111 should be modified to incorporate a general procedural schedule to govern the processing of proceedings using the simplified guidelines.

DATES: Comments are due March 14, 1997.

ADDRESSES: Send comments referring to STB Ex Parte No. 527 (Sub-No. 1) to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Ave., N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 927–7312. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Under the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995)(ICCTA), new 49 U.S.C. 10704(c), the Board is required to decide the reasonableness of a challenged rate within 9 months after the record closes if the determination is based on stand-alone cost evidence, and within 6 months if it is based upon a simplified methodology. By decision served on October 1, 1996 in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, Ex Parte No. 527, published in the Federal Register on October 8, 1996 (61 FR 52710) (October decision) the Board adopted final rules to expedite the handling of challenges to the reasonableness of railroad rates including the adoption of a procedural schedule applicable in stand-alone cost cases. The general procedural schedule requires completion of the evidentiary phase of a stand-alone cost case in 7 months and the issuance of a final decision within 16 months of the filing of the complaint. 49 CFR 1111.8. The rules became effective November 16, 1996.

In the October decision, we did not adopt a procedural schedule to govern the filing of evidence in cases using the simplified rate evaluation procedures. Rather, we indicated that we would consider the adoption of regulations covering such cases following completion of the Ex Parte No. 347 (Sub-No. 2).

On December 31, 1996, we adopted simplified evidentiary guidelines to determine the reasonableness of rail rates on captive traffic where the Constrained Market Pricing guidelines [1] cannot be practicably applied. Consequently, we are now soliciting comments to assist us in establishing a general procedural schedule to be used in cases processed under the simplified rate evaluation procedures of Ex Parte No. 347 (Sub-No. 2). Interested parties are asked to comment on whether a general procedural schedule applicable to cases processed under the simplified guidelines can be promulgated at this time, and if so, what that schedule should be, or whether we should delay

[1] Stand-alone costing is part of the Constrained Market Pricing framework.

the adoption of a general procedural schedule and proceed on a case-by-case basis until the Board and the industry have had some experience utilizing the new guidelines.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1111

Administrative practice and procedure, Investigations.

Decided: February 3, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–3388 Filed 2–11–97; 8:45 am]

BILLING CODE 4915–00–P

Notices

Federal Register
Vol. 62, No. 29
Wednesday, February 12, 1997

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

Foreign Agriculture Service

Agricultural Policy and Technical Advisory Committees for Trade; Nominations

AGENCY: Foreign Agricultural Service.

ACTION: Notice: Request for nominations.

SUMMARY: The Secretary of Agriculture and the United States Trade Representative are seeking nominations for appointment to the following advisory committees for trade:

Agricultural Policy Advisory Committee for Trade
Agricultural Technical Advisory Committee for Trade in Animals and Animal Products
Agricultural Technical Advisory Committee for Trade in Fruits and Vegetables
Agricultural Technical Advisory Committee for Trade in Grains, Feed, and Oilseeds
Agricultural Technical Advisory Committee for Trade in Sweeteners and Sweetener Products
Agricultural Technical Advisory Committee for Trade in Tobacco, Cotton, and Peanuts

The Advisory Committees for Trade were established to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests by providing the Secretary and the Trade Representative with advice concerning negotiating objectives and bargaining positions before entering into a trade agreement; the operation of an agreement once entered into; and other matters arising in connection with the administration of the trade policy of the United States.

DATES: Written nominations must be received on or before March 14, 1997.

ADDRESSES: Please send all nominating materials to Mr. John B. Winski, Executive Secretary, Agricultural Policy Advisory Committee for Trade, Foreign Agricultural Service, USDA, room 5065—STOP 1001, 1400 Independence Avenue, S.W., Washington, D.C. 20250–1000.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the Advisory Committee Membership Background Information form which must be completed by each nominee, or for additional information, please contact Mr. John B. Winski or Ms. Denise Burgess, Foreign Agricultural Service, USDA, room 5065—STOP 1001, 14th & Independence Avenues, S.W., Washington, D.C. 20250–1000, (202) 720–6829 (telephone), (202) 720–8097 (FAX), or info@fas.usda.gov (e-mail).

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. appendix), notice is hereby given that the Secretary of Agriculture and the United States Trade Representative are seeking nominations for the Agricultural Policy Advisory Committee for Trade (APAC) and the Agricultural Technical Advisory Committees for Trade (ATACs) listed below:

Agricultural Policy Advisory Committee for Trade
Agricultural Technical Advisory Committee for Trade in Animals and Animal Products
Agricultural Technical Advisory Committee for Trade in Fruits and Vegetables
Agricultural Technical Advisory Committee for Trade in Grains, Feed, and Oilseeds
Agricultural Technical Advisory Committee for Trade in Sweeteners and Sweetener Products
Agricultural Technical Advisory Committee for Trade in Tobacco, Cotton, and Peanuts

Background

In 1974, Congress established a private sector advisory committee system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Congress expanded and enhanced the role of this system in three subsequent trade acts.

The private sector advisory system now consists of almost 40 committees, arranged in three tiers; The President's Advisory Committee on Trade and Policy Negotiations (ACTPN); seven policy advisory committees, including the Agricultural Policy Advisory Committee for Trade (APAC); and more than 30 technical advisory committees including the five Agricultural Technical Advisory Committees for Trade (ATACs).

The duties of the APAC are to provide the Secretary and the Trade Representative with advice concerning: negotiating objectives and bargaining positions before entering into a trade agreement; the operation of an agreement once entered into; and other matters arising in connection with the administration of the trade policy of the United States. The duties of the ATACs are to provide advice and information regarding trade issues which affect both domestic and foreign production and trade concerning their respective commodities, drawing upon the technical competence and experience of its members. Each committee is required to meet at the conclusion of negotiations for each trade agreement entered into under the Act to provide a report on such agreement to the President, to Congress, and to the U.S. Trade Representative.

Membership

Members are appointed jointly by the Secretary of Agriculture and the U.S. Trade Representative. Appointments are made upon the rechartering of each committee and periodically throughout the duration of the Committee charter. The APAC and the ATACs are expected to be rechartered in April 1997, for a period of two years. Members serve at the discretion of the Secretary and the U.S. Trade Representative. Appointments to a Committee expire at the end of the Committee's charter, but members may be reappointed for one or more additional terms should the charter of the Committee be renewed.

Approximately 50 private sector representatives are appointed to the APAC and approximately 25 private sector representatives are appointed to each ATAC.

A chairperson is selected for each committee from the membership of the committee. The Assistant to the Administrator, Foreign Agricultural Service, and the Assistant United States Trade Representative, Office of Intergovernmental Affairs and Public Liaison, Office of the U.S. Trade Representative, are the joint Executive Secretaries of the APAC. A full-time

Federal Officer or employee of the Foreign Agricultural Service shall serve as the Executive Secretary of each ATAC.

Nominations

The Secretary of Agriculture and the U.S. Trade Representative invite those individuals, organizations, and interest groups affiliated with foreign trade and agriculture, to nominate individuals for membership to any of the committees. The Secretary and the U.S. Trade Representative seek a diverse group of members representing a broad spectrum of persons interested in the United States agricultural trade policy, from every region of the country. To ensure that there is balanced representation on each committee, the Secretary and the U.S. Trade Representative may seek additional nominations from the private sector as necessary.

The term ''balanced representation'' includes balance among the various agricultural interests such as farmers, farm and commodity organizations, processors, traders, and consumers, as well as geographical balance. No company, producer or farm organization, trade association, or other entity has a right to representation on a Committee. Members are selected primarily for their expertise and knowledge of agriculture or specific agricultural products and of trade matters and are expected to provide advice to the Government as general representatives of those interests. In making selections, every effort shall be made to maintain balanced representation on each committee.

Equal opportunity practices will be followed in all appointments to the committees. To ensure that the recommendations of the committees have taken into account the needs of the diverse groups served by the USDA and the USTR, membership should include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Nominations should describe and document the proposed member's qualifications for membership to the committee. Nominations must include a completed AD–755 Advisory Committee Membership Background Information form and supplemental form which are reproduced below.

Appointments are made subject to a *confidential* security clearance. All nominees must be U.S. citizens.

Wardell C. Townsend, Jr.,

Assistant Secretary for Administration.

BILLING CODE 3410–10–M

Form Approved O.M.B.
No. 0505-0001
Expires 8/31/98

United States Department of Agriculture

ADVISORY COMMITTEE MEMBERSHIP BACKGROUND INFORMATION

Privacy Act Notice

Public Laws 95-113 and 93-579 permit collection of the data requested on this form. The information is used to determine qualifications, suitability and available for service on advisory committees. The information will be used to conduct background clearances and/or for annual reports on advisory committees. Failure to submit this information may result in nonselection of a prospective advisory committee member or termination of the committee.

1. Name (Last, First, Middle)	2. Social Security Number
3. Residence Address (include ZIP Code)	4. Telephone: Home: Office: FAX:
5. Place of Birth	6. Date of Birth
7. Name of Employer	
8. Employer Address (include ZIP Code)	9. Your Occupation/Title

10. List your business experience.

11. List education and any specialized experience.

FORM AD-755 (8/31/95)

(Continued on reverse)

12. If applicable, how long have you been engaged in farming or production, and what is the size of your farming operation (i.e., list acreage and pounds produced by kind of crop, as well as kinds and numbers of livestock)?

13. List producer or farm organizations (include whether a member or officer and how long affiliated).

14. List other affiliations and/or service as a community leader that would benefit you in your role as a member of the advisory committee.

15. List any Federal advisory committee or board on which you are currently a member and the number of years you have served on that committee or board.

16. List sources of income–in excess of $10,000–for the past calendar year from other than your primary employment. List only sources; do not show amounts of income from each source.

17. Have you ever been convicted of a felony? (A felony is defined as any violation of law punishable by imprisonment of longer than one year.) If so, please explain.

18. As a result of your participation in Federal programs, have any judgments been rendered against you? As a result of participation in any governmental programs relative to the purposes of the advisory committee for which you are a nominee, have any civil or criminal actions been initiated against you? If so, please explain.

Signature Date

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching for existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0505-0001), Washington, D.C. 20503.

SUPPLEMENTAL ADVISORY COMMITTEE MEMBERSHIP BACKGROUND INFORMATION

1. Name (Last, First, Middle Initial)	2. Social Security Number

3. Advisory Committee members must obtain a confidential security clearance.

   a. Are you engaged in employment or have a financial interest which is likely to affect the integrity of your service on the committee?

   b. Are you employed by a foreign corporation or a subsidiary of a foreign corporation?

4. Members serve at their own expense; travel is not reimbursed. Are you willing to travel to Washington, D.C.

   (Y/N): 4 - 5 times a year _____

   3 - 4 times a year _____

   2 - 3 times a year _____

5. Are you willing to travel abroad to attend trade negotations?

6. Please provide a short narrative regarding your professional experience with trade related matters:

Please return the completed questionnaire along with a copy of your resume to:

John B. Winski
Executive Secretary, Agricultural Policy Advisory
Committee for Trade
Foreign Agricultural Service - Rm. 5065-S
U.S. Department of Agriculture
Washington, D.C. 20250-1000

[FR Doc. 97–3485 Filed 2–11–97; 8:45 am]
BILLING CODE 3410–10–C

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Commercial Encryption Items

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, 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 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 12, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Acting Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, Department of Commerce, 14th & Constitution Avenue, N.W., Room 6877, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is necessary to support liberalizations of export controls for encryption items recently announced by the Administration. This initiative makes it easier to use stronger encryption products, both at home and abroad, to protect their privacy, intellectual property and other valuable information. It supports the growth of electronic commerce, increases the security of the global information, and sustains the economic competitiveness of U.S. encryption product manufacturers during the transition to a key management infrastructure. The information provided is used for export licensing decisions.

I. Method of Collection

Written or by Fax.

II. Data

OMB Number: 0694–0104.
Form Number: BXA 748P.
Type of Review: Renewal of existing collection.
Affected Public: Businesses or other for-profit organizations.
Estimated Number of Respondents: 2,200.
Estimated Time Per Response: ½ to 40 hours per response.
Estimated Total Annual Burden Hours: 7,720.
Estimated Total Annual Cost: $160,000 (for start-up costs for data base development).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. The Department particularly welcomes comments on the burden estimate to comply with the requirements, as well as the costs associated with it.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: February 4, 1997.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–3413 Filed 2–11–97; 8:45 am]

BILLING CODE 3510–33–P

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held March 6, 1997, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Open Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Bureau of Export Administration initiatives.
4. Report on ''is informed'' implementation.
5. Discussion on Enhanced Proliferation Control Initiative (EPCI) issues: rewrite of the Export Management System guidelines and end-use screening.
6. Responses to Report on Foreign Policy Export Controls.
7. Discussion on ''deemed export'' case review and policy.
8. Reports from the working groups.

Closed Session

9. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA MS: 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 2, 1996, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to pubic meetings found in section 10 (a)(1) and (a)(3), of a the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, call Lee Ann Carpenter at (202) 482–2583.

Dated: February 6, 1997.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 97–3436 Filed 2–11–97; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on March 4, 1997; March 11, 1997; March 18, 1997; and March 25, 1997; at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: February 6, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–3411 Filed 2–11–97; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army, Corps of Engineers

The Draft Baltimore Harbor, Anchorages and Channels Feasibility Study and Environmental Impact Statement Information Meeting

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following meeting.

Name of Meeting: The Draft Baltimore Harbor, Anchorages and Channels Feasibility Study and Environmental Impact Statement Information Meeting.

Date of Meeting: February 26, 1997.

Place: Maryland Port Authority, 2310 Broening Hwy, Point Breeze Maritime Center II, Baltimore, MD 21224–6621, Room 235 (2nd floor conference room).

Time: 7:00 p.m.

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Mr. Daniel Bierly, U.S. Army Corps of Engineers, Baltimore District, ATTN: CENAB–PL, P.O. Box 1715, Baltimore, Maryland 21203, phone (410) 962–6139.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–3453 Filed 2–11–97; 8:45 am]

BILLING CODE 3710–41–M

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the New Castle County Water Supply Project in New Castle County, Delaware

AGENCY: U.S. Corps of Engineers—Philadelphia District, DOD; Cooperating Agency: U.S. Environmental Protection Agency—Region III.

ACTION: Notice of intent.

SUMMARY: The proposed action evaluates the need for and the alternative methods of providing additional water supply capacity to meet present and projected water demands in northern New Castle County, Delaware.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Ms. Mary Marshall, U.S. Army Corps of Engineers—Environmental Resources Branch (CENAP–PL–E), Wanamaker Building, 100 Penn Square East, Philadelphia, Pennsylvania 19107–3390; phone: 215–656–6561, fax: 215–656–6543.

SUPPLEMENTARY INFORMATION:

1. Proposed project: The applicant, the Water Resources Agency for New Castle County previously applied for a Department of the Army Permit to construct a 2 billion gallon, 250 acre off-stream reservoir in a freshwater tidal wetland, Churchmans Marsh. Based on extensive coordination and technical studies, the applicant re-evaluated the feasibility of reservoir construction at Churchmans Marsh.

The applicant decided to resubmit the permit application, siting Thompsons Station as the proposed location for reservoir construction. The proposed project site is north of Newark, on an unnamed tributary to the White Clay Creek near the intersection of Thompson Station and Pleasant Hill Roads. The proposed project is a 132 acre, 1.9 billion gallon storage facility. Water would be pumped into the proposed reservoir from White Clay Creek during periods of high stream flow.

2. Alternatives that will be addressed by the Draft Environmental Impact Statement include:

a. The proposed Thompsons Station reservoir impoundment;

b. Churchmans Marsh reservoir impoundment;

c. Artesian Marsh (or Churchmans Marsh South) reservoir impoundment;

d. Water transfer via existing and/or proposed pipelines;

e. Desalination of brackish surface water; and

f. No action.

3. Significant issues to be addressed in the EIS regarding the proposed project include:

a. Biological impacts, including loss of freshwater wetlands;

b. Fish and wildlife habitat impacts, including threatened and endangered species;

c. Physical impacts, including water quality and hydrology;

d. Stream and riparian impacts;

e. Cultural resource impacts;

f. Mitigation plans;

g. Disposal of excavated material; and

h. Water supply alternatives to the proposed action.

4. The following paragraphs detail the scoping actions that have occurred to date:

a. The U.S. Army Corps of Engineers, Philadelphia District sponsored a previous Public Workshop/Scoping meeting on April 11, 1996.

b. The applicant has taken a number of steps to solicit input from the public including the development of a citizens advisory group. Numerous public information meetings have been held to discuss the status of the project and obtain public comments. In addition, numerous pre-application and pre-scoping meetings have been held with agency participation from the Delaware Department of Natural Resources and Environmental Control, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, the U.S. Environmental Protection Agency, the National Park Service and the Delaware River Basin Commission.

c. The U.S. Army Corps of Engineers, Philadelphia District and the U.S. Environmental Protection Agency, Region III have executed a Cooperating Agency Agreement for the development

of this EIS. The U.S. Environmental Protection Agency, through this agreement, has committed to play an active role in the scoping process, the performance of appropriate field investigations, the development of portions of the Draft and Final EIS, primarily those related to water quality and hazardous waste issues, and the development of responses to comments received on those sections of the DEIS.

5. A Public Workshop/Scoping Meeting is scheduled for Thursday, March 6, 1997, at the Delmarva Power Company Conference Center Auditorium located at 4100 South Wakefield Drive in Newark, Delaware. The conference center will open at 6 pm for informal viewing of project displays and documents and discussions with appropriate agency representatives. The formal meeting will begin at 7 pm.

6. It is estimated that the Draft Environmental Impact Statement will be made available to the public in the Fall of 1997.

Richard A. Hassel,

Assistant Chief, Regulatory Branch, Corps of Engineers-Philadelphia District.

[FR Doc. 97–3452 Filed 2–11–97; 8:45 am]

BILLING CODE 3710–GR–M

DEPARTMENT OF EDUCATION

Title I Part C—Education of Migratory Children

AGENCY: Department of Education.

ACTION: Notice of funding level for FY 1997 consortium incentive grants available under Part C of Title I of the Elementary and Secondary Education Act of 1965.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education reserves $1,500,000, the maximum permitted by the statute, for FY 1997 consortium incentive grant awards authorized under section 1308(d) of Title I of the Elementary and Secondary Education Act (ESEA) of 1965. State educational agencies operating Migrant Education Programs (MEPs) are the only eligible entities for this grant program. Criteria for awarding consortium incentive grants were published on April 8, 1996 (61 FR 15670).

FOR FURTHER INFORMATION CONTACT: Ms. Kristina Barber, U.S. Department of Education, 600 Independence Avenue, SW., Portals Building, Room 4100, Washington, DC 20202–6235. Telephone: 202–260–3169. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay System (FIRS), at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

(Catalog of Federal Domestic Assistance Number 84.144, Migrant Education—Coordination Program)

Program Authority: 20 U.S.C. 6398(d).

Dated: February 4, 1997.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 97–3470 Filed 2–11–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of claims and the availability of funds for reimbursement in fiscal year 1997.

SUMMARY: This Notice announces the Department of Energy acceptance of claims for reimbursement and the availability of approximately $34 million in funds for fiscal year 1997 for reimbursement of certain costs of remedial action at eligible active uranium and thorium processing sites pursuant to Title X of the Energy Policy Act of 1992. The Department of Energy anticipates that claims submitted by licensees in fiscal year 1997 together with outstanding approved claims from prior fiscal years will exceed $34 million and would therefore be subject to prorated payment.

DATES: The closing date for the submission of claims for reimbursement in fiscal year 1997 is May 1, 1997.

ADDRESSES: Claims may be mailed to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, P. O. Box 5400, Albuquerque, NM 87185–5400. All claims should be addressed to the attention of Mr. James B. Coffey and sent by registered or certified mail, return receipt requested. Two copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Messrs. James Coffey (505–845–4026) or Gil Maldonado (505–845–4035), U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division.

SUPPLEMENTARY INFORMATION: The Department of Energy published a final rule under 10 CFR part 765 in the Federal Register on May 23, 1994 (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. Title X requires the Department of Energy to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a state pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by the Department of Energy in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Pub. L. 102–46, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington D.C. on this of 31st day of January 1997.

David E. Mathes,

Leader, UMTRA/Surface Ground Water Team Office of Southwestern Area Programs Environmental Restoration.

[FR Doc. 97–3474 Filed 2–11–97; 8:45 am]

BILLING CODE 6450–01–P

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: This notice announces and seeks public comment on a report prepared by the Environmental Management Advisory Board. The *Report of a Stakeholder Process to Develop Guiding Principles for the Formerly Utilized Sites Remedial Action Program (FUSRAP), Background Information Document,* prepared by the Environmental Management Advisory Board Formerly Utilized Site Remedial

Action Program Committee, will be available on February 12, 1997.

DATES: Comments should be submitted by Friday, March 14, 1997.

ADDRESSES: To Obtain Copies of the Report or Submit Comments to: James T. Melillo, Special Assistant to the Assistant Secretary for Environmental Management, Environmental Management Advisory Board, EM–1, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4400. The Internet address is: James.Melillo@em.doe.gov.

SUPPLEMENTARY INFORMATION: Purpose of the Board. The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management program from the perspectives of affected groups and State and local Governments. The Board helps to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Depart ment's numerous publics with opportunities to express their opinions regarding the Environ mental Management Program including the Formerly Utilized Site Remedial Action Program, pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770).

The objectives of this Report currently available for comment are to provide risk information on FUSRAP materials and to provide recommended guiding principles developed by the Committee and involved stakeholders to assure that actions taken at FUSRAP sites are protective of public health and the environment and are sensitive to stakeholder interests.

Issued at Washington, DC on February 7, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee, Management Officer.

[FR Doc. 97–3512 Filed 2–11–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. CP97–216–000]

Natural Gas Pipeline Company of America; Notice of Request Under Blanket Authorization

February 6, 1997.

Take notice that on January 29, 1997, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP97–216–000 a request pursuant to Sections 157.205, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to continue to operate existing delivery point facilities in Vermilion Block 380, offshore Louisiana, under Natural's blanket certificate issued in Docket No. CP82–402–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural proposes to operate the existing delivery point facilities to deliver approximately 1,000 MMBtu of natural gas per day to Forcenergy Exploration, Inc. (Forcenergy), a producer of natural gas. It is stated that the existing facilities, consisting of 2.6 miles of 12-inch pipeline and an 8-inch meter, were installed in 1982 to connect Block 380 with the facilities of ANR Pipeline Company (ANR) in Vermilion Block 397 in order for Natural to receive gas from Texaco, Inc. (Texaco), the former owner of the production platform now owned by Forcenergy on Block 380 for transportation on behalf of ANR until 1992, when the transportation agreement between Natural and ANR was abandoned. Natural now proposes to continue operating the facilities for deliveries to Forcenergy, pursuant to a transportation agreement with Coastal Energy Group, which begin in October 1996. It is stated that the proposal would have no adverse impact on Natural's peak day deliveries. It is further stated that Natural has sufficient gas supply to make the deliveries and that the deliveries can be made without detriment or disadvantage to Natural's existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–3440 Filed 2–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–224–000]

Northwest Pipeline Corporation; Notice of Application

February 6, 1997.

Take notice that on February 3, 1997, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158–0900, filed in Docket No. CP97–224–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon transportation services for Amoco Production Company (Amoco) and Chevron U.S.A., Inc. (Chevron) provided pursuant to agreements certificated in Docket No. CP82–432 and incorporated in Volume No. 2 of Northwest's Tariff as Rate Schedules X–77 and X–78, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northwest states that Rate Schedules X–77 and X–78 provide for interruptible transportation of 1,200 Dth per day for Amoco and 350 Dth per day for Chevron, respectively, from the Ryckman Creek Field in Uinta County, Wyoming to a mainline meter interconnect with the Amoco/Chevron supply line for their sulphur terminals. Northwest further states that these transportation agreements have each expired by their own terms, that no services have been requested or provided thereunder since early 1993, and that Amoco and Chevron currently are using open-access, interruptible transportation agreements to provide for deliveries to the Amoco/Chevron supply line delivery point.

Northwest also states that no abandonment of facilities is proposed in conjunction with the abandonment of these services.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 27, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–3442 Filed 2–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG97–8–000]

Pacific Interstate Offshore Company; Notice of Filing

February 6, 1997.

Take notice that on January 31, 1997, Pacific Interstate Offshore Company (PIOC) filed standards of conduct under section 161.3(i) of the Commission's regulations, 18 CFR 161.3(i).

PIOC states that copies of this filing have been mailed to all shippers on PIOC's system and the California Public Utilities Commission.

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 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before February 21, 1997. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–3443 Filed 2–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–219–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

February 6, 1997.

Take notice that on January 31, 1997, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77056–5310, filed in Docket No. CP97–219–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a delivery point in Madison County, Kentucky so that Texas Eastern may provide natural gas deliveries to Delta Natural Gas Company (Delta), a local distribution company, under Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and install a 2-inch tap valve and a 2-inch check valve on Texas Eastern's existing 30-inch Line No. 15 at approximate Mile Post 461.47 in Madison County, Kentucky. Texas Eastern states that in addition to these facilities, Delta will install a duel 2-inch turbine meter (Meter Station), approximately 54 feet of 2-inch pipeline extending from the Meter Station to the tap and electronic gas measurement equipment. Texas Eastern also states that it will be reimbursed by Delta for 100% of the costs for installing the facilities, estimated to be approximately $73,753.

Texas Eastern states that it will provide interruptible transportation service in order to deliver up to 2,500 Dth per day of natural gas to Delta pursuant to its Rate Schedule IT–1.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–3441 Filed 2–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP97–215–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

February 6, 1997.

Take notice that on January 29, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in the above docket, a request pursuant to Section 7 of the Natural Gas Act and Sections 157.205 and 157.211 of the Commission's Regulations for authorization to utilize an existing tap, authorized under Williston Basin's blanket certificate issued in Docket Nos. CP82–487–000, *et al.*, to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Co. for ultimate use by additional residential customers in Custer County, Montana, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–3439 Filed 2–11–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–641–000]

ANR Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Michigan Leg South Looping Project

February 6, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by ANR Pipeline Company (ANR) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

ANR proposes to loop its existing Michigan Leg South System with 11.9 miles of 42-inch-diameter pipeline in two segments to provide additional system flexibility and to alleviate a bottleneck in the pipeline system. The two segments consist of 1.6 miles of loop in Will County, Illinois, and 10.3 miles of loop in Porter County, Indiana. The project also includes the addition of one aftercooling bay at the existing St. John Compressor Station in Lake County, Indiana, and the relocation of an existing pig launcher from milepost (MP) 885.02 to MP 874.72 in Porter County, Indiana, and a pig receiver from MP 848.31 to MP 849.91 in Will County, Illinois.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Rm. 2A–1, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding. A limited number of copies of the EA are available from the above address.

Any person wishing to comment on the EA may do so. Written comments must be received by March 10, 1997, reference Docket No. CP96–641–000, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Rm. 1A, Washington, DC 20426.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–3438 Filed 2–11–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00465; FRL–5581–3]

Department of Defense Plan for Certification of Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent to Approve Certification Plan.

SUMMARY: On December 8, 1985, EPA announced approval of a revised Department of Defense (DOD) plan for the certification of pesticide applicators. DOD has submitted another revision to their pesticide applicator certification plan reflecting changes in their administrative procedures and adoption of several new subcategories of certification. Notice is hereby given of the intention of EPA to grant approval of the newly revised DOD plan.

DATES: Written comments should be submitted on or before March 14, 1997.

ADDRESSES: The Agency invites interested persons to submit written comments on this Notice. Comments identified by the docket control number ''OPP–00465'' should be submitted in triplicate by mail to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments in electronic form must be identified by the docket number ''OPP–00465.'' No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Copies of the DOD revised plan are available for viewing at the following locations during normal business hours:

1. U.S. Environmental Protection Agency, Office of Pesticide Programs, Crystal Mall #2, 1921 Jefferson Davis Highway, Rm. 1121, Arlington, VA 22202. Contact: Robert V. Bielarski, (703) 305–6708.

2. U.S. Department of Defense, Armed Forces Pest Management Board, Forest Glen Section, Walter Reed Army Medical Center, Washington, DC 20307-5001. Contact: Major Charles E. Cannon, (301) 295–7476/77.

3. Select U.S. DOD installations. Contact Major Cannon at aforementioned location for list of locations.

FOR FURTHER INFORMATION CONTACT: Robert V. Bielarski, Environmental Protection Agency, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20461. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Highway, Rm. 1121, Arlington, VA, Telephone: (703) 305–6708, e-mail: bielarski.robert@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Electronic Availability: Electronic copies of this notice and the revised DOD pesticide applicator certification plan are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Subset entry under ''Rules and Regulations.''

I. Background

In the Federal Register of December 8, 1985, notice was published announcing the final approval of a revised DOD pesticide applicator certification plan. The DOD has again revised its certification plan to reflect updated administrative procedures and the addition of three new subcategories. This newly revised plan has been submitted to EPA for approval. The revised plan will continue to cover workers from the three branches of the Armed Forces. The revised plan will retain the aerial applicator category contained in the current plan. The revised plan will add the following new subcategories: (1) Subcategory 3a., soil fumigation under the existing ornamental and turf category, (2) subcategory 6a., grassland and non-crop agricultural land under the existing right-of-way category, and (3) subcategory 7a., stored product fumigation under the existing industrial, institutional, structural, and health-related category. The remaining categories in the revised certification plan are similar to the established EPA categories. The DOD estimates that the number of applicators to be certified in the newly established subcategories will not exceed 50 applicators.

The certification program will continue to be administered by the Armed Forces Pest Management Board within the Office of the Secretary of Defense. Certification and recertification will be required by taking and passing of a written examination. Recertification will be required every 3 years.

EPA finds that the revised DOD certification plan fully meets the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act and the regulations at 40 CFR part 171. Therefore, EPA announces its intention to approve the revised DOD certification plan.

Interested persons are invited to submit written comments on EPA's intention to approve the revised DOD certification plan.

II. Public Docket

A record has been established for this action under docket number ''OPP–00465 '' (including comments submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 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.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

Environmental protection.

Dated: February 5, 1997.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 97–3381 Filed 2–11–97; 8:45 am]

BILLING CODE 6560–50–F

[PF-707; FRL-5587-2]

American Cyanamid Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of tolerances for residues of dithianon (5,10-dihydro-5,10-dioxonaphtho[2,3-*b*]-1,4-dithiin-2,3-dicarbonitrile) in or on pome fruits and dried hops. This notice includes a summary of the petition that was prepared by the petitioner, American Cyanamid Company.

DATES: Comments, identified by the docket number [PF-707], must be received on or before, March 14, 1997.

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

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [PF-707]. Electronic comments on this notice of filing may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM 22), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, Room 229, 1921 Jefferson Davis Highway, Arlington, VA, 703-305-7740, e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 6E4781) from American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543, proposing pursuant to section 408 (d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the fungicide dithianon in or on the raw agricultural commodity (RAC) pome fruits at 5 parts per million (ppm) and dried hops at 100 ppm. The proposed analytical methods are HPLC methods with UV detection for pome fruits (apples and pears) and with electrochemical detection for quantitation for hops.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408 (d)(2) of the FFDCA; however, EPA has

not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) Pub. L. 104-170, American Cyanamid included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of American Cyanamid. EPA is in the process of evaluating the petition. As required by section 408(d)(3) of the FFDCA, EPA is including the summary as a part of this notice of filing. EPA has made minor edits to the summary for the purpose of clarity.

I. Petition Summary

On August 20, 1996, American Cyanamid Company petitioned the EPA for an import tolerance for dithianon residues on pome fruits (with representative crops of apples and pears) and dried hops. This is the first tolerance petition for dithianon fungicide in the United States.

Section 408(b)(2)(A) of the amended FFDCA allows the EPA to establish a tolerance only if the Administrator determines that there is a ''reasonable certainty that no harm will result from the aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' All of the studies required for the proposed import tolerance have been completed and submitted to EPA for review. The available information indicates there is a reasonable certainty that no harm will result from various types of exposure to dithianon. The following is a summary of the information submitted to the EPA to support the establishment, under section 408(b)(2)(D) of the amended FFDCA, of an import tolerance for dithianon on pome fruits and dried hops.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of dithianon in plants is adequately understood. Metabolism studies in three diverse crops demonstrate a similar pattern of dithianon metabolism with a significant amount of unchanged parent compound remaining on the plant surfaces. The metabolism of dithianon in plants results in a large number of fragments in only trace amounts. Hence, parent dithianon is the only residue of concern.

2. *Analytical method.* Two practical analytical methods for detecting and measuring levels of dithianon in pome fruits (apples and pears) and in hops have been submitted to EPA. The analytical method for apples and pears is an HPLC method with UV detection. For hops, an HPLC method with electrochemical detection for quantitation was submitted. Both methods are appropriate for enforcement purposes.

3. *Magnitude of residues.* Residue field trials were conducted in representative countries exporting the majority of the RAC of this petition to the United States. For the pome fruit crop group, field residue trials on apples were conducted in France, New Zealand, Germany, and Brazil and on pears in France, Australia, and New Zealand. These studies cover a wide range of geography with diverse climates and growing conditions, as well as various cultural practices. The residue values reported in the tolerance petition were all less than the proposed tolerance of 5 ppm for pome fruits. Hop residue trials conducted in Germany support the dried hop tolerance. Except for one outlier, the field residue levels of dithianon in dried hops were less than the proposed tolerance of 100 ppm.

Of the crops for which this tolerance is requested, only apples have processed commodities. Apple processing studies submitted in this petition indicate that dithianon does not concentrate in apple juice, but does concentrate in the wet apple pomace. It is unlikely that apple pomace will be imported into the United States. Therefore, an import tolerance is not necessary for that processed commodity.

B. Toxicological Profile

A complete, valid and reliable database of mammalian toxicology studies supports the tolerance for dithianon on pome fruits and dried hops.

1. *Acute toxicity.* Dithianon has a low order of acute toxicity to rats by the oral route of exposure with an LD_{50} (females) greater than 678 milligram/kilogram (mg/kg) and LD_{50} (males) greater than 720 mg/kg. Since this petition is for an import tolerance, oral toxicity data sufficiently assesses the risk of acute exposure for this use.

2. *Genotoxicity.* The collective data from an extensive battery of *in vitro* and *in vivo* tests covering all major genetic end-points, including an *in vivo* chromosomal aberration assay, show that dithianon does not pose a genotoxic risk and is not likely to be a genotoxic carcinogen.

3. *Reproductive and developmental toxicity.* Results from a 2-generation reproductive toxicity study in rats show that dithianon is not a reproductive toxicant. Developmental toxicity studies in rats and rabbits revealed no evidence of teratogenic effects for fetuses of either species and no evidence of development effects in the absence of maternal toxicity. The no observed effect levels (NOELs) for fetal/developmental toxicity are established at 20 mg/kg/day in rats and 25 mg/kg/day in rabbits. The maternal NOELs are 20 mg/kg/day in rats and 10 mg/kg/day in rabbits. A 2-generation reproduction study in rats supports a NOEL for fertility/reproductive toxicity of 600 ppm (highest concentration tested) or 42 mg/kg/day. In the reproduction study, the parental NOEL was 200 ppm or 15 mg/kg/day.

4. *Subchronic toxicity.* Short-term exposure of mice and rats to dithianon technical resulted in slight anemia. Mice also exhibited hemosiderin deposition in the liver, and rats showed increased kidney and liver weights and histopathological findings in the kidney (females only). Short-term exposure of dogs to dithianon resulted in decreased body weight or weight gain, decreased food consumption, and increased kidney weight. The NOEL in a 28-day oral study in mice was 100 ppm or 15 mg/kg/day and for rats the NOEL was 315 ppm or 31.5 mg/kg/day. In 90-day oral studies in rats and dogs the NOELs were 180 ppm or 15.5 mg/kg/day and 200 ppm or 3.0 mg/kg/day, respectively.

5. *Chronic toxicity.* Findings similar to those observed in short-term toxicity studies were also apparent in the long-term dietary toxicity studies conducted in dogs, rats and mice. Pre-neoplastic and neoplastic lesions were observed in the life-time rat dietary study in females. However, the collective evidence from this study and special mechanistic studies showed that these lesions occur due to a regenerative response of the kidney basophilic tubules, which follow persistent cellular damage to kidney proximal tubular epithelial cells. Thus, a threshold for these lesions exists. Moreover, these lesions were only noted following a 24-month dietary exposure to 600 ppm of dithianon, a concentration that exceeded the Maximum Tolerated Dose (MTD), as evidenced by markedly depressed body weight gains in females as compared to controls. Pre-neoplastic or neoplastic lesions were not observed in the life-time dietary study in mice, even at a concentration of dithianon that exceeded the MTD.

In a 1-year chronic toxicity study in dogs, the NOEL was 40 ppm or 1.6 mg/

kg/day. The NOEL for chronic effects in mice from the 18-month combined chronic toxicity and oncogenicity study was 20 ppm or 3.0 mg/kg/day, while the NOEL for potential oncogenic effects was 500 ppm or 75 mg/kg/day, which is the highest concentration tested. In the 24-month combined chronic toxicity and oncogenicity study in rats, the NOEL for chronic effects was 20 ppm or 1.0 mg/kg/day. The carcinogenicity NOEL was 120 ppm for females or 6.0 mg/kg/day.

6. *Animal metabolism.* The rat and goat metabolism studies indicate that the qualitative nature of the residues of dithianon in animals is adequately understood. Elimination of dithianon via excreta is rapid. The metabolism data suggests that unabsorbed dithianon is broken down in the gastrointestinal tract, since only very low concentrations of the unaltered parent were identified in the fecal excreta. A hen metabolism study is not required, because pome fruits (represented by apples and pears) and hops are not used as significant feedstuff for poultry.

In the metabolism studies using radio labeled dithianon, examination of organs, tissues, and milk indicated that accumulation is not of concern. Additionally, repeated dosing did not result in the accumulation of total radioactive residues.

7. *Metabolite toxicology.* No toxicologically significant metabolites were detected in plant or animal metabolism studies. Therefore, toxicology studies with metabolites are not required.

8. *Endocrine effects.* Collective organ weights and histopathological findings from the 2-generation rat reproductive study, as well as from the subchronic and chronic toxicity studies in three different animal species, demonstrate no apparent estrogenic effects or treatment-related effects on the endocrine system.

C. Aggregate Exposure

1. *Dietary Exposure*—i. *Food.* The Theoretical Maximum Residue Concentrations (TMRC) of dithianon on or in pome fruits, dried hops, and processed commodities (apple juice/cider, dried apples and pears, apple juice concentrate) are:

—0.003419 mg/kg body weight (b.w.)/day for the general U.S. population.

—0.006417 mg/kg b.w./day for non-nursing infants.

—0.007479 mg/kg b.w./day for children 1 to 6 years of age.

—0.005147 mg/kg b.w./day for children 7 to 12 years of age.

The TMRC for the non-nursing infants group is based on the assumption that apple sauce, rather than unprocessed apples, would be eaten by this subpopulation. For the 7 to 12 year old age group, no consumption data was available for dried pears, so the values for dried pears from the 1 to 6 year old age group were used for the calculation. These TMRC values are calculated from the proposed tolerances of 5 ppm on pome fruits (with a 0.12 ppm residue level calculated for apple juice), 100 ppm on dried hops, and from food consumption data obtained from the Agriculture Department's (USDA) Continuing Survey of Food Intake by Individuals (CSFII) conducted from 1989 to 1992. These chronic dietary exposure estimates are very conservative, because they assume that 100% of all apples, pears, and hops for human consumption are imported. The estimates also assume that all apples, pears, and hops that are imported are treated with dithianon and that the levels of residues on the RAC are at the tolerance level.

Dietary exposure to residues of dithianon will be limited to residues on imported pome fruits, in apple and pear processed commodities, and in beer. Wet apple pomace is considered as a significant ruminant feed item, but it is unlikely that apple pomace would be imported for this use. Apple pomace is not a poultry feed item. Thus, no residues are expected in poultry or eggs. There are no other established tolerances for dithianon in the United States, and there are no registered uses for dithianon on food or feed crops in the United States.

ii. *Drinking water.* This proposed tolerance is for imported pome fruits and dried hops. Since there are no approved uses for dithianon in the United States, the potential exposure from drinking water is not relevant to this petition.

2. *Non-dietary exposure.* This petition is for a tolerance on imported pome fruits and dried hops. There is no approved use for dithianon in the United States and none is being sought. Therefore, the potential for non-dietary exposure is not pertinent to this petition.

D. Cumulative Effects

We are aware of no information to indicate or suggest that any toxic effects produced by dithianon would be cumulative with those of any other chemical.

E. Safety Determination

1. *U.S. population.* The RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. For dithianon, the RfD of 0.01 mg/kg/b.w./day is based on a NOEL of 20 ppm or 1 mg/kg b.w./day from the 24-month chronic toxicity study in rats and a safety (uncertainty) factor of 100. A 100-fold safety factor is supported by a threshold level for the proliferative effects in the kidney, which were only observed in females following long-term administration of an excessively toxic dietary concentration of dithianon. Thus, a quantitative cancer risk assessment is not required.

The chronic dietary exposure of 0.003419 mg/kg b.w./day for the general U.S. population will utilize 34.2% of the RfD. EPA generally has no concern for exposures below 100% of the RfD. American Cyanamid concludes that there is a ''reasonable certainty of no harm'' from aggregate exposure to dithianon residues. The complete and reliable toxicity data and the conservative chronic exposure assumptions support this conclusion.

2. *Infants and children.* The chronic dietary exposure estimates presented in Unit C of this document will utilize approximately 64.2% of the RfD for non-nursing infants less than 1 year old, approximately 74.8% of the RfD for children 1 to 6 years of age, and approximately 51.5% of the RfD for children 7 to 12 years of age. Thus, the conservative exposure estimates for the subpopulations of infants and children are all well below the RfD for dithianon.

A 2-generation reproductive toxicity study in rats showed that dithianon is not a reproductive toxicant. Moreover, no treatment-related effects on pup development were noted in this study, supporting a NOEL for developmental effects of 600 ppm (the highest concentration tested) or approximately 42 mg/kg b.w./day. Results of developmental toxicity studies in rats and rabbits revealed no evidence of teratogenic effects for fetuses of either species and no evidence of development effects in the absence of maternal toxicity, indicating that dithianon is not selectively toxic to the fetus. These studies support maternal NOELs of 20 and 10 mg/kg b.w./day for the rat and rabbit studies, respectively, and developmental NOELs of 20 and 25 mg/kg b.w./day for the rat and rabbit studies, respectively.

The NOEL used to calculate the RfD for the general U.S. population is 1 mg/kg b.w./day derived from the 24-month chronic toxicity study in rats. A NOEL of 1 mg/kg b.w./day is 20 to 42 times lower than the NOELs for developmental effects from the developmental toxicity and reproductive toxicity studies.

Based on the current toxicological data requirements, the database relative to pre-and post-natal effects for children is complete, valid and reliable. Collective results from the 2-generation and teratology studies show no increased sensitivity to developing offspring. Thus, no increased sensitivity of infants and children to dithianon residues is anticipated. Therefore, American Cyanamid concludes that an additional safety (uncertainty) factor is not warranted and the RfD of 0.01 mg/kg b.w./day, which utilizes a 100-fold safety factor, is appropriate to ensure a reasonable certainty of no harm to infants and children.

F. International Tolerances

A Maximum Residue Limit (MRL) for dithianon at the level of 5 mg/kg was established for pome fruits by the 1992 WHO/FAO Joint Meeting on Pesticide Residues (JMPR). The MRL for pome fruits was raised to step 8 at the Codex Committee on Pesticide Residues (CCPR) meeting in 1996 and will be approved by the Codex Alimentarius Commission in 1997 for Codex Maximum Residue Limit (CXL) (final). The 1992 JMPR established an MRL for dithianon in dried hops of 100 mg/kg. This MRL for dried hops is a CXL (final).

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notation indicating the docket number [PF-707].

A record has been established for this notice of filing under docket number [PF-707] including comments and data submitted electronically as described below. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 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.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice of filing, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

List of Subjects

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

Dated: February 3, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97-3226 Filed 2–11–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–698; FRL–5585–4]

Englehard Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing a temporary exemption from the requirement of a tolerance for residues of kaolin in or on apples, apricots, bananas, beans, cane berries, citrus fruits, corn, cotton, cucurbits, grapes, nuts, ornamentals, peaches, peanuts, pears, peppers, potatoes, seed crops, soybean, small grains, strawberries, sugar beets, and tomatoes. The summary was prepared by the petitioner, Engelhard Corporation.

DATES: Comments, identified by the docket control number [PF-698], must be received on or before March 14, 1997.

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

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF-698]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as comments concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Room 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail, Sheryl Reilly, Regulatory Action Leader, (PM 90), Biopesticides and Pollution Prevention Division (7501W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Station #1, 5th Floor, 2800 Crystal Drive, Arlington, VA, 703-308-8265, e-mail: reilly.sheryl@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition [PP–7G4793] from Engelhard Corporation, 101 Wood Ave., Iselin, NJ 08830. The petition proposes, pursuant to section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a, to amend 40 CFR part 180 to establish a temporary exemption from the requirement of a tolerance for residues of the biochemical pesticide kaolin in or on the raw agricultural commodities apples, apricots, bananas, beans, cane berries, citrus fruits, corn, cotton, cucurbits, grapes, nuts, ornamentals, peaches, peanuts, pears, peppers, potatoes, seed crops, soybean, small grains, strawberries, sugar beets, and tomatoes. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports

granting of the petition. Additional data may be needed before EPA rules on the petition. As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) Pub. L. 104-170, Engelhard Corporation included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Engelhard Corporation; EPA, as mentioned above, is in the process of evaluating the petition. As required by section 408(d)(3) of the FFDCA, EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Proposed Use Practices

The proposed experimental program will be conducted in the states of Alabama, Arizona, California, Florida, Georgia, Idaho, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Virgin Islands, Virginia, Washington, and West Virginia. Crops to be treated are apples, apricots, bananas, beans, cane berries, citrus fruits, corn, cotton, cucurbits, grapes, nuts, ornamentals, peaches, peanuts, pears, peppers, potatoes, seed crops, soybean, small grains, strawberries, sugar beets, and tomatoes. Treatment is made shortly after leaf or plant emergence and applied to crops at 7 to 10-day intervals. Treatment will not be applied within 10 days of harvest. Dosage rates are 10 to 100 lbs of the formulated kaolin per acre and are applied with standard commercial spray equipment. The first year target pests are aphids, apple scab, codling moth, fireblight, leaf hoppers, and pear psylla. The second year target pests are aphid complex, apple scab, armyworm, bacteria spot, bollworms, citrus canker, citrus rust, codling moth, Colorado potato beetle, cotton flea hopper, European and spotted red mite, fabrea leaf spot, early and late blight, fireblight, flyspeck, Japanese beetle, leaf hopper complex, leaf rollers, mealybug, mildews, phylloxera, pear psylla, pear rust mites, Pierce's Disease, rots, scales, tarnish plant bug, thrips, wheat stem-saw fly, and whitefly.

B. Product Identity/Chemistry

1. Kaolin is a white, nonporous, nonswelling, natural aluminosilicate mineral with the chemical formula of $Al_4Si_4O_{10}(OH)_8$. Kaolin is one of the most highly divided and highly refined naturally occurring minerals. Median particle size of commercial products vary between 0.1–10 microns. Kaolin is chemically inert. Its hydrophilic surface allows kaolin to be easily dispersed in water at neutral pH values of 6–8. Common physical properties of kaolin are: platy shape, high brightness (80–95), specific gravity 2.58–2.63, refractive index 1.56–1.62, and Mohs hardness 2–3.

2. A temporary exemption from the requirement of a tolerance is requested for kaolin.

3. An analytical method for detecting and measuring the levels of kaolin residue are not needed because kaolin has GRAS (Generally Recognized as Safe) status under 21 CFR 186.1256 and is generally recognized as safe ''as an indirect human food ingredient with no limitation other than current good manufacturing practice.''

C. Mammalian Toxicological Profile

Waivers are requested for acute toxicity, genotoxicity, reproductive and developmental toxicity, subchronic toxicity, and chronic toxicity. Kaolin is used as an indirect food additive for paper/paper board in wet and fatty food contact, paper/paper board dry food contact, adhesives, polymeric coatings, rubber articles, and cellophane. Kaolin is used in pharmaceuticals, tablet diluents, poultices, and surgical dusting powders. Kaolin is used as a cosmetic in face powders, face masks, and face packs. Kaolin is used in health products and toiletries, toothpaste, and antiperspirants. Kaolin can be used directly in foods as an anti-caking agent (up to 2.5%).

D. Aggregate Exposure

1. Dietary exposure of kaolin via food or water is difficult to estimate due to the use of kaolin in thousands of products. Kaolin is an inert mineral and has no known toxicological effects.

2. Increased non-dietary exposure of kaolin via lawn care, topical insect repellents, etc. will be minimal. Kaolin is already used in the products listed in Unit I.C. of this document. The amount of kaolin currently used in the U.S. pesticide industry as an inert is between 2 million lbs. and 10 million lbs. per year.

E. Cumulative Exposure

Kaolin has no mode of toxicity and therefore cumulative exposure is not applicable. Kaolin is used in thousands of products as well as being a naturally occurring part of the earth. Cumulative exposure is not possible to calculate nor is it necessary due to the non-toxic nature of kaolin.

F. Safety Determination

1. For the U.S. population kaolin has no known adverse effects.

2. For infants and children kaolin has no known adverse effects.

G. Existing Tolerances

1. Kaolin is listed as exempt from the requirement of a tolerance ''when used in accordance with good agricultural practice as an inert (or occasionally active) ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest.''(40 CFR 180.1001)

2. The registrant does not know if international tolerance exemptions exist; however, since kaolin is commonly used as an inert in chemical pesticide formulations, it is assumed that such exemptions from the requirement of a tolerance exist.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number [PF-698]. All written comments filed in response to this petition will be available, in the Public Response and Program Resources Branch, at the address given below from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays. A record has been established for this notice under docket control number [PF-698] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 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.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which

will also include all comments submitted directly in writing.

The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this notice.

List of Subjects

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

Dated: January 30, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–3224 Filed 2–11–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–704; FRL–5586–5]

Entek; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of tolerances for residues of carbon disulfide in or on almond nutmeats, almond hulls, peaches and plums (fresh prunes). This notice includes a summary of the petition that was prepared by the petitioner, Entek Corporation.

DATES: Comments, identified by the docket number [PF-704], must be received on or before, March 14, 1997.

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

Comments and data may also be submitted electronically be sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by docket number [PF-704]. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit II. of this document.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Product Manager (22), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–5540, e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP 5F4482) from Entek Corporation, P.O. Box 458, Brea, CA 92822, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.467 by establishing a tolerance, at 0.1 part per million (ppm), for residues of the fumigant carbon disulfide resulting from the soil application of sodium tetrathiocarbonate in or on the raw agricultural commodities almond nutmeats, almond hulls, peaches and plumes (fresh prunes). The proposed analytical method is gas chromatography using a sulfur specific detector. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (Pub. L. 104-170), Entek Corporation included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Entek Corporation. EPA is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA has made minor edits to the summary for the purpose of clarity.

I. Entek's Petition Summary

A. Residue Chemistry

1. *Plant metabolism.* Radiolabel metabolism studies, using ^{14}C labeled sodium tetrathiocarbonate, were conducted with potatoes and tomatoes. The studies established that sodium tetrathiocarbonate rapidly degrades in soil and plants and the resulting residues are carbon disulfide (CS_2), free and bound. No other residues of concern were identified in the radiolabel or other residue chemistry studies submitted by the petitioner.

2. *Analytical method.* An adequate analytical method for detecting free and bound CS_2 residues in plants is available. The method has been validated by EPA. In brief, plant material is blended with water in a sealed container. Aliquots of the gas and liquid phases are removed and the free CS_2 content is determined by purge-and-trap gas chromatography using a sulfur-specific detector. A sample of the liquid phase, purged for free CS_2, is subjected to hot acid hydrolysis followed by purge-and-trap gas chromatography in order to measure the bound CS_2 content. In general, the limit of detection for the analytical method is 0.5 ppb and the limit of quantitation is 1.7 parts per billion (ppb).

3. *Magnitude of residues.* Two field trials were conducted for each crop (peaches, plums and almonds). Trials were all conducted in California since it is the predominant growing area for each of the requested raw agricultural commodities (RACs) and the petitioner has proposed to limit use of Enzone® (the product containing sodium tetrathiocarbonate) to Arizona, California, Oregon, and Washington. In each trial, sodium tetrathiocarbonate was applied in amounts equal to or greater than the maximum label rate and pretreatment, control and treatment samples were analyzed for free and bound CS_2.

In the plum and peach trials, very low levels (<20 ppb) of free and bound CS_2 were observed in pretreated, control and treatment samples. In both almond trials, very low levels of free or bound CS_2 (< 10 ppb) were observed in almond nutmeats. In one of the almond trials, unusually high levels of bound CS_2 (from 567–6,761 ppb) were observed in control and treated almond hull

samples. The petitioner believes that these atypical levels were most likely due to high natural occurrence or drift of an ethylene bisdithiocarbamate (EBDC) pesticide from a nearby source.

Rigorous statistical analysis of the sample data clearly showed that there is no increase in CS_2 (free or bound) above background levels for treated almond, pear or plum trees when compared to untreated or control trees.

B. Toxicological Profile

1. *Acute toxicity.* Technical sodium tetrathiocarbonate (32% active ingredient) is moderately toxic by the oral route, with a combined acute oral LD_{50} of 631 milligrams/kilograms (mg/kg) in the rat. Technical sodium tetrathiocarbonate is practically nontoxic by dermal application (acute dermal LD_{50} > 2,000 mg/kg) and slightly toxic after a 4-hour inhalation exposure (acute LC_{50} is 4.73 mg/L (males) and 3.17 mg/L (females). Technical sodium tetrathiocarbonate is corrosive to skin and eyes but is not a dermal sensitizer.

2. *Genotoxicity.* In the bacterial gene mutation test (Ames) technical sodium tetrathiocarbonate was negative, with or without metabolic activation. Technical sodium tetrathiocarbonate was also negative in a mammalian gene mutation assay (CHO/HGPRT), with or without metabolic activation. In the chromosome aberration assay, technical sodium tetrathiocarbonate gave a weakly positive result under activation conditions. Technical sodium tetrathiocarbonate was negative in the unscheduled DNA Synthesis assay. On the basis of the mutagenicity battery, Entek concludes that sodium tetrathiocarbonate is not mutagenic or genotoxic.

3. *Developmental toxicity.* Developmental toxicity studies with sodium tetrathiocarbonate were performed in the rat and rabbit. In the rat study, pregnant rats were administered sodium tetrathiocarbonate at doses of 0, 150, 400, 450 and 500 mg/kg/day on gestation days 6 through 15. Necropsy examinations of the animals that died and animals that survived to final sacrifice did not reveal any lesions which could be attributed to sodium tetrathiocarbonate. Treatment with 150, 400 or 450 mg/kg/day of sodium tetrathiocarbonate did not alter fetal, skeletal or visceral development. The developmental toxicity no observed effect level (NOEL) for this study is 450 mg/kg/day. In the rabbit study, pregnant rabbits were administered sodium tetrathiocarbonate at doses of 0, 75, 150 and 185 mg/kg/day on days 7-19 of gestation. Developmental effects (elevated resorptions and increased post-implantation loss) were observed at 185 mg/kg/day; developmental effects were not observed at the lower dose levels. The developmental toxicity no observed effect level (NOEL) for this study is 150 mg/kg/day.

Entek has requested waivers for several of the toxicology studies that are normally required for crop tolerances. These include: 90–day oral toxicity study (rat and dog); 2-generation reproduction (rat); chronic toxicity study (rat and dog); oncogenicity (rat and mouse) and general metabolism. The basis for the waiver request is that the natural or background levels of CS_2, either free or bound, are not increased from the application of sodium tetrathiocarbonate to almonds, peaches or plums.

In 1987, an oral reference dose (RfD) of 0.1 mg/kg/day for CS_2 was established by EPA's Integrated Risk Information System (IRIS).

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food.* Extensive residue data compiled by the petitioner and information in the public literature has shown a natural occurring dietary CS_2 level (bound and free) of approximately 10-20 ppb. Assuming a dietary intake of 3,000 g/day, the daily intake of CS_2 is approximately 0.06 mg/day. The use of sodium tetrathiocarbonate on almonds, peaches or plums is not anticipated to add to the daily intake of CS_2 since, as noted above, no increases in CS_2 residues above background levels were observed in the residue trials. It should also be noted that there was no increase above background CS_2 levels for the crops (grapes and citrus) currently covered by a tolerance.

ii. *Drinking water.* Two state-of-art prospective ground water monitoring studies were conducted for sodium tetrathiocarbonate. In both studies, sodium tetrathiocarbonate was applied above very shallow aquifers (3-7 ft. below the surface) and the ground water was analyzed for CS_2. The studies demonstrated that CS_2, from sodium tetrathiocarbonate application, is not a residual ground water contaminant.

2. *Non-dietary exposure.* Carbon disulfide is an industrial chemical used in the manufacture of rayon fibers; in the production of cellulose and rubber chemicals; as a solvent for cleaning and extraction; as an extractant for olive oil and in the production of adhesives. Accordingly, workers in these industries may be exposed to low levels of CS_2 in the air. The daily exposure limit is 20 ppm (8-hr time weight average).

D. Cumulative Effects

There is no reliable information to indicate that carbon disulfide has a common mechanism of toxicity with any other chemical compound.

E. Safety Determination

1. *U.S. population.* Since the use of sodium tetrathiocarbonate on almonds, peaches and plums is not anticipated to contribute to CS_2 exposures, Entek concludes that there is a reasonable certainty that no harm will result from sodium tetrathiocarbonate application to these RACs.

2. *Infants and children.* Entek also concludes that there is a reasonable certainty that no harm will result to infants and children since no increase in infant or child exposure to CS_2 will result from the application of sodium tetrathiocarbonate on almonds, peaches and plums.

F. International Tolerances

There are no Codex maximum residue levels [MRLs] established for residues of carbon disulfide resulting from the application of sodium tetrathiocarbonate.

II. Public Record

A record has been established for this notice under docket number [PF-704] including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 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.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address

in ''ADDRESSES'' at the beginning of this document.

List of Subjects

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

Dated: February 7, 1997.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–3645 Filed 2–11–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–694; FRL–5583–9]

Nayfa Industries Inc.; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing an exemption from the requirement of a tolerance for residues of propionic acid in or on sugarbeet, potatoes and sweet potatoes. This notice includes a summary of the petition prepared by the petitioner Nayfa Industries Inc.

DATES: Comments, identified by the docket control number [PF–694], must be received on or before, March 14, 1997.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found below this document.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC. Office location, telephone number and e-mail address: Rm. 229, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 703–305–7740. e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP) 6F4770 from Nayfa Industries, Inc., c/o 1625 K St., NW., Suite 501, Washington, DC 20006, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. section 346(d), to amend 40 CFR part 180 by an exemption from the requirement of a tolerance for residues of the herbicide propionic acid in or on the raw agricultural commodities sugarbeets, potatoes and sweet potatoes. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act, Nayfa Industries, Inc. included in the petition a summary of the petition and authorization for the summary to be published in the Federal Register in a notice of receipt of the petition. The summary represents the views of Nayfa Industries, Inc. EPA is in the process of evaluating the petition. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA has made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Residue Chemistry

Propionic acid is currently exempt from the requirement of a tolerance (40 CFR 180.1023), when used as a fungicide for postharvest application to prevent fungal growth. The raw agricultural commodities include oat, corn, barley, wheat, rice and sorghum grains, hay, alfalfa, clover, cottonseed, timothy, vetch, sudan grass, rye grass, peanuts, orchard grass, lespedeza, fescue, brome grass, lupines, soybeans, Bermuda grass and bluegrass, cowpea, peanut, peavine and soybean hays, livestock and poultry drinking water, storage areas for silage and grain, and poultry litter.

The formula statements dated January 4, 1991 are acceptable and have been included in this file. It is understood that the use of methylene chloride in this formulation is no longer consistent with the terms of its registration.

Propionic acid naturally occurs in animals and in dairy products in small amounts. It is Generally Recognized As Safe (GRAS) [21 CFR 184.1081], by FDA for use in food. Propionic Acid is exempt from the requirement of a tolerance when applied (as an inert ingredient) to growing crops or to raw agricultural commodities after harvest as described in 40 CFR 180.1001(c).

Nayfa Industries, Inc. requested Residue Chemistry Data Waivers: All the residue chemistry data requirements covered under 40 CFR part 158 (Guideline Series 171) which covers nature of residues in plants and animals; residue analytical methods for plants and animals; storage stability; magnitude of residues in sugarbeets, potatoes, and sweet potatoes and their processed products, meat, milk, poultry and eggs. The bases for waivers are prior clearances for propionic acid by EPA and FDA. The Agency has determined that propionic acid as an active ingredient in registered products may be used for both human food and animal feed.

B. Toxicological Profile

1. Acute toxicity. Acute oral: > 2 g/kg (Category III); acute dermal: > 2 g/kg (Category III); acute inhalation: > 0.5 through 5 mg/L (Category III); eye irritation: corrosive (Category I); dermal irritation: corrosive (Category I); skin sensitization: not available and Nayfa believes this data requirement should be waived.

Contact with concentrated solutions of propionic acid may cause local damage to skin, eye, or mucosa. Tissue necrosis was caused by 10 mg/24 hr with propionic acid in a rabbit skin irritation test, but the same quantity of propionic acid as a 10 percent solution in acetone had little effect. The acid has been called moderately toxic for rabbits but corrosive for guinea pigs in skin irritation tests. Rats survived an eight hour exposure to concentrated vapor of propionic acid.

2. Genotoxicity. Propionic acid gave negative results in mutagenicity assays in 5 strains of *Salmonella typhimurium*

and one of *Saccharomyces cerevisiae*, with and without activation.

Additional data on calcium and sodium propionate indicate that:

a. Calcium propionate tested in three strains of *S. typhimurium* and one strain of *S. cerevisiae*, with several activation systems, gave negative results.

b. Sodium propionate showed higher incidence of abnormalities in developing chick embryos only at the highest level (10 mg/egg) by air cell administration, not in yolk treatment; however, 5 and 10 mg/egg levels had increased mortality.

3. Reproductive and developmental toxicity. Based on the available data:

a. No maternal or fetal effects were seen upon feeding calcium propionate to pregnant animals at rates up to 300 mg/kg/day for rats and mice, or up to 400 mg/kg/day for hamsters and rabbits.

b. No teratogenicity was found in developing chick embryos when up to 100 mg/kg calcium propionate was injected into the yolk or air cell, although there was increased mortality at 5 and 10 mg/kg.

4. Subchronic toxicity. Data on calcium and sodium propionate were used to assess subchronic toxicity of propionic acid. When rats were fed calcium or sodium propionate at 1 percent of the diet (equivalent to about 750 mg/kg/day of propionic acid) for 4 weeks followed by 3 percent (equivalent to about 1,200 mg/kg/day propionic acid) for 3 weeks, they had no changes in weight gain compared to controls. Rats fed 5 percent propionic acid in the diet (about 5,000 mg/kg body weight) for 110 days developed lesions of the forestomach.

Propionic acid was given in the feed to dogs at 220, 735, or 2,066 mg/kg/day (3,000, 10,000, and 30,000 ppm) for 90 days. The high dose dogs showed reduced food consumption, increased incidence of epithelial hyperplasia in the esophagus, and increased nitrite in the urine. These effects were no longer present in dogs held for a 6 week recovery period. A limited study with calcium propionate in dogs for 90 days showed vomiting and diarrhea in animals fed 2,523 mg/kg/day (43,500 ppm).

Addition of sodium propionate to the diet of chicks and young rats accentuated the growth depression seen when their diet was deficient in vitamin B12. Body weight gain in young lambs was not affected by 5,600 mg/kg/day of sodium propionate in the diet for 50 days.

When an adult male human was fed 6.0 g/day sodium propionate, the only effect noted was slightly alkaline urine.

5. Chronic toxicity. Twenty male rats per group were fed 0.4 or 4.0 percent propionic acid in the diet for 2 years. The high dose animals had hyperplasia and hyperplastic ulcers in the forestomach. (The rat forestomach has no counterpart in human anatomy).

Data on calcium and sodium propionate indicate that rats fed bread containing sodium propionate (4,000 mg/kg/day) for a year showed no adverse effects, nor did rats fed a similar diet for 32 weeks, other than an initial depression of growth.

6. Animal metabolism. Propionic acid is rapidly absorbed from the mammalian gastro-intestinal tract. Propionic acid is a normal intermediary metabolite in the body. It is utilized by most organs and tissues, and can be metabolized to glucose, carbohydrates, amino acids, and lipids. It is produced in large quantities in ruminants. In non-ruminants, propionic acid is one of the metabolic products from the breakdown of several amino acids. Propionic acid is formed in the oxidation of fatty acids and from the side chain of cholesterol.

7. Metabolite toxicology. All the metabolites of propionic acid are naturally occurring and are utilized by humans and animals. Nayfa believes that the metabolite toxicity data requirements should be waived because these metabolites are not of toxicological concern.

C. Aggregate Exposure

1. Dietary exposure. Since propionic acid is utilized by most organs and tissues, and is metabolized to glucose, carbohydrates, amino acids and lipids when ingested by livestock and poultry, residues in meat, milk or poultry are considered to be negligible. Propionic acid or mixtures of methylene bispropionate and oxy (bismethylene) bispropionate are exempt from the requirements of a tolerance when used as a post-harvest fungicide on alfalfa, barley grain, Bermuda grass, bluegrass, brome grass, clover, corn grain, cowpea hay, fescue, lespedeza, lupines, oat grain, orchard grass, peanut hay, peavine hay, rye grass, sorghum grain, soybean hay, sudan grass, timothy, vetch, and wheat grain (40 CFR 180.1023). Propionic acid is also exempt from the requirement of a tolerance when applied (as an inert ingredient) to growing crops or to raw agricultural commodities after harvest as described in 40 CFR 180.1001(c). Propionic acid is Generally Recognized As Safe (GRAS) (21 CFR 184.1081), by FDA for use in food.

2. Non-dietary exposure. The only non-dietary exposure to propionic acid is the occupational exposure. Propionic acid end-use products are sprayed on grain and forage at application rates ranging from 1 - 4 gallons of 85% – 100% a.i., depending on the moisture content of grain or forage, and type and length of storage desired. They are also applied to livestock and poultry drinking water and grain storage areas. Based on the use patterns, the potential exposure of applicators to propionic acid could be significant as well as to workers in the spray area. The potential for post-application exposure should be minimal (assuming the area is adequately ventilated).

Certain protective clothing is appropriate for propionic acid users due to eye and skin hazards. The Agency requires applicators to wear protective clothing if the products contain in excess of 63% propionic acid as active ingredient.

D. Cumulative Effects

1. Environmental fate assessment. Under anaerobic conditions propionic acid acts as a carbon source for various microbes and is metabolized to acetic acid, methane, carbon dioxide and water. The only incident reports concerning propionic acid were detections in the tissue of the mussel (*Mytilus Sdulis*) and in ground water as the result of the break-down of petroleum pollution. All environmental fate data requirements are waived for the currently registered uses based on the fact that propionic acid tends to be used as a carbon source by many microbes and is metabolized to carbon dioxide and water.

E. Safety Determination

1. Human health assessment.

a. U.S. population. Propionic acid is a normal component of metabolism in the human body and humans ordinarily consume propionic acid as a natural component of common foods and as an added ingredient. It is a natural component of butter and cheese, and may constitute as much as 1 percent of Swiss cheese. Dietary exposure from pesticidal use would be very low.

b. Infants and children. As noted above, propionic acid is produced by human body. The humans include not only adult population but also children and infants who receive propionic acid through common foods including those that contain this ingredient as a food additive. Additionally, children and infants consume dairy products such as butter and cheese which contain propionic acid. Therefore, dietary exposure from pesticidal use would be very minimal.

F. International Tolerances

There are no known international tolerances for residues of propionic acid in food or animal feed.

G. Tolerance Exemptions for Proposed Uses

The petitioner proposes new uses which include application of propionic acid to sugar beets, potatoes and sweet potatoes. The petitioner requests tolerance exemption for residues of propionic acid in or on sugar beets, potatoes and sweet potatoes. The petitioner also requests waivers for all tests for determining the residues including the analytical method.

The petitioner proposes tolerance exemption for propionic acid for its use on or in:

a. Sugarbeets (stored sugarbeets and seed sugarbeets, and also dried-pulp and dried-molasses intended for animal feed);

b. Potatoes (stored potatoes - marketable and frozen and stored seed potatoes, and also stored potatoes for animal feed); and,

c. Sweet potatoes (stored sweet potato and stored seed sweet potatoes).

The maximum amount of propionic acid applied to these RACs during storage will be 6 lb/ton.

II. Administrative Matters

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the document control number [PF–694]. All written comments filed in response to this petition will be available, in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket control number [PF–694] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 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.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSEES'' at the beginning of this document.

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

List of Subjects

Environmental Protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 3, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–3227 Filed 2–11–97; 8:45 am]

BILLING CODE 6560–50–F

[PF–702; FRL–5586–3]

Valent U.S.A. Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing.

SUMMARY: This notice announces the filing of a pesticide petition proposing the establishment of a regulation for residues of the herbicide clethodim in or on tomato, alfalfa, dry bean, and peanut commodities. The summary of the petition was prepared by the petitioner, Valent U.S.A. Corporation (Valent).

DATES: Comments, identified by the docket control number [PF–702], must be received on or before, March 13, 1997.

ADDRESSES: By mail, submit written comments to Public Response and Program Resources Branch Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. In person, bring comments to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in unit II. of this document.

Information submitted as comments concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23; Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA; (703) 305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP 5F4572 and PP 5F4440) from Valent U.S.A. Corporation, 1333 N. California Blvd., Walnut Creek, CA 94596 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the herbicide clethodim in or on the following raw or processed agricultural commodities: tomatoes at 1.0 part per million (ppm); tomato puree at 2.0 ppm; tomato paste at 3.0 ppm; alfalfa forage at 6.0 ppm; alfalfa hay at 10.0 ppm; peanut nutmeat at 3.0 ppm; peanut hay at 3.0 ppm; peanut meal at 5.0 ppm; and dry bean seeds at 2.0 ppm. The proposed enforcement analytical method for these commodities is EPA-RM-26D-3, a high-performance liquid chromatography (HPLC) method. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

As required by section 408(d) of the FFDCA, as recently amended by the Food Quality Protection Act (FQPA) (Pub L. 104-170), Valent included in the petitions a summary of the petitions and authorization for the summary to be published in the Federal Register in a notice of receipt of the petitions. The summary represents the views of Valent; EPA is in the process of evaluating the petitions. As required by section 408(d)(3) EPA is including the summary as a part of this notice of filing. EPA may have made minor edits to the summary for the purpose of clarity.

I. Petition Summary

A. Residue Chemistry

1. *Plant metabolism*. Clethodim is used for postemergent control of grasses in a wide variety of crops including cotton, soybeans, sugar beets, onions, etc. Plant metabolism studies have been performed in carrots, soybeans, and cotton. Studies were performed with clethodim radio-labeled in the ring structure and in the side chain to follow both parts of the molecule.

The major metabolic pathway in plants is initial sulfoxidation to form clethodim sulfoxide followed by further sulfoxidation to form clethodim sulfone; elimination of the chloroallyloxy side chain to give the imine sulfoxide and sulfone; and hydroxylation to form the 5-OH sulfoxide and 5-OH sulfone. Clethodim sulfoxide and clethodim sulfone conjugates were also detected as major or minor metabolites, depending on plant species and subfractions. Once cleaved from clethodim, the chloroallyloxy moiety undergoes extensive metabolism to eliminate the chlorine atom and incorporate the three-carbon moieties into natural plant components. EPA has determined that the nature of the residue is adequately understood for the purposes of this petition (memos from J. Morales, February 8, 1996 and June 25, 1996).

Based on these metabolism studies, the residues of concern in crops are clethodim and its metabolites containing the cyclohexene moiety, and their sulfoxides and sulfones.

2. *Analytical methods.* Adequate analytical methodology is available for detecting and measuring levels of clethodim and its metabolites in crops. For most commodities, the primary enforcement method is EPA-RM-26D-3, an HPLC method capable of distinguishing clethodim from the structurally related herbicide sethoxydim. However, for milk natural interferences prevent adequate quantitation of clethodim moieties and the common-moiety method (RM-26B-2) is the primary enforcement method with EPA-RM-26D-3 as the secondary method if needed to determine whether residues are clethodim or sethoxydim. Both of these methods have successfully undergone petition method validations at EPA.

3. *Magnitude of residues.* Clethodim is the active ingredient in SELECT 2 EC Herbicide (EPA Reg. No. 59639-3) and SELECT Herbicide (also known as PRISM and ENVOY Herbicides, EPA Reg. No. 59639-78). Tolerances have been established for residues in cotton, soybean, sugar beet, onion (dry bulb), and animal commodities. A summary of available field residue data for the pending tolerances on tomato, alfalfa, peanut, and dry bean commodities is presented below.

In 12 field trials, tomatoes were treated with two post-emergent applications of 0.25 lb. a.i./A each, approximately 14 days apart, and harvested approximately 20 days after the last application. Both fresh and processing tomatoes were included and trials were performed in EPA growing regions 1, 2, 3, 5, and 10. Residues for individual tomato fruit samples ranged from < 0.1 ppm to 0.82 ppm. The highest average field trial (HAFT) residue was 0.77 ppm. The average residue value for all trials, excluding samples less than the limit of detection, was 0.37 ppm. Two processing studies were also performed for tomatoes. Residues were found to concentrate in puree and paste. Concentration factors were determined to be 2.2 for puree and 3.25 for paste. These data have been reviewed by EPA and support time-limited tolerances of 1.0 ppm in tomato fruit, 2.0 ppm in puree, and 3.0 in paste. Valent has agreed to conduct four additional residue trials in growing region 10 as a condition of registration in order to meet recent Agency guidance for distribution of crop field trials across the United States.

In 12 field trials, alfalfa was treated with two post-emergent applications of 0.25 lb. a.i./A each. Alfalfa was harvested approximately 15 to 20 days after each application. Forage samples were taken immediately after cutting and hay samples were dried in the field for 1 to 10 days before being collected. Trials were performed in EPA growing regions 1, 5, 7, 10 and 11. Residues for individual forage samples, treated with either one or two applications, ranged from 0.13 ppm to 5.7 ppm. The highest average field trial (HAFT) residue was 5.4 ppm. Hay sample residues ranged from 0.45 ppm to 9.2 ppm. The HAFT residue was 8.9 ppm. These data have been reviewed by the EPA and support tolerances of 6.0 ppm in alfalfa forage and 10.0 ppm in hay.

In 8 field trials, peanuts were treated with two post-emergent applications of 0.25 lb. a.i./A each approximately 14 days apart and harvested approximately 40 days after the last application. Trials were performed in EPA growing regions 2, 3, and 8. Harvested peanuts were dried in the field for 3 to 11 days after which peanuts and peanut hay were sampled. Residues for individual peanut nutmeat samples ranged from < 0.05 ppm to 2.7 ppm. The highest average field trial (HAFT) residue was 1.75 ppm. The average residue value for all trials, excluding samples less than the limit of detection, was 0.94 ppm. Residues in peanut hay ranged from 0.22 ppm to 2.6 ppm with a HAFT residue of 2.55 ppm. A processing study was also performed for peanuts and residues were found to concentrate in meal with a concentration factor of 3.0. These data have been reviewed by the EPA and support tolerances of 3.0 ppm in peanut nutmeat, 3.0 ppm in peanut hay, and 5.0 ppm in peanut meal. Valent has agreed to conduct four additional residue trials in growing region 2 as a condition of registration in order to meet recent Agency guidance for distribution of crop field trials across the United States.

In 9 field trials, dry beans were treated with two post-emergent applications of 0.25 lb. a.i./A each approximately 14 days apart and harvested approximately 30 days after the last application. Trials were performed in EPA growing regions 5, 7, 9, 10, and 11. Residues for individual dry bean seed samples ranged from 0.58 ppm to 1.6 ppm. The highest average field trial (HAFT) residue was 1.6 ppm. The average residue value for all trials, excluding samples less than the limit of detection, was 0.99 ppm. These data have been reviewed by the EPA and support a tolerance of 2.0 ppm for dry bean seeds. Valent has agreed to conduct three additional residue trials in growing region 5 as a condition of registration in order to meet recent Agency guidance for distribution of crop field trials across the United States.

B. Toxicological Profile

1. *Acute toxicity.* Clethodim Technical is slightly toxic to animals following acute oral (Toxicity Category III), dermal (Toxicity Category IV), or inhalation exposure (Toxicity Category IV under current guideline interpretation). Clethodim is a moderate eye irritant (Category III), a severe skin irritant (Category II), and does not cause skin sensitization in the modified Buehler test in guinea pigs. In addition, an acute oral no-observed effect level

(NOEL) has been determined in rats to be 300 mg/kg. Since this NOEL is significantly higher than the lowest chronic NOEL of 1 mg/kg/day, chronic exposures are expected to be of the most concern and this summary will focus on repeated exposures.

2. *Genotoxicity*. Clethodim Technical did not induce gene mutation in microbial *in vitro* assays. A weak response in an *in vitro* assay for chromosome aberrations was not confirmed when clethodim was tested in an *in vivo* cytogenetics assay up to the maximally tolerated dose level, nor was the response observed *in vitro* using technical material of a higher purity. No evidence of unscheduled DNA synthesis was seen following *in vivo* exposure up to a dose level near the LD_{50} (1.5 g/kg). This evidence indicates that clethodim does not present a genetic hazard to intact animal systems.

3. *Reproductive and developmental toxicity*. No reproductive toxicity was observed with Clethodim Technical at feeding levels up to 2,500 ppm. Developmental toxicity was observed in two rodent species, but only at maternally toxic dose levels. In rats, the developmental NOEL was 300 mg/kg/day while the maternal toxicity NOEL was only 150 mg/kg/day. In rabbits, the developmental NOEL was 300 mg/kg/day and the maternal NOEL was only 25 mg/kg/day. Thus, Valent believes that clethodim should therefore not be considered a reproductive or developmental hazard.

4. *Subchronic toxicity*. High doses of Clethodim Technical cause decreased body weights, increased liver size (increased weight and cell hypertrophy), and anemia (decreased erythrocyte counts, hemoglobin, or hematocrit) in rats and dogs. No observable effect levels have been determined to be 100 mg/kg/day for a 4-week dermal study in rats, 200 to 1,000 ppm for 4- or 5-week feeding studies in rats or mice, 500 ppm in a 13-week feeding study in rats, and 25 mg/kg/day in a 90-day oral study in dogs.

5. *Chronic toxicity and oncogenicity*. In chronic studies conducted in rats, mice, and dogs, compound-related effects noted at high doses included decreased body weight, increased liver size (liver weight and hypertrophy), and anemia (decreased hemoglobin, hematocrit, and erythrocyte count). Bone marrow hyperplasia was observed in dogs at the highest dose tested. No treatment-related increases in incidence of neoplasms were observed in any study. Chronic NOELs were 200 ppm for an 18-month feeding study in mice and 500 ppm for a 24-month study in rats. The lowest NOEL is from the 1-year oral dog study and is 1 mg/kg/day clethodim technical. Based on this study and a 100-fold safety factor, the Reference Dose (RfD) for clethodim was determined to be 0.01 mg/kg/day. Valent believes that Clethodim is not carcinogenic.

6. *Rat metabolism*. The *in vivo* metabolism of clethodim in rats was tested at a high dose (468 mg/kg), low dose (4.4 mg/kg), and a low dose (4.8 mg/kg) following 14 days of treatment with Clethodim Technical. A single oral dose of [14C]-clethodim was given to each rat and expired carbon dioxide and excreta were collected over the next two and seven days, respectively, to determine radio-label recovery. Several organs and tissues, and the remaining carcass, were collected after sacrifice to determine radio-label recovery. In all treatment groups, nearly all of the radio-label was eliminated in the urine (87-93%), feces (9-17%), and carbon dioxide (0.5-1%) and less than 1% of the dose was recovered in the organs and tissues after seven days.

Elimination was rapid as most of the recovered dose was eliminated within 48 hours. The low dose groups eliminated clethodim slightly faster than the high dose group, and repeated exposure to clethodim prior to radio-label dosing did not affect the rate of elimination or distribution of recovered radio-label. There were no apparent sex differences with respect to elimination or distribution of metabolites.

The primary excretory metabolites were identified as clethodim sulfoxide (48-63%), clethodim S-methyl sulfoxide (6-12%), clethodim imine sulfoxide (7-10%), and clethodim 5-hydroxy sulfoxide (3-5%). Minor metabolites included clethodim oxazole sulfoxide (2-3%), clethodim trione sulfoxide (1%), clethodim (1%), clethodim 5-hydroxy sulfone (0.3-1%), clethodim sulfone (0.1-1%), aromatic sulfone (0.2-0.7%), and S-methyl sulfone (0-0.4%).

7. *Dermal penetration*. The dermal penetration of SELECT 2 EC Herbicide, the end-use product, was tested on unabraded, shaved skin of rats. Single doses of approximately 0.05, 0.5, and 5.0 mg of radio-labeled (14C-clethodim) SELECT 2 EC Herbicide, were applied topically to 10 cm2 sites on the dorsal trunk. After 2, 10, or 24 hours, urine, feces, volatiles, scrubbings of the skin, skin at treatment site, blood, several tissues, and the carcass were collected and counted for radioactivity. Clethodim was found to be slowly absorbed through the skin in a time-dependent manner. The percent of dose absorbed increased with length of exposure and decreased with increasing dose. Ten-hour absorption rates ranged from 7.5% to 30.0%. Most of the absorbed material was found in the urine and carcass, and most of the unabsorbed material was found in the skin scrubbings indicating that material was still on the skin surface.

8. *Metabolite toxicity*. Two metabolites of clethodim, clethodim imine sulfone (RE-47719) and clethodim 5-hydroxy sulfone (RE-51228), have been tested in toxicity screening studies to evaluate the potential impact of these metabolites on the toxicity of clethodim. In general, these metabolites were found to be less toxic than Clethodim Technical for acute and oral toxicity studies; reproduction and teratology screening studies; and several mutagenicity studies.

C. Aggregate Exposure

1. *Dietary exposure*—a. *Food*. Clethodim is approved for use in the production of commercial agricultural crops including cotton, soybeans, sugar beets, and onions (dry bulb). Dietary exposures are expected to represent the major route of exposure to the public. Since chronic exposures are of more concern than acute exposures for clethodim, this summary will focus primarily on chronic issues. Chronic dietary assessments for clethodim have been conducted recently by EPA and Valent to address the new tolerances proposed for tomato, alfalfa, peanut, and dry bean commodities.

In the EPA assessment (memo from Brian Steinwand dated June 28, 1996), anticipated residues were used for soybean, cotton, and animal commodities. For all other crops, tolerance values were used which overestimate potential exposure. The assessment assumed 100% of all crops were treated with clethodim which also overestimates exposure. The results of this conservative assessment are summarized in the Safety Determination section of this document and indicate that chronic dietary exposures for existing and proposed uses of clethodim are less than the reference dose.

In Valent's assessment, anticipated residues were used for all crop and animal commodities. Anticipated residue levels were the mean levels found in crop field trial data after treatment with the maximum recommended rate and harvested at minimum allowable intervals. These values are, therefore, slightly conservative. An assessment was performed assuming 100% of crop treated (still conservative) as well as assuming a more realistic percent of crop treated based on market survey data for existing uses or market projections for proposed uses. Adjusting

for percent of crop treated is justified because most of treated commodities are combined in central locations and broadly distributed to the public, none of the clethodim tolerances or uses are limited to specific regions in the United States, and we are primarily concerned with chronic dietary exposure which minimizes the variance of single serving residues. The results of these more realistic assessments are summarized in the Safety Determination section of this document and indicate that chronic dietary exposures for existing and proposed uses of clethodim are well below the RfD in either case.

b. *Drinking water.* Since clethodim is applied outdoors to growing agricultural crops, the potential exists for clethodim or its metabolites to leach into groundwater. Drinking water, therefore, represents a potential route of exposure for clethodim and should be considered in an aggregate exposure assessment.

Based on available studies used in EPA's assessment of environmental risk for clethodim (memo from E. Brinson Conerly dated June 26, 1990), clethodim itself was classified as mobile in soil, but very non-persistent, representing a minimal groundwater concern. Metabolites of clethodim were also classified as mobile, but are slightly more persistent (half-lives up to 30 days versus up to 3 days for parent). Regarding clethodim metabolites, the Agency concluded that the ''potential for groundwater contamination may be somewhat higher than for clethodim but would still be expected to be relatively low in most cases due to their moderately low persistence''.

There is no established Maximum Concentration Level for residues of clethodim in drinking water under the Safe Drinking Water Act.

Based on this information, Valent believes that clethodim appears to represent an insignificant risk for exposure through drinking water.

2. *Non-dietary exposure.* Clethodim is currently approved for the commercial production of agricultural crops including soybeans, cotton, sugar beets, onions, and ornamental plants as well as for use on non-crop areas. The new uses proposed in this notice of filing are all agricultural crops. While there is a potential for clethodim to be used in non-crop areas (e.g. around parks and rights-of-way) where the public does spend some time, the likelihood of significant exposure is very small. First, this grass herbicide cannot be sprayed on lawns where the public does spend significant amounts of time, but instead must be used where there is no crop or around ornamental plants that are tolerant to the chemical. The public does not spend significant amounts of time in these areas. And second, clethodim is not persistent in the environment so the potential for public exposure is short term. Therefore, Valent believes that the potential for non-occupational exposure to the general public, other than through the diet or drinking water, is insignificant.

D. Cumulative Effects

There is one other pesticide compound registered in the United States, sethoxydim, which is structurally related to clethodim and has similar effects on animals. Sethoxydim is approved for use on a variety of agricultural crops, in non-crop areas, and around the home. This chemical should be considered in an aggregate exposure assessment along with clethodim. Dietary exposure is expected to represent the major route of exposure for sethoxydim as well as for clethodim.

The RfD for sethoxydim is 0.09 mg/kg/day based on the 1-year dog feeding study NOEL and a 100-fold safety factor. This in on the same order of magnitude as clethodim, 0.01 mg/kg/day, which is also based on a 1-year dog study and a 100-fold safety factor.

A discussion of the cumulative effects from clethodim and sethoxydim exposures is presented below in the Safety Determination section.

E. Safety Determination

1. *U.S. population.* Using the dietary exposure assessment procedures described above for clethodim, chronic dietary exposures resulting from existing and proposed uses of clethodim were compared to the RfD of clethodim. In the EPA's conservative analysis (using anticipated residues for some crops and 100% of all crops treated), the total dietary exposure will occupy 39.4% of the RfD for the U.S. population. The highest exposure group is children aged 1 - 6 years, where exposure will occupy 84.1% of the RfD. In Valent's conservative assessment (using anticipated residues and assuming 100% treated for all crops), exposure for the U.S. population would occupy 13.5% of the RfD and non-nursing infants (< 1 year) are most highly exposed with total exposure occupying 29.1% of the RfD. In Valent's realistic analysis (using anticipated residues and estimated percent of crop treated for all crops), exposure for the U.S. population would occupy only 0.6% of the RfD and non-nursing infants would be at only 1.5% of the RfD.

For sethoxydim, recent EPA dietary assessments have been performed in conjunction with tolerance approvals using the very conservative assumptions of tolerance values and 100% of crop treated for all crops. In a Proposed Rule published in the Federal Register dated February 29, 1996 (61 FR 7764; FRL–5351–8) the EPA estimated that exposure to all existing and proposed tolerances for sethoxydim would occupy 37.7% of the sethoxydim RfD for the U.S. population and 74.3% of the RfD for the most exposed subpopulation of children aged 1 to 6 years. A more realistic assessment utilizing anticipated residues and percent of crop treated will certainly reduce exposure by a large amount as with clethodim.

Since clethodim and sethoxydim have similar toxicological effects in mammals, the contributions to the individual RfDs should be considered in an aggregate exposure assessment. The EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Based on the very conservative assumptions in the EPA analyses, aggregate exposures would exceed 100% if the contributions for these two chemicals were summed directly. However, reliable information is not available to indicate that directly summing the percent of RfD for these two chemicals is the most appropriate thing to do. In addition, as can be seen by the Valent assessments using anticipated residue and percent of crop treated values, both well-accepted Agency practices, realistic exposures are lower by about an order of magnitude. Similar reductions would be expected for sethoxydim since actual residues will be lower than tolerance levels and percent of crop treated values will likely be similar to those for clethodim since they both compete for the same post-emergence grass herbicide market. Valent believes that it is therefore very likely that aggregate dietary exposure will be well below the acceptable level of 100% of the RfD and probably well below 10%. Unfortunately, Valent does not have access to appropriate values for anticipated residues or percent of crop treated for sethoxydim and cannot provide an estimate of realistic dietary exposure.

Regarding drinking water exposures, sethoxydim is similar to clethodim representing a minimal risk for leaching into groundwater due to its rapid degradation in the environment. There is no established Maximum Concentration Level for residues of sethoxydim in drinking water under the Safe Drinking Water Act.

Regarding non-occupational exposures, sethoxydim is registered for use in non-crop areas and around the home and may have some potential for exposure to the general public. However, as discussed for clethodim, sethoxydim cannot be applied to grass where public contact is expected and sethoxydim is not persistent in the environment. Valent expects that non-occupational exposures to the public are therefore expected to be minimal for sethoxydim.

In summary, Valent expects that dietary exposure for clethodim and sethoxydim are each expected to occupy less than 10% of their RfD's when anticipated residue levels and percent of crop treated values are considered. Exposures through the drinking water or other non-occupational routes are expected to be minimal. Collectively, Valent believes that the aggregate risks associated with the uses of these two chemicals is small and demonstrates a reasonable certainty of no harm to the public.

2. *Infants and children.* As discussed above, dietary exposure for clethodim and sethoxydim is greatest for children ages 1 to 6 years or non- nursing infants less than 1 year old. However, using a realistic approach to estimating exposures, exposures are expected to be below 10% of the RfD for each chemical even for infants and children. The databases for clethodim and sethoxydim are complete relative to current pre- and post-natal toxicity testing requirements including developmental toxicity studies in two species and multi-generation reproduction studies in rats. Reproduction and developmental effects have been found in toxicology studies for clethodim and sethoxydim, but the effects were seen at levels that were also maternally toxic. This indicates that developing animals are not more sensitive than adults. FQPA requires an additional safety factor of up to 10 for chemicals which represent special risks to infants or children. Clethodim and sethoxydim do not meet the criterion for application of an additional safety factor for infants and children. Valent believes that this demonstrates a reasonable certainty of no harm to children and infants from the proposed uses of clethodim.

3. *International tolerances.* Although some have been proposed, there are no Canadian, Mexican, or Codex tolerances or maximum residue limits established for clethodim on tomatoes, alfalfa, peanuts, or dry beans. There are no conflicts between this proposed action and international residue limits.

II. Public Record

EPA invites interested persons to submit comments on this notice of filing. Comments must bear a notification indicating the docket control number [PF–702]. All written comments filed in response to these petitions will be available, in the Public Response and Program Resources Branch, at the address given above from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays.

A record has been established for this notice under docket control number [PF–702] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 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.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

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

List of Subjects

Environmental Protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 3, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–3225 Filed 2–11–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

February 6, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c)ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 14, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M St., NW., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0478.

Title: Informational Tariffs.

Form No. N/A.

Type of Review: Extension of an existing collections.

Respondents: Businesses or other for profit, including small businesses.

Number of Respondents: 330.

Estimate Hours Per Response: 50 hour.

Total Annual Burden: 16,500 hours.

Needs and Uses: Pursuant to Section 47 U.S.C. 226(h)(1)(A), providers of operator services must file informational tariffs with the FCC. The tariffs will be reviewed to determine whether they are unjust or unreasonable. This information is maintained for public inspection.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–3455 Filed 2–11–97; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 62 FR 5005, February 3, 1997.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m. Thursday, February 6, 1996.

CHANGE IN THE MEETING: The following topic was added to the open portion of the meeting:

Designation of Federal Home Loan Bank Vice Chairs

The Board determined that agency business required its consideration of this matter on less than 7 days notice to the public and that no earlier notice of this changes in the subject matter of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 97–3688 Filed 2–10–97; 3:42 pm]

BILLING CODE 6725–01–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 February 26, 1997.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Clayton L. Green, Jr., Lawton, Oklahoma; to acquire an additional 86.25 percent, for a total of 100 percent of the voting shares of B.O.E. Bancshares, Inc., Elgin, Nebraska, and thereby indirectly acquire Bank of Elgin, Elgin, Nebraska.

Board of Governors of the Federal Reserve System, February 6, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–3425 Filed 2-11-97; 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). 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 March 7, 1997.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. The Colonial BancGroup, Inc., Montgomery, Alabama; to merge with Fort Brooke Bancorporation, Brandon, Florida, and thereby indirectly acquire Fort Brooke Bank, Brandon, Florida.

2. Decatur First Bank Group, Inc., Decatur, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Decatur First Bank, Decatur, Georgia (in organization).

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480-2171:

1. Trimont Bancorporation, Inc., Trimont, Minnesota; to acquire 24 percent of the voting shares of Financial Services of Winger, Inc., Winger, Minnesota, and thereby indirectly acquire Farmers State Bank Fosston-Winger, Winger, Minnesota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Community Bancshares, Inc., Neosho, Missouri; to acquire 100 percent of the voting shares of The Diamond Bank, Diamond, Missouri.

Board of Governors of the Federal Reserve System, February 6, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–3424 Filed 2-11-97; 8:45 am]

BILLING CODE 6210-01-F

Sunshine Act; Meeting

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Tuesday, February 18, 1997.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 10, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–3587 Filed 2–10–97; 10:17 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary, Office of Minority Health; Availability of Funds for Grants for the Bilingual/Bicultural Service Demonstration Program (Managed Care)

AGENCY: Office of the Secretary.

ACTION: Notice of availability of funds and request for applications.

AUTHORITY: This program is authorized under section 1707(d)(1) of the Public Health Service Act, as amended in Public Law 101–527, the Disadvantaged Minority Health Improvement Act of 1990.

PURPOSE: The purpose of this Fiscal Year 1997 Bilingual/Bicultural Service Demonstration Grant Program (Managed Care) is to:

(1) provide support to improve and expand the capacity and ability of health care providers and other health care professionals to deliver linguistically and culturally competent health services to limited-English-proficient populations; and

(2) increase the limited-English-proficient populations' knowledge and understanding about managed care and its implications, including the different managed care models/plans that exist, so they can make informed decisions about their health care.

These grants are intended to demonstrate the merit of programs that involve partnerships between minority community-based organizations and health care facilities in a collaborative effort to address cultural and linguistic barriers to effective health care service delivery and to increase access to effective health care for the limited-English-proficient populations living in the United States.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report: Stock No. 017–001–00474–0) or *Healthy People 2000: Midcourse Review and 1995 Revisions* (Stock No. 017–001–00526–6) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 or telephone (202) 783–8238.

ELIGIBLE APPLICANTS: Public and private, nonprofit minority community-based organizations which have an established linkage with a health care facility serving a targeted minority community with limited-English-proficient populations. Applicants must be located within one of the following top 15 Metropolitan Statistical Areas identified from the 1990 U.S. Census as having the highest number of limited-English-proficient households experiencing linguistic isolation:

- Phoenix, AZ.
- Fresno, CA.
- Los Angeles/Anaheim/Riverside, CA.
- Sacramento, CA.
- Honolulu, HI.
- Boston/Lawrence/Salem, MA–NH.
- Detroit/Ann Arbor, MI.
- New York/North New Jersey/Long Island, NY–NJ–CT.
- Philadelphia/Wilmington/Trenton, PA–NJ–DE–MD.
- Dallas/Ft. Worth, TX.
- El Paso, TX.
- Houston/Galveston/Brazoria, TX.
- McAllen/Edinburg/Mission, TX.
- Seattle/Tacoma, WA.
- Washington, DC Metropolitan Statistical Area.

National organizations are not eligible to apply; however, local affiliates of national organizations which have an established link with a health care facility are eligible to apply. Currently funded OMH Bilingual/Bicultural Service Demonstration Program grantees are not eligible to apply.

DEADLINE: To receive consideration, grant applications must be received by the OMH Grants Management Office by April 11, 1997. Applications will be considered as meeting the deadline if they are: (1) received on or before the established deadline date and received in time for orderly processing. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

ADDRESSES/CONTACTS: Applications must be prepared using Form PHS 5161–1 (Revised July 1992 and approved by OMB under control Number 0937–0189). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone (301) 594–0758. Completed applications are to be submitted to the same address.

Questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed to Ms. Cynthia Amis, Director, Division of Program Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, Maryland 20852, telephone number (301) 594–0769.

The OMH Regional Minority Health Consultants (RMHCs) are also available to provide technical assistance. A listing of the RMHCs and how they may be contacted will be provided in the grant application kit. Applicants can contact the OMH Resource Center (OMH–RC) at 1–800–444–6472 for health information.

AVAILABILITY OF FUNDS: Approximately $1.17 million is available for award in FY 1997. It is projected that awards of up to $100,000 total costs (direct and indirect) for a 12-month period will be made to approximately 10 to 12 competing applicants.

PERIOD OF SUPPORT: The start date for the Bilingual/Bicultural Service Demonstration Program (Managed Care) grants is September 30, 1997. Support may be requested for a total project period not to exceed 3 years. Noncompeting continuation awards of up to $100,000 will be made subject to satisfactory performance and availability of funds.

BACKGROUND: Large numbers of minorities in the United States are

linguistically isolated. According to the 1990 U.S. Census, 31.8 million persons or 13 percent of the total U.S. population (ages 5 and above) speak a language other than English at home. Almost 2 million people do not speak English at all and 4.8 million people do not speak English well. The 1990 U.S. Census also found that various minority populations and subgroups are linguistically isolated: approximately 4 million Hispanics; approximately 1.6 million Asian and Pacific Islanders; approximately 282,000 Blacks; and approximately 77,000 Native Americans. Based on the review of the statistics regarding linguistically isolated households across the United States, it has been determined that this announcement will focus on those top 15 Metropolitan Statistical Areas in which the largest concentration of limited-English-proficient minority populations reside.

In 1993, the Office of Minority Health launched its Bilingual/Bicultural Service Demonstration Grant Program to specifically address the barriers that limited-English-proficient minority populations encounter when accessing health services. Besides the social, cultural and linguistic barriers, which significantly affect the delivery of adequate health care, there are other factors that contribute to the poor health status of limited-English-proficient minorities. These factors include:

- Inadequate number of health care providers and other health care professionals skilled in culturally competent and linguistically appropriate delivery of services;
- Scarcity of trained interpreters at the community level;
- Deficiency of knowledge about appropriate mechanisms to address language barriers in health care settings;
- Lack of culturally appropriate community health prevention programs;
- Absence of effective partnerships between major mainstream provider organizations and limited-English-proficient minority communities;
- Low economic status;
- Lack of health insurance; and
- Organizational barriers.

Today, more and more people are receiving their health services through managed care—the integration of financing, management, and the delivery of health services, with providers taking on financial risk (OMH, Closing The Gap, Mar/Apr 1996). The Health Care Financing Administration (HCFA) is the largest purchaser of managed care in the country. According to HCFA's 1995 Medicaid Managed Care Enrollment Report, more than 11.6 million Medicaid beneficiaries are enrolled in Medicaid managed care plans. With this increased focus on providing health care service delivery via managed care, it is essential that limited-English-proficient minority populations adequately understand the intricacies of the managed care system.

To make informed decisions, the target population will need to understand various concepts: for example, what managed care means, what are managed care entities, what types of managed care plans exist and what are the differences, what are the pros and cons of a managed care system, how to access services in a managed care setting, what is a provider network, and what are the rights of the client. For this information to be effective, it will need to be provided in linguistic and culturally sensitive and comprehensive formats appropriate for diverse populations.

It is essential that health care providers, health care professionals and other staff (managed care or non-managed care) become informed about their diverse clientele from a linguistic, cultural, and medical perspective. By becoming culturally competent, health care providers can encourage this vulnerable population to more confidently access and receive appropriate health care.

Definitions

For purposes of this grant announcement, the following definitions apply:

Cultural Competency—A set of interpersonal skills that allow individuals to increase their understanding and appreciation of cultural differences and similarities within, among and between groups. This requires a willingness and ability to draw on community-based values, traditions and customs, and to work with knowledgeable persons of and from the community in developing focused interventions, communications and other supports. (Orlandi, Mario A., 1992.)

Health Care Facility—A public nonprofit facility that has an established record for providing a full range of health care services to a targeted, limited-English-proficient, racial and ethnic minority community. Facilities providing only screening and referral activities are not included in this definition. A health care facility may be a hospital, outpatient medical facility, community health center, migrant health center, or a mental health center. (Federal Register, Vol. 60, No. 71, pg 18935, April 13, 1995.)

Limited-English-Proficient Populations—Individuals (as defined in Minority Populations below) with a primary language other than English who must communicate in that language if the individual is to have an equal opportunity to participate effectively in and benefit from any aid, service or benefit provided by the health provider.

Metropolitan Statistical Area—Comprises one or more counties containing either a place with at least 50,000 inhabitants, or an urbanized area and a metropolitan area of at least 100,000 (75,000 in New England). Contiguous counties are included if they have close social and economic links with the area's population nucleus. (U.S. Bureau of the Census, Factfinder for the Nation, CFF No. 8, March 1991.)

Minority Community-Based Organization—A public or private nonprofit community-based minority organization or a local affiliate of a national minority organization that has: a governing board composed of 51 percent or more racial/ethnic minority members, a significant number of minorities in key program positions, and an established record of service to a racial and ethnic minority community.

Minority Populations—Asian/Pacific Islanders, Blacks, Hispanics, and American Indians/Alaska Natives. (OMB Statistical Policy Directive No. 15)

Project Requirements

Each project funded under this demonstration grant is to:

1. Carry out activities to improve the ability of health care providers and other health care professionals to delivery linguistically and culturally competent health care services to the target population. Potential activities may include: language and cultural competency training and curricula development using traditional and innovative training models, such as CD–ROMs, on-line formats for continuing education; bilingual health access or health promotion information in the native language; and on-site interpretation services.

2. Carry out activities to educate the target population on the basic principles of managed care plans and services available within the targeted region. Potential activities may include: utilizing culturally and linguistically appropriate informational/communication technologies, such as mass media, public service announcements and neighborhood outreach and electronic systems including kiosks, as an educational tool; and conducting forums/seminars to promote information exchange among managed care organizations, health care

providers, advocacy groups, and consumers.

3. Have an established, formal linkage with a health care facility, prior to submission of an application, for the purpose of ensuring that the target population is provided with a continuum of support for receiving appropriate health care services. Evidence of an established linkage should include signed letters of agreement written specifically to address the proposed projects and relevant activities.

4. Have clearly defined and documented roles for the applicant (minority community-based organization), the health care facility and any other primary entity relevant to the proposed model.

5. Develop an evaluation plan to assess process and outcome data.

Use of Grant Funds

Budgets of up to $100,000 total costs (direct and indirect) per year may be requested to cover costs of: personnel, consultants, supplies, equipment, and grant-related travel. Funds may not be used for medical treatment, construction, building alterations, or renovations. All budget requests must be fully justified in terms of the proposed goals and objectives and include a computational explanation of how costs were determined.

Criteria for Evaluating Applications

Review of Applications: Applications will be screened upon receipt. Those that are judged to be incomplete, nonresponsive to the announcement or nonconforming will be returned without comment. Each organization may submit no more than one proposal under this announcement. If an organization submits more than one proposal all will be deemed ineligible and returned without comment. Accepted applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Panel chosen for their expertise in minority health and managed care, and their understanding of the unique health problems and related issues confronted by the limited-English-proficient, racial and ethnic populations in the United States.

Applicants are advised to pay close attention to the specific program guidelines and general and supplemental instructions provided in the application kit.

Application Review Criteria: The technical review of applications will consider the following generic factors:

Factor 1: Background (15%)

Adequacy of: demonstrated knowledge of the problem at the local level; demonstrated need within the proposed community and target population; demonstrated support and established linkages in order to conduct proposed model; and extent and documented outcome of past efforts/activities with the target population.

Factor 2: Goals and Objectives (15%)

Delineation of specific objectives which are consistent with the goals of the program, and are measurable and outcome-oriented.

Factor 3: Methodology (35%)

Comprehensiveness of proposed work plan and specific activities for each objective. Adequacy of the time line in relation to the objectives and program evaluation. Extent to which the applicant demonstrates access to the target population. Adequacy of the established linkages to provide the services. Delineation and clarity of defined roles for the applicant and the linked health care facility.

Factor 4: Evaluation (20%)

Thoroughness, feasibility and appropriateness of the evaluation design from a methodological and data collection perspective. Extent to which the design allows a generalized conclusion regarding the outcomes in achieving the goals and objectives of the project. Potential for replication in other health care settings for the target population.

Factor 5: Management Plan (15%)

Capability of the applicant organization for program management and evaluation of the project. Evidence of capabilities would be adequacy of: proposed management, frontline and evaluation staff qualifications or requirements of ''to be hired'' staff; proposed staff level of effort; and background and experience of proposed staff relevant to proposed activities.

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary of Minority Health, Office of Minority Health and will take under consideration: the recommendations/ratings of the review panels, geographic and race/ethnicity distribution, and health problem areas having the greatest impact on minority health. Consistent with the Congressional intent of Public Law 101–527, section 1707(c)3, special consideration will be given to projects targeting Asian, American Samoan, and other Pacific Islander populations. Special consideration will also be given to projects proposed to be implemented in Empowerment Zones/Empowerment Communities.

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) an annual progress report and Financial Status Report, and (2) a final project report and Financial Status Report in the format established by the Office of Minority Health, in accordance with provisions of the general regulations which apply under ''Monitoring and Reporting Program Performance,'' 45 CFR Part 74, Subpart J, with the exception of State and local governments to which 45 CFR Part 92, Subpart C reporting requirements apply.

Provision of Smoke-Free Workplace and Non-use of Tobacco Products by Recipients of PHS Grants

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to Public Health Systems Reporting Requirements which have been approved by the Office of Management and Budget under No. 0937–0195. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based, nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate state and local health agencies in the area(s) to be impacted: (a) a copy of the face page of the applications (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) a description of the population to be served, (2) a summary of the services to be provided,

(3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

State Reviews

This program is subject to the requirements of EO 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applications (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline by the Office of Minority Health's Grants Management Officer. The Office of Minority Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR Part 100 for a description of the review process and requirements.)

OMB Catalog of Federal Domestic Assistance

The OMB Catalog of Federal Domestic Assistance Number for the Bilingual and Bicultural Service Demonstration Program is 93.105.

Dated: January 23, 1997.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 97–3522 Filed 2–11–97; 8:45 am]

BILLING CODE 4160–17–M

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following five meetings.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Hanford Health Effects Subcommittee (HHES).

Dates: February 20, 1997. February 21, 1997, 9:30 a.m.–12:30 p.m.

Times: 9 a.m.–5 p.m.; 6:30 p.m.–8:30 p.m.

Place: Red Lion Hotel/Jantzen Beach, 909 N. Hayden Island Drive, Portland, Oregon 97217. Same Location.

Tel: 503/283–4466.

Fax: 503/283–4743.

Dates: May 8, 1997, May 9, 1997, 9:30 a.m.–3:30 p.m.

Times: 9 a.m.–5 p.m., 6:30 p.m.–8:30 p.m.

Place: Cavanaugh's at Columbia Center, 1101 Columbia Center Boulevard, Kennewick, Washington 99336. Same Location.

Tel: 509/783–0611.

Fax: 509/735–3087.

Dates: July 24, 1997. July 25, 1997, 9:30 a.m.–3:30 p.m.

Times: 9 a.m.–5 p.m., 6:30 p.m.–8:30 p.m.

Place: Marines' Memorial Club, 609 Sutter Street (at Mason), San Francisco, California 94102.

Tel: 415/673–6672.

Fax: 415/441–3649.

Dates: October 9, 1997. October 10, 1997, 9:30 a.m.–3:30 p.m.

Times: 9 a.m.–5 p.m., 6:30 p.m.–8:30 p.m.

Place: Coeur d'Alene Inn, West 414 Appleway, Coeur d'Alene, Idaho 83814. Same Location.

Tel: 208/765–3200.

Fax: 208/664–1962.

Dates: December 11, 1997. December 12, 1997, 9:30 a.m.–3:30 p.m.

Times: 9 a.m.–5 p.m., 6:30 p.m.–8:30 p.m.

Place: Madison Hotel, 515 Madison Street, Seattle, Washington 98104. Same Location

Tel: 206/583–0300.

Fax: 206/624–8125.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 150 people.

Background

A Memorandum of Understanding (MOU) was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose

This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed

Agenda items include: ATSDR's proposed medical monitoring program, ATSDR's planning for an exposure subregistry program, and solicitations of subcommittee concerns to be addressed by ATSDR and CDC. There will also be updates from the Inter-tribal Council on Hanford Health Projects, and reports from the following Work Groups: Outreach/Special Populations, Public Health Activities, and Health Studies.

This notice is being published less than 15 days prior to the meeting due to an administrative delay.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Linda A. Carnes, Health Council Advisor, ATSDR, E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639–0730, FAX 404/639–0759.

Dated: February 5, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–3472 Filed 2–11–97; 8:45 am]

BILLING CODE 4163–70–P

Administration on Aging

[Program Announcement No. AoA–97–1]

Fiscal Year 1997 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to demonstrate models that assist retired persons to serve in their communities as volunteer expert resources and educators in combatting health care waste, fraud and abuse.

SUMMARY: The Administration on Aging announces that it will hold a competition for cooperative agreement awards for model projects that demonstrate effective ways of utilizing retired persons as expert resources and educators in community efforts to combat health care waste, fraud, and abuse. In accordance with Senate Report 104–368, the Health Care Financing Administration will transfer funds to the Administration on Aging to facilitate a collaboration of aging network agencies, health insurance counseling programs, senior centers, and other appropriate entities in carrying out the demonstration program.

The deadline date for the submission of applications is April 11, 1997. Prospective applicants should note that, consistent with the terms of Senate Report 104–368, preference will be given to projects to be carried out by consortia headed by agencies/organizations representative of health insurance counseling programs, area agencies on aging, and other senior advocacy efforts. Agencies/organizations representative of senior centers should also have prominent roles in the consortia since Senate Report 104–368 further provides that senior centers should be the test sites in at least one-half of the model projects funded.

Application kits are available by writing to: Department of Health and Human Services, Administration on Aging, Office of Governmental Affairs and Elder Rights, 330 Independence Avenue, S.W., Room 4254, Washington, DC 20201. Please include an organizational capability statement.

Dated: February 6, 1997.

Robyn I. Stone,

Acting Assistant Secretary for Aging.

[FR Doc. 97–3437 Filed 2–11–97; 8:45 am]

BILLING CODE 4150–40–P

Centers for Disease Control and Prevention

[Announcement 716]

Traumatic Brain Injury Surveillance Program Notice of Availability of Funds for Fiscal Year 1997

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 funds for a cooperative agreement program for population-based data systems for Traumatic Brain Injury (TBI). The intent of the program is to further develop a multi-state, population-based surveillance system for TBI that began in FY 1995. The development of population-based surveillance for TBI fulfills, in part, activities mandated in Public Law 104–166, The Traumatic Brain Injury Act, enacted in 1996. This program will serve two purposes:

Part I—To enhance existing State or territory surveillance systems for TBI, to ensure they are population-based and provide high quality, useful data.

Part II—To develop TBI surveillance systems in States or territories that have not received past funding from CDC for this purpose and have legal authority to collect TBI data but have little or no surveillance infrastructure. CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and to improve the quality of life. This announcement is related to the priority areas of Unintentional Injury, Violent and Abusive Behavior, and Surveillance and Data Systems. (For ordering a copy of ''Healthy People 2000,'' see the section ''WHERE TO OBTAIN ADDITIONAL INFORMATION.'')

Authority

This program is authorized under sections 301, 317, 391, and 392, of the Public Health Service Act (42 U.S.C. 241, 247b, 280b, and 280b-1) as amended, including Pub. L. 104–166.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the official State public health agencies or other State agencies or departments. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau.

State agencies applying under this announcement that are other than the official State health department must provide written concurrence for the application from the official State health agency.

Only *one* application from each State may enter the review process and be considered for an award under this program. Applicants may apply for either Part I or Part II funding as most appropriate, *but not both*.

For Part I, applicants who are funded under Announcement 526 are not eligible for this program.

For Part II, applicants who have received past funding for TBI Surveillance from CDC (from the National Center for Injury Prevention and Control (NCIPC) or the National Center for Environmental Health (NCEH)) are not eligible for this program.

Availability of Funds

Approximately $1,550,000 is available in FY 1997 to fund up to eleven awards under Parts I and II of this announcement:

Part I—Approximately $1,200,000 is available in FY 1997 to fund six to eight awards to enhance existing State surveillance systems for TBI. It is expected that the average award will be $150,000, ranging from $125,000 to $175,000.

Part II—Approximately $350,000 is available in FY 1997 to fund two to three awards to assist in planning TBI surveillance systems. It is expected that the average award will be $115,000, ranging from $90,000 to $125,000.

Projects are expected to begin on or about August 1, 1997, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Funds may be used for personnel services, supplies, equipment, travel, subcontracts, and services directly related to project activities. Project funds cannot be used to supplant other existing funds for surveillance or registry activities, for construction costs, or to lease or purchase facilities or space.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Funding Preferences: During the selection process CDC will make every effort to ensure a balanced geographic distribution.

Use of Funds

Prohibition on use of CDC funds for certain gun control activities: The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997 specifies that: ''None of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used to advocate or promote gun control.''

Anti-Lobbying Act requirements prohibit lobbying Congress with appropriated Federal monies. Specifically, this Act prohibits the use of Federal funds for direct or indirect communications intended or designed to influence a Member of Congress with regard to specific Federal legislation. This prohibition includes the funding and assistance of public grassroots campaigns intended or designed to influence Members of Congress with regard to specific legislation or appropriation by Congress.

In addition to the restrictions in the Anti-Lobbying Act, CDC interprets the new language in the CDC's 1997 Appropriations Act to mean that CDC's funds may not be spent on political action or other activities designed to affect the passage of specific Federal, State, or local legislation intended to restrict or control the purchase or use of firearms.

Background and Definitions

Background

Among all types of injury, traumatic brain injury is most likely to result in death or permanent disability. The incidence and prevalence, severity, and cost indicate that these injuries are important public health problems. TBI is also preventable.

- Some estimates and studies of incidence have indicated that traumatic brain injuries may result in 260,000 hospitalizations and 52,000 deaths each year.
- The severity of the nonfatal injuries is shown by estimates that each year 70,000 to 90,000 people sustain TBI resulting in permanent disability.
- The costs of TBI—acute care, rehabilitation, chronic care, and indirect costs—are unknown but certainly enormous. One estimate suggests that head injuries impose an annual economic burden of $37 billion in direct and indirect costs. These estimates of cost fail to account for the extraordinary losses experienced by the families and friends of those who have died or sustained disability from TBI.
- Injuries are largely preventable. The leading causes of TBI are motor-vehicle crashes, falls, and violence.

Despite the magnitude of the problem of TBI, surveillance systems in only a few U.S. jurisdictions are adequately monitoring its impact. In the past, most of the data on TBIs have been collected in: (1) Hospital-based clinical case series, (2) epidemiological studies restricted to particular times and locales, (3) registries maintained by government agencies responsible for providing services for persons with these injuries, and (4) state-based public health surveillance systems for TBI.

Hospital-based clinical case series. Data collected at hospitals treating persons with Central Nervous System (CNS) injuries have been used mainly to assess clinical course, treatment efficacy and quality of care. Usually these data are not collected from all the hospitals serving a geographic area; instead these data include only persons who present at a particular hospital or group of hospitals for treatment. Thus, the data may be unrepresentative of injury occurrence in the entire population of the geographic area. They provide no information on persons in the area who fail to receive treatment at the hospitals collecting the data, persons whose characteristics may differ substantially from those who do receive treatment at these hospitals.

Epidemiological Studies. Although epidemiological studies designed to estimate the incidence of TBI have been useful, published studies have been limited to certain geographic areas and to earlier time periods. These studies, although valuable in defining the size of the problem and describing etiologies of injury, have not been ongoing. Therefore, they have not provided sufficient data to define patterns in TBI over time, to assess changes in such patterns, and to evaluate the effectiveness of current prevention programs. Furthermore, in specialized studies, investigators have used varying definitions of TBI and inclusion criteria, making comparison across studies (and therefore across jurisdictions) difficult. Studies of these injuries have produced a broad range of incidence estimates.

Service-based registries. Until recently, TBI case reports were often collected in registries developed to plan and provide for patient and family services. These were often collected by agencies of State government not involved in traditional public health prevention activities (e.g., mental health, vocational rehabilitation, and other rehabilitation services). Because of the service delivery focus of registries, little information was collected on the etiologies of injuries, limiting the usefulness of these data for prevention program planning. These data are seldom used for public health program planning.

State-based Surveillance. Over the past several years, many States have responded to the need for better TBI data by developing public health surveillance systems—some efforts growing out of previous registry efforts. These data systems are just beginning to provide ongoing population-based incidence and etiologic information that is useful to plan and evaluate public health programs. Building on these efforts, in 1995, CDC funded four States to conduct ongoing population-based surveillance for TBI. Methods of data collection vary among these surveillance systems, some employing legal reporting requirements for CNS injuries similar to reporting requirements for certain communicable diseases, some using existing hospital discharge data systems or trauma registries, and some relying on a combination of these methods.

Definitions

Traumatic Brain Injury (TBI) and essential data elements for TBI surveillance are fully defined in CDC's ''Guidelines for Surveillance of Central Nervous System Injury.'' For ordering a copy of the Guidelines, see the sections ''WHERE TO OBTAIN ADDITIONAL INFORMATION'' and ''TRAUMATIC BRAIN INJURY SURVEILLANCE REFERENCES.''

Surveillance is the ongoing, systematic collection, analysis, and interpretation of health data necessary for designing, implementing, and evaluating public health programs.

Hospital discharge data (HDD) are summary data compiled by hospitals for all patients admitted and discharged. These data, which are usually entered in a computer data base maintained by each hospital, include information on patient age, sex, residence, diagnoses coded according to the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM codes), services provided, service charges, and dates of hospital admission and discharge. In some jurisdictions, hospital discharge data are compiled from all patients in all hospitals and are maintained in a centralized, population-based, data collection system. In other

jurisdictions, these data are only separately maintained by each hospital.

Purpose

The purpose of this program is to improve the quality and availability of TBI data:

Part I—To enhance existing TBI surveillance systems in order to develop a multi-state surveillance system which will use common case definitions and data base. This surveillance system will better define the magnitude of TBI at a national level, define the spectrum of severity of injury, better define populations at high risk, and define the distribution of external causes of injury in order to plan injury control programs addressing prevention and service provision. CDC's Guidelines for Central Nervous System Injury Surveillance will be the standards used.

Part II—To develop new TBI surveillance systems in States or territories with authority to collect TBI data but which have had no prior funding from CDC to develop TBI surveillance and which have little or no TBI surveillance infrastructure. These State-based surveillance systems will also become part of the multi-state surveillance system described under Part I by the end of the project period. CDC's Guidelines for Central Nervous System Injury Surveillance will be the standards used.

Program Requirements

Part I—The applicant must:

1. Demonstrate the existence of a statewide (or territory-wide) population-based TBI surveillance system *or* a population-based TBI surveillance system in a geo-political jurisdiction of 1.5 million people or more.

2. Document that legislation and/or regulations are in place which support current collection of TBI data, and protect the confidentiality of this data.

3. Demonstrate the availability of at least one year of TBI data from the TBI surveillance system (from calendar year 1993, 1994, or 1995).

Part II—The applicant must: Document that legislation and/or regulations are in place which support current collection of TBI data, and protect the confidentiality of this data.

Both Part I and Part II applicants are to provide a 1 page Summary which includes:

1. Type of Federal assistance requested: Part I or Part II.

2. A succinct, but informative, response to each application program requirement.

An affirmative response to each requirement is required to qualify for the full objective review. This page should be included as the first page of the application and titled ''Program Requirements.''

Cooperative Activities

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC will be responsible for the activities listed under B. (CDC Activities).

Part I

Recipients of awards under Part I of this announcement will develop an enhanced statewide (or territory-wide) population-based TBI surveillance or population-based TBI surveillance within a geo-political jurisdiction of 1.5 million or more.

A. Recipient Activities include but will not be limited to:

1. Conduct surveillance for TBI using the definitions and variables as defined in the CDC Guidelines for Central Nervous System Injury Surveillance. Recipients will collect information addressing demographics, etiology, severity and outcome.

2. Access and use mortality data and hospital patient data, using vital records (death certificates and/or multiple-cause-of-death data) and linking them to hospital discharge data to produce a non-duplicative data base for the population under surveillance.

3. Evaluate the surveillance system for completeness and validity of data collected using methods described in ''Guidelines for Evaluating Surveillance Systems.''

4. Develop and submit an annual report of the analysis of surveillance data.

5. Compile and submit timely case-level surveillance data yearly (in each budget period) to CDC for use in a multi-state TBI surveillance data base formatted per CDC Guidelines for Central Nervous System Injury Surveillance.

6. Develop a yearly work plan which includes measurable objectives with appropriate time lines and associated activities.

B. CDC Activities:

1. Provide technical assistance for effective surveillance program planning and management and for application of the CDC Guidelines for Central Nervous System Injury Surveillance.

2. Provide technical assistance to evaluate the surveillance system for completeness and validity.

3. Maintain multi-state data base to develop TBI rates and other information for reports and other publications, when appropriate. Standard practices for co-authorship and publication among CDC and participating recipients will be followed according to the Manual Guide—General Administration No. CDC–69, Authorship of CDC or ATSDR Publications (12/1/95).

Part II

Recipients of awards under Part II of this announcement will develop statewide (or territory-wide) population-based TBI surveillance or population-based TBI surveillance within a geo-political jurisdiction of 1.5 million or more.

A. Recipient Activities include but are not limited to:

1. Develop and implement a 3-year plan to conduct TBI surveillance using the CDC Guidelines for Central Nervous System Injury Surveillance. Recipients will be expected to collect information addressing demographics, etiology, severity and outcome.

2. Use mortality data and hospital patient data, using vital records (death certificates and/or multiple-cause-of-death data) and linking them to hospital discharge data to produce a non-duplicative data base for the population under surveillance.

3. Develop and submit an annual report on progress of the developing TBI surveillance system.

4. Compile and submit case-level surveillance data to CDC in a timely manner for use in a multi-state TBI surveillance data base formatted per CDC Guidelines for Central Nervous System Injury Surveillance.

5. Where applicable, evaluate the surveillance system for completeness and validity of data collected using methods described in ''Guidelines for Evaluating Surveillance Systems.''

6. Develop a yearly work plan which includes measurable objectives with appropriate time lines and associated activities.

B. CDC Activities:

1. Provide technical assistance for effective surveillance program planning and management and for application of the CDC Guidelines for Central Nervous System Injury Surveillance.

2. Provide technical assistance for data management and analysis.

3. Maintain multi-state data base to develop TBI rates and other information for reports and other publications, when appropriate. Standard practices for co-authorship and publication among CDC and participating recipients will be followed according to the Manual Guide—General Administration No. CDC–69, Authorship of CDC or ATSDR Publications (12/1/95).

Technical Reporting Requirements

An original and two copies of semi-annual progress reports are required of all awardees. Time lines for the semi-annual reports will be established at the time of award. Final financial status and performance reports are required no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

Semi-annual progress reports should include:

A. A brief program description.

B. A listing of program goals and objectives, accompanied by a comparison of the actual accomplishments related to the goals and objectives established for the period.

C. If established goals and objectives were not accomplished or were delayed, describe both the reason for the deviation and anticipated corrective action or deletion of the activity from the project.

D. Other pertinent information, including the status of completeness, timeliness and quality of data, published annual reports from surveillance efforts, as well as other materials published related to the surveillance system.

For Part II, any other information about the progress of surveillance system development should be included.

Application Content

The entire application, including appendices, should not exceed 60 pages and the Proposal Narrative section contained therein should not exceed 25 pages. The first page of the application should contain the response to the Program Requirements section and be marked ''Program Requirements.'' Pages should be clearly numbered and a complete index to the application and any appendices included. The project narrative section must be double-spaced. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 10 point or greater) on 8½″ by 11″ paper, with at least 1″ margins, headers and footers, and printed on one side only.

The applicant should provide a detailed description of first-year activities and briefly describe future-year objectives and activities.

Part I—Application Content

A. Provide a 1 page Abstract which includes:

1. Existing resources for the program.

2. Major objectives and components for the proposed program.

B. Proposal Narrative (not to exceed 25 double-space pages excluding the budget narrative and appendices): This section should include:

1. A brief description of the needs for TBI surveillance within the jurisdiction applying for assistance.

2. A description of the existing TBI surveillance program within the jurisdiction, including the following:

a. Existing staff and brief summary of their qualifications.

b. Methods of case ascertainment and data collection, including:

(1) Case definition.

(2) Data elements collected.

(3) Sources of data used to ascertain cases.

(4) Other sources of data used to provide additional information on cases.

c. A brief summary of any data analyses completed.

d. A brief summary of any evaluations of surveillance data quality or timeliness.

3. A description of goals and specific, measurable, and time-linked objectives for the proposed surveillance program. Any proposed enhancements of the program should be noted. A schedule of attainment should be included.

4. A description of methods to achieve the proposed surveillance program objectives. This must include at least the following:

a. Proposed staff and qualifications. If staff are to be hired, assurances from the agency that position(s) are available and can be filled in a timely manner must be included.

b. Proposed methods of case ascertainment and data collection, including:

(1) The TBI case definition and its consistency with the CDC case definition.

(2) A listing of data elements proposed to be collected. This should include (but need not be limited to) data elements contained in the core variables of the CDC Guidelines for Central Nervous System Injury Surveillance. Data element formats must be consistent with the CDC Guidelines. At a minimum, data elements collected for every case should include birth date, age, sex, county (or zip code) of residence, ICD–9 or ICD–9–CM diagnostic codes, dates of hospital admission and discharge (if applicable) or dates of injury and death (if applicable), and type of hospital discharge disposition (if applicable). It is also expected that in at least a representative sample of reported cases, additional data elements will be collected describing injury cause (using either E-codes or CDC etiology codes), severity, and outcome, as described in the CDC Guidelines. Other data elements may be collected electively (e.g., medical service charges).

(3) All sources of data that would be used to ascertain cases. At a minimum this should include vital records (death certificates and/or multiple-cause-of-death data) and hospital discharge data. Hospital discharge data may be obtained from state-wide hospital discharge data systems, or may be obtained directly from all individual hospitals within the jurisdiction that provide acute care for brain injuries.

(4) All other sources of data that would be used to provide additional information on cases. At a minimum this should include hospital medical records, which may be reviewed in a representative sample of cases. Other, optional sources of data might include, for example, police reports or medical examiner records.

(5) A brief description of the sampling strategy proposed to obtain additional case information from medical records and other data sources (see previous section). This is important to validate case reports and collect additional data concerning injury risk factors, causes, severity, and outcome. Because of the time required to abstract such records and the large number of reported cases, it is not expected that all reported cases be abstracted. Sampling strategies should ensure representativeness of the sample, but may involve more intensive sampling of some strata with fewer reported cases (e.g., moderate and severe cases). The qualifications of data abstractors and quality control of this data collection should be addressed.

c. Evidence of legal authority to conduct all aspects of surveillance, including authority that gives the applicant access to and authority to collect all necessary vital records data, hospital discharge data, and medical records within the jurisdiction and protect the confidentiality of this data. A letter from the official State public health agency or other State agency or department or from the Attorney General's Office assuring that appropriate State authorities exist should be provided, which cites relevant language from State laws and/or regulations. Appropriate State authorities at a minimum must provide proof of the ability to collect and protect the confidentiality of essential data from State death certificates, hospital discharge data, and hospital medical records for all cases of traumatic brain injury occurring in the State.

d. A description of the applicant's capability for the entry, management,

processing and analysis of data, including a description of computer hardware and software resources; a description of methods and timeline to ensure timely delivery of edited case-level data to CDC.

e. Appropriate letters of commitment, such as letters from agencies that will provide the project with essential data or access to data.

f. A brief description of the proposed use of data for injury prevention programs.

5. A description of plans to evaluate the attainment of proposed objectives, including plans to evaluate the sensitivity and predictive value positive of case ascertainment and the completeness and quality of data.

6. A detailed first-year budget and narrative justification with future annual projections. Budgets should include costs for travel for two project staff to attend one meeting in Atlanta with CDC staff.

Part II—Application Content

A. Provide a 1 page Abstract which includes:

1. Existing resources for the program.

2. Major objectives and components for the proposed program.

B. Proposal Narrative (not to exceed 25 double-space pages excluding the budget narrative and appendices). This Section should include:

1. A brief description of the needs for TBI surveillance within the jurisdiction applying for assistance.

2. A description of the existing TBI surveillance resources within the jurisdiction, including the following:

a. Existing staff and brief summary of their qualifications.

b. Available TBI data, including:

(1) Case definition (s).

(2) Data elements collected.

(3) Sources of data used to ascertain cases.

c. A brief summary of any available analyses of TBI data.

3. A description of goals and specific, measurable, and time-linked objectives for the development of TBI surveillance. A schedule of attainment should be included.

4. A description of planned activities to address the objectives to develop TBI surveillance. This must include at least the following:

a. Proposed staff and qualifications. If staff are to be hired, assurances from the agency that position(s) are available and can be filled in a timely manner must be included.

b. Proposed methods of case ascertainment and data collection, including:

(1) The TBI case definition, consistent with the CDC case definition.

(2) A listing of data elements proposed to be collected. This should include (but need not be limited to) data elements contained in the core variables of the CDC Guidelines for Central Nervous System Injury Surveillance. When data are submitted to CDC, they must be in a format consistent with the CDC Guidelines.

(a) At a minimum, data elements collected for every case should include birth date, age, sex, county (or zip code) of residence, ICD–9 or ICD–9–CM diagnostic codes, dates of hospital admission and discharge (if applicable) or dates of injury and death (if applicable), and type of hospital discharge disposition (if applicable). It is expected that population-based data including these variables, obtained by linking hospital discharge data with vital records data, will be compiled and submitted in a timely manner, but no later than the end of the project period.

(b) It is also expected that in at least a representative sample of reported cases, including morbidity and mortality, additional data elements will be collected describing injury cause (using either E-codes or CDC etiology codes), severity, and outcome, as described in the CDC Guidelines.

(3) All sources of data that would be used to ascertain cases. At a minimum this should include vital records (death certificates or multiple-cause-of-death data) and hospital discharge data. Hospital discharge data may be obtained from state-wide hospital discharge data systems, or may be obtained directly from all individual hospitals within the jurisdiction that provide acute care for head injuries.

(4) All other sources of data that would be used to provide additional information on cases. At a minimum this should include hospital medical records, which may be reviewed in a representative sample of cases. Other, optional sources of data might include police reports or medical examiner records.

(5) A brief description of plans to develop a sampling strategy to obtain additional case information from medical records and other data sources (see previous section).

c. Evidence of legal authority to conduct all aspects of surveillance, including authority that gives the applicant access to and authority to collect all necessary vital records data, hospital discharge data, and medical records within the jurisdiction and protect the confidentiality of this data. A letter from the official State public health agency or other State agency or department or from the Attorney General's Office assuring that appropriate State authorities exist should be provided, which cites relevant language from State laws and/or regulations. Appropriate State authorities at a minimum must provide proof of the ability to collect and protect the confidentiality of essential data from State death certificates, hospital discharge data, and hospital medical records for all cases of traumatic brain injury occurring in the State.

d. A description of the applicant's plans to develop capability for the entry, management, processing and analysis of data, including a description of computer hardware and software resources; a description of methods and timeline to ensure timely delivery of edited case-level data to CDC.

e. Appropriate letters of commitment, such as letters from agencies that will provide the project with essential data or access to data.

f. A description of the proposed use of data for injury prevention programs.

5. A description of plans for a process evaluation of the attainment of proposed objectives.

6. A detailed first-year budget and narrative justification with future annual projections. Budgets should include costs for travel for two project staff to attend one meeting in Atlanta with CDC staff.

Evaluation Criteria

Upon receipt, applications for Part I and Part II will be reviewed by CDC staff for completeness and affirmative responses as outlined under the previous heading, ''PROGRAM REQUIREMENTS.'' Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

An Objective Review of applications that are successful in the preliminary review will then be conducted according to the following criteria:

Part I—Evaluation Criteria

1. Needs Assessment (5 points)

The extent to which the applicant describes the impact of TBI in the applicant's jurisdiction and the need for TBI data for public health programs.

2. Existing Surveillance Program and Resources (25 points)

The current status of the applicant's existing TBI surveillance program, and the degree to which it can be adapted to serve the requirements and purposes of this cooperative agreement. Important issues include access to critical data sources (vital records, hospital discharge data, and medical records); established relationships between the applicant and data providers (including

letters of support); legal authority to obtain and protect the confidentiality of data; currentness of existing TBI morbidity and mortality data analyzed by age, sex, and cause; ability to characterize the external cause, severity, and outcome of TBI (e.g., by abstracting data from medical records in a representative sample of reported cases); and established relationships with TBI advocacy and prevention organizations and programs.

3. Goals and Objectives (10 points)

The extent to which objectives are specific, achievable, practical, measurable, time-linked, and consistent with the overall purposes described in this announcement.

4. Methods and Activities (30 points)

The extent that the proposed methods and activities can achieve the proposed objectives, consistent with the purposes of this announcement. The extent to which clear explanations of appropriate methods addressing case ascertainment and data collection, TBI case definition(s), data elements, sources and availability of data, sampling methods, legal authority for surveillance activities and to protect confidentiality, and data processing and analysis are provided.

5. Project Management and Staffing (20 points)

The extent to which proposed staffing, organizational structure, staff experience and background, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff indicate ability to carry out the objectives of the program. Assurances that proposed positions are available and can be filled in a timely manner.

6. Evaluation (10 points)

The degree to which the applicant includes adequate plans to evaluate the attainment of proposed objectives, including plans to evaluate the sensitivity and predictive value positive of case ascertainment and the completeness and quality of data.

7. Budget (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with stated objectives and proposed activities.

Part II—Evaluation Criteria

1. Needs Assessment (10 points)

The extent to which the applicant describes the impact of TBI in the applicant's jurisdiction and the need for TBI data for public health programs.

2. Existing Surveillance Resources (20 points)

The potential of the applicant's existing TBI surveillance activities and resources to serve the requirements and purposes of this cooperative agreement. Critical issues include availability of and access to critical data sources (vital records, hospital discharge data, and medical records), and legal authority to obtain and protect the confidentiality of data.

3. Goals and Objectives (15 points)

The extent to which objectives are specific, achievable, practical, measurable, time-linked, and consistent with the overall purposes described in this announcement.

4. Methods and Activities (30 points)

The extent that the proposed plans and activities can achieve the proposed objectives for surveillance, consistent with the purposes of this announcement. The extent to which clear explanations of appropriate methods addressing case ascertainment and data collection, TBI case definition(s), data elements, sources and availability of data (including letters of support), legal authority for surveillance activities and to protect confidentiality, and data processing and analysis are provided.

5. Project Management and Staffing (15 points)

The extent to which proposed staffing, organizational structure, staff experience and background, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff indicate ability to carry out the objectives of the program. Proposed staffing should include epidemiologic and data management capacity. Assurances that proposed positions are available and can be filled in a timely manner.

6. Evaluation (10 points)

The degree to which the applicant includes adequate plans for a process evaluation of the attainment of proposed objectives.

7. Budget (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with stated objectives and proposed activities.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should send them to Ron S. Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, no later than 60 days after the application deadline. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' the State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.136.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (Revised 7/92, OMB Number 0937–0189) must be submitted to Joanne A. Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E–13, Atlanta, GA 30305, on or before April 16, 1997.

1. Deadline: Applications shall be considered as meeting the deadline if they are either;

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. Late Applications:

Applications that do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to reference to Announcement 716. You will receive a complete program description, information on application procedures, and applications forms.

If you have questions after reviewing the contents of all the documents, business management business management technical assistance may be obtained from Joanne Wojcik, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6535 or internet address <jcw6@cdc.gov>.

Programmatic technical assistance may be obtained from David J. Thurman, M.D., M.P.H., Division of Acute Care, Rehabilitation Research, and Disability Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–41, Atlanta, GA 30341–3724, telephone (770) 488–4031 or internet address <dxt9@cdc.gov>.

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is <http://www.cdc.gov>.

CDC will not send application kits by facsimile or express mail.

Please refer to Announcement 716 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) referenced in the ''INTRODUCTION'' through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: February 6, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

Traumatic Brain Injury Surveillance References

Methods and Key Resources

Thurman DJ, Sniezek JE, Johnson D, Greenspan A, Smith SM. Guidelines for Surveillance of Central Nervous System Injury. Atlanta: Centers for Disease Control and Prevention, 1995.

Klaucke DN, Buehler JW, Thacker SB, et al. Guidelines for evaluating surveillance systems. MMWR 1988;37(s-5):1–18.

Health Care Financing Administration. International Classification of Diseases, 9th Revision, Clinical Modification, Third Edition. Washington, DC: U.S. Department of Health and Human Services, 1989.

Epidemiologic Studies and Reviews

Kraus, JF. Epidemiology of head injury. In Cooper, PR, ed., Head Injury, Third Edition. Baltimore: Williams and Wilkins, 1993; 1–25.

Sosin DM, Sniezek JE, Waxweiler RJ. Trends in death associated with traumatic brain injury, 1979 through 1992. JAMA 1995; 273:1778.

Published epidemiologic studies of TBI are also reviewed in the article ''Epidemiology of Traumatic Brain Injury in the United States'' located at the Internet website of the National Center for Injury Prevention and Control <http://www.cdc.gov/ncipc/dacrrdp/tbi.htm>.

Centers for Disease Control and Prevention. Traumatic Brain Injury—Colorado, Missouri, Oklahoma, and Utah, 1990–93. MMWR 1997; 46(1):8–11.

How to Obtain a Copy of the CDC Guidelines for Surveillance of Central Nervous System Injury:

A copy of these Guidelines can be obtained either by calling 770–488–4031, by submitting the ''NCIPC Publications Order Form'' through the Internet website of the National

Center for Injury Prevention and Control <http://www.cdc.gov/ncipc/pub-res/pubsav.htm>, or by writing to the Division of Acute Care, Rehabilitation Research, and Disability Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–41, Atlanta, GA 30341–3724.

[FR Doc. 97–3473 Filed 2–11–97; 8:45 am]

BILLING CODE 4163–18–P

Administration for Children and Families

Children's Bureau/National Center on Child Abuse and Neglect Proposed Research Priorities for Fiscal Years 1997–2001

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Notice of proposed child abuse and neglect research priorities for fiscal years 1997–2001.

SUMMARY: The National Center on Child Abuse and Neglect/Children's Bureau (NCCAN/CB) within the Administration on Children, Youth and Families (ACYF) announces the proposed priorities for research on the causes, prevention, assessment, identification, treatment, cultural and socio-economic distinctions, and the consequences of child abuse and neglect.

NOTE: The National Center on Child Abuse and Neglect (NCCAN) was established in 1974 to carry out the functions of the Child Abuse Prevention and Treatment Act (CAPTA). Pursuant to Pub. L. 104–235, the Child Abuse Prevention and Treatment Act Amendments of 1996, the Office on Child Abuse and Neglect (OCAN) will, in the near future, be established by the Secretary for the purpose of coordinating the functions and activities of CAPTA, replacing NCCAN.

Section 104(a)(2) of CAPTA, as amended by Pub. L. 104–235, requires the Secretary to publish proposed priorities for research activities for public comment and allow 60 days for public comment on such proposed priorities. The proposed priorities are being announced for the five year period that corresponds to the authorization period for CAPTA. Because the amount of Federal funds available for discretionary activities in Fiscal Years 1997–2001 is expected to be limited, respondents are encouraged to recommend how the proposed issues should be prioritized.

As research issues arise or new issues emerge through consultation with other entities, additional announcements of proposed priorities will be published for public comment.

The actual solicitation of grant applications will be published separately in the Federal Register for

each fiscal year. Solicitations for contracts will be announced, at later dates, in the *Commerce Business Daily*. No proposals, concept papers, or other forms of application should be submitted at this time.

No acknowledgment will be made of the comments submitted in response to this notice, but all comments received by the deadline will be reviewed and given thoughtful consideration in the preparation of the final funding priorities for the announcements. The names and addresses of all those who submit comments will be added to the mailing list for receiving copies of the final program announcements when they are published.

DATES: In order to be considered, comments must be received no later than April 14, 1997.

ADDRESSES: Comments should be sent to: James A. Harrell, Deputy Commissioner, Administration on Children, Youth and Families, Attention: CB/NCCAN, PO Box 1182, Washington, DC. 20013.

Electronic comments may be sent to: <comments@acf.dhhs.gov>

If you comment electronically and wish to be added to the mailing list, please include a street address.

SUPPLEMENTARY INFORMATION:

I. Background

In addition to projects funded under priority areas selected as a result of this announcement, NCCAN/CB may continue discretionary funding for:

- The National Clearinghouse on Child Abuse and Neglect Information;
- The National Resource Center on Child Maltreatment;
- Future phases of the Consortium for Longitudinal Studies of Child Maltreatment;
- The National Data Archive on Child Abuse and Neglect; and
- The National Child Abuse and Neglect Data System (NCANDS) technical assistance and technical support program.

NCCAN/CB will continue to pursue Interagency Agreements to develop collaborative research with other Federal agencies to carry out an interdisciplinary program of research that is designed to provide information needed to better protect children from abuse or neglect and to improve the well-being of abused or neglected children. NCCAN/CB also will continue to participate in the development of a Federal framework for child welfare research and an ACF strategic research agenda on child abuse and neglect.

In addition, NCCAN/CB explicitly acknowledges on-going analytic work with the National Incidence Study (NIS), the National Child Abuse and Neglect Data System (NCANDS), and the Adoption and Foster Care Analysis and Reporting System (AFCARS) data collection projects that will inform several of the topics described below. Comments about research topics and future activities should be addressed in light of this ongoing work. The relevant topics include: recurrence (the numbers and characteristics of children and families in both substantiated and unsubstantiated reports that return to the system) and patterns of recurrence (repeat substantiations, as well as unsubstantiated cases that return as substantiated cases) which will be topics of analysis in the NCANDS Detailed Case Data Component (DCDC) in the coming year; the removal of children and abuse and neglect in foster care will be examined by cross-walking data between NCANDS and AFCARS; mandated reporter characteristics and child characteristics, as correlates, will be explored through further analysis of both NCANDS and NIS data; and court activity related to substantiated reporting will be explored through additional analyses of NCANDS data.

Information on these and other prior and continuing projects supported by NCCAN/CB as well as on other studies of child maltreatment are available through the National Clearinghouse on Child Abuse and Neglect Information, PO Box 1182, Washington, DC. 20013 (1–800–394–3366).

The proposed research priority areas which follow have been developed in consultation with several entities and from several sources.

- The 1996 reauthorization of CAPTA, section 104.
- The National Research Council (NRC), Commission on Behavioral and Social Sciences and Education (CBASSE), Panel on Research on Child Abuse and Neglect report, *Understanding Child Abuse and Neglect.* This report was produced by CBASSE in response to a request from ACYF to undertake a comprehensive review and synthesis of research on child abuse and neglect and to recommend research needs and priorities for the remainder of the decade. Over the last several years, NCCAN/CB has responded to individual recommendations as funding allowed. NCCAN/CB will continue to address the concerns raised in the NRC report, as appropriate.
- Reviews of current literature on child abuse and neglect.
- Findings from recently completed studies.
- Recommendations from the field.
- Meetings with other Departmental units and professional organizations.

NCCAN/CB will continue to examine the recommendations from these various sources in light of other ongoing efforts and the applicability of the recommendations to Federal research goals.

II. Proposed Child Abuse and Neglect Research Priorities for Fiscal Years 1997–2001

A. Legislative Topics:

A number of research topics are suggested in the 1996 reauthorization of CAPTA, section 104. Comments are requested on the feasibility of these topics for research, their pertinence to the field, and their likelihood to promote innovative research that increases our understanding of all aspects of child maltreatment.

The Research Frame: In general, all NCCAN/CB sponsored research must fit within an overall frame of research on the nature and scope of child abuse and neglect; the causes, prevention, assessment, identification, treatment, cultural and socio-economic distinctions, and consequences of child abuse and neglect; appropriate, effective and culturally sensitive investigative, administrative, and judicial procedures with respect to cases of child abuse; and the national incidence of child abuse and neglect. These areas of inquiry underlie all other questions and apply especially to inquiries that are investigator-initiated, as described below in section C.

Mandated Reporting: Because entry into the child protective services system may be affected by factors in addition to those specific to an incident, research which explores these other factors will elucidate the entry, service, re-entry, and flow processes experienced by children and their families. Mandated reporting, for example, affects the number of reports made, the gateways into child protective services, and the allocation of resources in relation to the number of reports accepted for investigation.

State child protective services (CPS) data show significant differences in the reporting patterns and substantiation rates for different reporting sources. For instance in an analysis of all reports investigated by CPS in 10 States in 1993, it was found that 60 percent of reports from legal and law enforcement professionals were substantiated or indicated versus 45 percent of reports from educators. (Child Abuse and Neglect Case Level Data 1993: Working Paper 1).

Questions about mandated reporting include those that explore the extent to which the lack of adequate resources and the lack of adequate training of individuals required by law to report suspected cases of child abuse have contributed to the inability of a State to respond effectively to serious cases of child abuse and neglect.

Unsubstantiated, unfounded, and false reports: Unsubstantiated, unfounded, and falsely reported cases of child abuse and neglect put considerable stress on the children and families who are the subjects of the reports, but also put stresses on the child protective service system itself. At this time, we have very little knowledge of the relationship between reports, however false, unsubstantiated or unfounded, and future maltreatment and system entry. Research questions might inquire about: the extent to which the number of unsubstantiated, unfounded, and falsely reported cases of child abuse or neglect contribute to the inability of a child welfare system or child protective services system to respond effectively to serious cases of child abuse or neglect; the extent to which and the pathways by which unsubstantiated reports return as more serious cases of child abuse or neglect.

Reports in the context of family court proceedings: Some reports occur in a context of divorce, custody or other family court proceedings. NCCAN/CB is interested in the interaction between this venue and the child protective services system. Research might be at the individual, case, or system level. Questions might include: How does family history with a child protective services system relate to family court proceedings? Does entry into the child protective services system via the family court gateway have a relationship to particular case outcomes? What is the relationship, if any, between unsubstantiated, unfounded, and false reports and families involved in divorce, custody, or other family court actions?

Substitute care: NCCAN/CB is interested in the relationship between child protective service systems and other child welfare programs as well as a more detailed look at differentiated effects within substitute care experiences. Research interests include: What is the context, incidence, and prevalence of child physical, sexual, and emotional abuse and physical and emotional neglect occurring in substitute care? Because substitute care is itself a service, are children in substitute care referred for and receiving additional services related to the precipitating incident or additional incidents of abuse and neglect? What is the efficacy of those additional services in terms of safety, permanency, and child well-being outcomes and does efficacy have a relationship to either the type of abuse precipitating the placement, demographic characteristics of the child (e.g., age, sex, disability), or characteristics of the substitute placement (e.g., relative care, licensing, certification).

Substantiated cases: Substantiated cases of child maltreatment represent a particular sector of the child protective service population. NCCAN/CB is interested in funding research that explores system and sequelae questions with substantiated case samples, which may answer such questions as: Can ''system history'' and ''client characteristics'' be used to make predictions about future service needs and system usage? What are the number and characteristics of substantiated cases that result in a judicial finding of child abuse or neglect or related criminal court convictions?

B. Other Topics

Child Safety and Child Fatality: NCCAN/CB is interested in research that explores ways to understand the nature and scope of child abuse and neglect that results in fatalities or permanent disabilities and systemic responses to child fatalities. Questions might include those which would explore reducing fatalities by asking questions about efficacious placement of siblings or termination of parental rights (TPR), as well as more prevention-oriented questions, including those which explore the context of home and community environments related especially to other forms of violence and the availability of a continuum of comprehensive community preventive and treatment services. Other research interests include: explorations of the relationship of child fatality or serious injuries to placement and TPR decisions; and ''best practices'' and model development for safety assessment. Recommendations are requested on the ability to sustain a research focus on, and the usefulness of a focus on, variables related to strengths-based programming and resiliency characteristics at the family level especially as they are related to placement and TPR.

Co-occurrence: Suggestions for additional research questions as well as comments are sought on research exploring the nature of the pathways between the co-occurrence of child maltreatment and substance abuse and/or domestic violence as those pathways relate to the prevention of child maltreatment, assessment of co-occurrence, treatment or intervention, and system responses to co-occurrence (including demands on treatment, training, and resources). Preliminary questions might include: What are the variety of system responses to identifying, as a dynamic issue, and coordinating, as a structural issue, services for co-occurrence? Do treatment models which begin with one or the other symptom have more efficacious outcomes? Are there identifiable ''best practices'' for treatment or service?

Definitions: In the interest of supporting on-going work and encouraging new work in creating a consensus on definitions for research purposes, NCCAN/CB seeks recommendations for field tests in research settings and other applications of a set of working data elements developed by the research committee of the Interagency Task Force on Child Abuse and Neglect. The committee has been working with researchers over the past three years to identify the data elements that represent a core of consensus for research purposes about the experiences of child abuse and neglect. The overall goal of the work of the committee has been to present a common data collection set of attributes that explicitly describe the nature of maltreatment in a particular sample and allows samples to be compared, in terms of maltreatment experiences, across studies.

Graduate Student Research Fellowships: With a continuing interest in encouraging new investigators to select child maltreatment as an area of specialty, NCCAN/CB seeks comments comparing the two models of graduate student research support employed most recently. One model awarded funds directly to eligible institutions for specific eligible individual students. The second model awarded funds to eligible institutions for a group consisting of a faculty member and eligible students, or student. The goal of the Fellowships is to develop mechanisms which support the renewal of the research field by increasing the number of new researchers who elect to study child abuse and neglect.

Outcomes: Building on the work of the Children's Bureau regarding monitoring by outcomes and thinking ahead to the requirements for outcome-based performance partnerships, NCCAN/CB seeks comments on the socio-economic, cultural, and community variances which have bearing on the use of ''safety,'' ''permanency,'' and ''child and family well-being'' as outcomes, and tools for assessing the outcomes. Questions

might include: What is the relationship between the availability of tools for assessing particular outcomes and a community's efforts to achieve those outcomes? From a systemic perspective, how does the definition of outcomes, or the operationalization of them, have impact on the system's delivery of services and the success of particular populations achieving the outcomes?

Over-represented populations and special populations (i.e., racial and ethnic groups, children with disabilities): With continuing concern about over-representation, research questions might include: What are the characteristics of the system or the context that may contribute to the over-representation of some populations in child protective service caseloads? How do systems achieve a better understanding of the dynamics of the communities that are over-represented? How are clients assessed in order to generate knowledge about these populations that is formed from appropriate cultural and sociological perspectives?

NCCAN/CB is interested in the safety and well-being of immigrant children and their families, as a special population. Questions might include explorations of service utilization, outreach, and cultural context. More specific examples of research questions might include: What are the relationships between child safety and well-being, child protective services, the characteristics and needs of the children and families themselves, and the communities in which they reside? How are the needs of immigrant children and their families identified and assessed? What are effective maltreatment prevention and treatment program models for these populations?

Secondary Analysis: NCCAN/CB seeks comments regarding the interest of the field for funding of secondary analyses of federally-financed data collections and existing datasets. Opportunities here exist in the analysis of, for example, Head Start data, data from the Adoption Foster Care Analysis and Reporting System (AFCARS), the 1994 National Study of Protective, Preventive and Reunification Services Delivered to Children and their Families, the National Child Abuse and Neglect Data System (NCANDS), and the National Incidence Study (NIS), regarding specific field-generated or federally-generated research inquiries related to child maltreatment. Comments should include (1) suggestions for minimal award sizes and (2) suggestions for application strategies that reduce the burden of applying for these small-amount grants.

Triage: Triage, here, is used to describe a differentiated response service-entry or resource allocation model for handling child abuse and neglect reports. Some triage models include assignment to service prior to investigation for some classes of reports. Research interests include questions about: The effects of a triage process on child safety and child and family well-being, caseload sizes, and resource allocation; and evaluations of the impact and efficacy of criteria, tools, and protocols for case assignment, safety and risk assessment. Does a triage approach result in changes in system responses, client behavior (i.e., recidivism), changes in public perception of CPS, or changes in clients' perceptions of CPS responsiveness to their needs or to the perception of a punitive nature of CPS service?

Welfare Reform and System Changes: The impact of recent changes in family support entitlements, block granting of welfare funds, work requirements, child care needs, and other systemic changes is unknown. NCCAN/CB is interested in research which explores the interactions of these changes in welfare policy at the state and local level with child safety in general and the protective needs of children in particular. States have a range of options available to them as they implement new welfare programs. Questions might include: How do these policy choices affect child protective services agencies' ability to protect children? What are the impacts on case loads, case characteristics, and system entry and exit, for example, of family caps, time limits, and the transition to work?

C. Field Initiated Research on Child Abuse and Neglect

The generation of new knowledge for understanding critical issues in child abuse and neglect improves prevention, identification, assessment, and treatment. Research areas to be addressed may be those that will expand the current knowledge base, build on prior research, contribute to practice enhancements, inform policy, improve science, and provide insights into new approaches to the assessment, prevention, intervention, and treatment of child maltreatment (i.e., physical abuse, sexual abuse, emotional maltreatment, or neglect) on any of the topics listed in (A) Legislative Topics, (B) Other Topics, above, or any other child maltreatment topic.

In addition to the topics cited above, practitioners and researchers are encouraged to propose other relevant subjects for research topics.

(Catalog of Federal Domestic Assistance Program Number 93.670, Child Abuse and Neglect Prevention and Treatment)

Dated: February 7, 1997.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 97–3469 Filed 2–11–97; 8:45 am]

BILLING CODE 4184–01–P

Food and Drug Administration

[Docket No. 96E–0385]

Determination of Regulatory Review Period for Purposes of Patent Extension; ULTIVA™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ULTIVA™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts

with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ULTIVA™ (remifentanil hydrochloride). ULTIVA™ is indicated for intravenous administration as follows: (1) As an analgesic agent for use during the induction and maintenance of general anesthesia for inpatient and outpatient procedures, and for continuation as an analgesic into the immediate postoperative period under the direct supervision of an anesthesia practitioner in a postoperative anesthesia care unit or intensive care setting; and (2) as an analgesic component of monitored anesthesia care. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ULTIVA™ (U.S. Patent No. 5,019,583) from Glaxo Wellcome, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 4, 1996, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ULTIVA™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ULTIVA™ is 2,222 days. Of this time, 1,920 days occurred during the testing phase of the regulatory review period, while 302 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: June 14, 1990. FDA has verified the applicant's claim that the date that the investigational new drug application became effective was on June 14, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act*: September 15, 1995. FDA has verified the applicant's claim that the new drug application (NDA) for ULTIVA™ (NDA 20–630) was initially submitted on September 15, 1995.

3. *The date the human drug was approved*: July 12, 1996. FDA has verified the applicant's claim that NDA 20–630 was approved on July 12, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,088 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 14, 1997, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 5, 1997, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 31, 1997.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 97–3417 Filed 2–11–97; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[Document Identifier: HCFA–9026]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

HCFA–9026 *Type of Information Collection Request:* Reinstatement, without change, of previously approved collection for which approval has expired; *Title of Information Collection:* Intermediary Request to Hospitals for Medical Information on Inpatient Claims for Statutorily Excluded Services/SSA 1862; 42 CFR 411.15; FR Vol. 60, No. 181; *Form No.:* HCFA–9026; *Use:* This information request is to enable intermediaries to obtain hospital medical records for inpatient claims involving statutorily excluded services and other non-covered services and devices. 42 CFR 411.15 is the regulation supporting this collection of information; *Frequency:* On occasion; *Affected Public:* Business or other for profit, not for profit institutions, State, local, or tribal governments, Federal government; *Number of Respondents:* 5,258; *Total Annual Responses:* 20,355; *Total Annual Hours:* 5,088.

To obtain copies of the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 3, 1997.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 97–3498 Filed 2–11–97; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Voluntary Partner Surveys to Implement Executive Order 12862 in the Health Resources and Services Administration—NEW

In response to Executive Order 12862, ''Setting Customer Service Standards'', the Health Resources and Services Administration (HRSA) is proposing to conduct voluntary customer surveys of its ''partners'' to assess strengths and weaknesses in program services. A generic approval is being requested from OMB to conduct the partner surveys. HRSA partners are typically State or local governments, health care facilities, health care consortia, health care providers, and researchers.

Partner surveys to be conducted by HRSA might include, for example, mail or telephone surveys of grantees to determine satisfaction with a technical assistance contractor, or in-class evaluation forms completed by providers who receive training from HRSA grantees, to measure satisfaction with the training experience. Results of these surveys will be used to plan and redirect resources and efforts as needed to improve service. Focus groups may also be used to gain partner input into the design of mail and telephone surveys. Focus groups, in-class evaluation forms, mail surveys, and telephone surveys are expected to be the preferred methodologies.

A generic approval will permit HRSA to conduct a limited number of partner surveys without a full-scale OMB review of each survey. If generic approval is granted, information on each individual partner survey will not be published in the Federal Register. Anyone wishing to receive information on individual partner surveys as they are developed should contact the HRSA Reports Clearance Officer at (301)443–1129.

An estimate of annual burden is shown below.

Type of Survey	Number of respondents	Responses per respondent	Avg. burden/ response (hrs.)	Total hours of burden
In-class evaluations	40,000	1	0.05	2,000
Mail/telephone surveys	12,000	1	0.25	3,000
Focus groups	50	1	1.5	75
Total	52,050	1	0.10	5,075

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Virginia Huth, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 6, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination.

[FR Doc. 97–3531 Filed 2–11–97; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

National Institute of Environmental Health 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 meeting:

Name of Committee: Environmental Health Sciences Review Committee.

Date: March 24–26, 1997.

Time: 8:30 a.m. to Adjournment.

Place: National Institute of Environmental Health Sciences, South Campus, Building 101, Conference Room B, Research Triangle Park, North Carolina.

Contact Person: Dr. Ethel B. Jackson, Scientific Review Administrator, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–7826.

Purpose: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set froth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. 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, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Research and Manpower Development, National Institutes of Health)

Dated: February 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–3418 Filed 2–11–97; 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 committee meeting of the National Institute of General Medical Sciences Special Emphasis Panel:

Committee name: Pharmacokinetics and Pharmacodynamics.

Date: Febuary 26, 1997.

Time: 8:00 a.m.—until conclusion (approximately 4 hours).

Place: Stanyan Park Hotel, 750 Stanyan Street, San Francisco, CA 94117.

Contact Person: Irene B. Glowinski, Ph.D., Scientific Review Administrator, NIGMS, Office of Scientific Review, 45 Center Drive, Room 1AS–13J, Bethesda, MD 20892–6200, 301–594–2772 or 301–594–3663.

Purpose: To review and evaluate grant applications. 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 of 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: February 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–3419 Filed 2–11–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health 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 National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meeting:

Name of SEP: Microtechniques for Determining Genetic Changes in Carcinogenesis-SBIR (Telephone Conference Call).

Date: March 6, 1997.

Time: 1:00 P.M.

Place: National Institute of Environmental Health Sciences, Building 17, Rm. 1713, Research Triangle Park, NC 27709.

Contact Person: Mr. David P. Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: February 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–3420 Filed 2–11–97; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel (Telephone Conference Call).

Date: February 26, 1997.

Time: 11:30 a.m.

Place: Natcher Building, Room 6AS–25S, National Institutes of health, 45 Center Drive, Bethesda, Maryland 20892–6600.

Contact Person: Dr. Francisco O. Calvo, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS–25S, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892–6600, Phone: 301–594–8897.

Purpose/Agenda: To review and evaluate contract proposals.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel (Telephone Conference Call).

Date: February 28, 1997.

Time: 3:00 p.m.

Place: Natcher Building, Room 6AS–37A, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892–6600.

Contact Person: Dr. William Elzinga, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS–37A, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892–6600, Phone: 301–594–8895.

Purpose/Agenda: To review and evaluate a contract proposal.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: March 6–7, 1997.

Time: 7:30 p.m.—adjournment on March 7.

Place: Stanford Terrace Inn, Palo Alto, California.

Contact Person: Sharee Pepper, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS–25S, National Institutes of Health, 45 Center Drive, Bethesda, Maryland 20892–6600, Phone: 301–594–7798.

Purpose/Agenda: To review and evaluate a research grant application.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: April 1–2, 1997.

Time: 8:00 a.m.—adjournment on April 2.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Ave., N.W., Washington, D.C. 20036.

Contact Person: Roberta J. Haber, Ph.D., Scientific Review Administrator, Natcher Building, Room 6AS–25N, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: 301–594–8898.

Purpose/Agenda: To review and evaluate research grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health.)

Dated: February 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–3421 Filed 2–11–97; 8:45 am]

BILLING CODE 4140–01–M

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in March.

A summary of the meeting and a roster of the members may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA Office of Extramural Activities Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–4783.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: March 3, 1997—9:30 a.m.—4:00 p.m.

Place: Sheraton City Center Hotel, The Georgetown Room, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Closed: March 3, 1997—9:30 a.m.—4:00 p.m.

Panel: Center for Mental Health Services, Technical Assistance Center.

Contact: Stanley Kusnetz, Room 17–89, Parklawn Building, Telephone: (301) 443–9918 and FAX: (301) 443–3437.

Dated: February 6, 1997.

Jeri Lipov,

Committee Management Officer, SAMHSA.

[FR Doc. 97–3416 Filed 2–11–97; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey.

ACTION: Notice of proposed cooperative research and development agreement (CRADA).

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a Cooperative Research and Development Agreement (CRADA) with Heska to evaluate a vaccine for plague (*Yersinia pestia*) for use in domestic and wild animals.

INQUIRIES: If any other parties are interested in participating with the USGS in a CRADA to test vaccines that have developed for plague (*Yersinia pestia*), please contact: Dr. Christopher Brand, National Wildlife Health Center, 6006 Schroeder Rd., Madison, WI 53711: (608) 271–4640.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual. This notice will close within 30 days of publication in the Federal Register, responses from interested parties will be considered and the cooperative agreement will be completed and immediately initiated.

Dated: February 4, 1997.

Dennis B. Fenn,

Chief Biologist.

[FR Doc. 97–3493 Filed 2–11–97; 8:45 am]

BILLING CODE 4310–13–M

Privacy Act of 1974; Creation of a New System of Records

Notice is hereby given that the Department of the Interior proposes to create a new system of records, INTERIOR/USGS–27, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and Office of Management and Budget Circulation No. A–130, Appendix I.

This system of records is being created by the U.S. Geological Survey (USGS) to provide and maintain an employee/visitor identification and access control system at the National Center building under 5 U.S.C. 301, 6101, and 43 U.S.C. 1457. The information included in the system of records is directly related to records of USGS employees and contractors that have been issued a USGS identification card/access badge and records of individuals entering and existing the USGS National Center building utilizing the access control system.

Any persons interested in commenting on this new system of records may do so by submitting comments in writing to the U.S. Geological Survey, Bureau Security Manager, Office of Management Services, Office of Program Support, Mail Stop 250, National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192. This system of records will become effective March 24, 1997, unless the Department receives comments that will result in a contrary determination.

The new system description, ''Office of Management Services (OMS) Badging and Access Control System, INTERIOR/USGS–27'' will read as set forth below.

Dated: February 4, 1997.

Gary W. Kramer,

Acting Chief, Office of Management Services.

INTERIOR/USGS–27

SYSTEM NAME:

Office of Management Services (OMS) Badging and Access Control System—Interior, USGS–27.

SYSTEM LOCATION:

Records are stored at U.S. Geological Survey sites in three locations:

(1) U.S. Geological Survey, Safety and Security Management Office, National Center Rm. 1A102, 12201 Sunrise Valley Drive, Reston, Virginia 20192

(2) U.S. Geological Survey, Branch of Facilities Management, National Center Rm. 6A109, 12201 Sunrise Valley Drive, Reston, Virginia 20192

(3) U.S. Geological Survey, Branch of Facilities Management, National Center Rm. 6A458, 12201 Sunrise Valley Drive, Reston, Virginia 20192

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

USGS employees and contractors who receive a USGS identification badge that is also an access control system card key for the National Center.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 6101, and 43 U.S.C. 1457.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of all USGS employees and contractors that have been issued a U.S. Geological Survey identification badge that is also an access control system card key for the National Center. Records of individuals entering and exiting the National Center utilizing the access control system to include the times of ingress and egress. Information identifying the employee of contractor: Name, social security number, photograph, organization/division or office of assignment, office phone number, cared serial number, access levels, date issued, expiration date, signature, and cancellation information.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USER:

The primary uses of the records are:

(1) To maintain accountability records of identification badges issued to USGS employees and contractors by the USGS, Office of Management Services; and

(2) To assess building security requirements and verify the access status of individuals by the USGS, Safety and Security Management Office.

Information in the system may be used as follows:

(1) To verify time and attendance records by supervisors and managers of individuals in the system;

(2) By employees or contraltos to determine their individual access status; and

(3) By the appropriate organization within the USGS to identify current employment status.

In addition to those disclosures generally permitted under 5 U.S.C. 522a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Department of the Interior as a routine use pursuant to 5 U.S.C. 522a(b)(3) as follows:

(1) To Members of Congress to respond to inquiries made on behalf of individual constituents that are recorded subjects;

(2) To the General Services Administration, Federal Protective Service, to assess building security requirements and standards and by Federal, State, and local law enforcement agencies to verify the access status of individuals during the course of criminal investigations or emergency response situations;

(3) To representative of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906; and

(4) To security services companies providing monitoring and maintenance support to permit servicing the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in computerized form on two non-removable hard disks with backups on diskettes. Report

listings are provided to the appropriate organization for update purposes and then destroyed.

RETRIEVABILITY:

Records are indexed by name of individual, social security number, organization, access levels, and card serial number.

SAFEGUARDS:

The computers are key locked with access to the records password and user ID controlled. Audit trails are established for recording changes to the records. The appropriate Privacy Act warning notice appears on the computer screen when working with the records containing Privacy Act information. Frequent backups for restoration after unintentional destruction occur. The backup diskettes are stored in a locked and controlled room.

RETENTION AND DISPOSAL:

Records are disposed of as provided in the USGS General Records Disposition Schedule, Item 306–20b, and General Records Schedule 11, Item 4.

SYSTEM MANAGER(S) AND ADDRESS:

Acting Bureau Security Manager, U.S. Geological Survey, 250 National Center, Reston, Virginia 20192

Chief, Support Services Section, U.S. Geological Survey, 209 National Center, Reston, Virginia 20192

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records should be addressed to the appropriate System Manager. A written, signed request stating that the requester seeks information concerning records pertaining to him/her is required. Sec. 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access should be addressed to the pertinent System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

(1) Individual employees or contractors, (2) Supervisors, (3) Division or Office Administrative Officers.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 97–3499 Filed 2–11–97; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

[COC–59828]

Colorado; Proposed Classification of Public Lands for State Indemnity Selection

1. The Colorado State Board of Land Commissioners has filed a petition for classification and application to acquire the public lands described in paragraph five below, under the provisions of Sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), in lieu of certain school lands granted to the state under Section 7 of the Act of March 3, 1875 that were encumbered by other rights or reservations before the state's title could attach. The application has been assigned Serial Number Colorado 59828.

2. The Bureau of Land Management will examine these lands for evidence of prior valid rights or other statutory constraints that would bar transfer. This proposed classification is pursuant to Title 43 Code of Federal Regulations, Subpart 2400 and Section 7 of the Act of June 8, 1934 (48 Stat. 1272), as amended (43 U.S.C. 315f).

3. Information concerning these lands and the proposed transfer to the state of Colorado may be obtained from the Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, Attention: Realty Group–CO–935.

4. For a period of 60 days from the date of publication of this notice in the Federal Register, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the above address. Any adverse comments will be evaluated by the BLM Colorado State Director who will issue a notice of determination to proceed with, modify, or cancel the action. In the absence of any action by the State Director, this classification will become the final determination of the Department of the Interior. As provided by Title 43 Code of Federal Regulations, Subpart 2450.4(c), a public hearing may be scheduled by the State Director if it is determined that sufficient public interest exists to warrant the time and expense of a hearing.

5. The lands included in this proposed classification are in Fremont, Hinsdale, Jackson, La Plata, Park, and Routt counties and are described as follows:

Sixth Principal Meridian, Colorado,

T. 17 S., R. 68 W., Fremont County
Sec. 11, SE¼SW¼ and SW¼SE¼;
Sec. 15, S½NE¼ and S½;
Sec. 21, NW¼SE¼;
Sec. 22, NW¼NW¼;
Sec. 27, SW¼;
Sec. 28, NE¼SE¼;
Sec. 34, W½ and SE¼;
T. 18 S., R. 68 W.,
Sec. 3, lots 3, 4, S½NW¼, and SW¼;
Sec. 4, NE¼SE¼;
Sec. 10, N½NW¼;
T. 11 S., R. 75 W., Park County
Sec. 5, lots 1, 2, 3, 4, S½NE¼, and SE¼SE¼;
Sec. 6, lots 1, 2, 3, 4, 5, S½NE¼ and SE¼NW¼;
T. 9 N., R. 77 W., Jackson County
Sec. 19, S½SE¼;
Sec. 29, W½NW¼ and NW¼SW¼;
Sec. 30, SE¼NE¼ and NE¼SE¼;
T. 10 N., R. 78 W.,
Sec. 7, S½NE¼ and SE¼;
Sec. 17, E½, E½W½ and SW¼SW¼;
Sec. 18, NE¼NE¼;
Sec. 19, NE¼NE¼, S½NE¼ and SE¼;
Sec. 21, NE¼SE¼;
Sec. 30, lots 1, 2, N½NE¼ and E½NW¼;
T. 7 N., R. 88 W., Routt County
Sec. 5, SE¼SE¼;
Sec. 8, N½NE¼ and SW¼NE¼;

New Mexico Principal Meridian, Colorado,

T. 43 N., R. 4 W., Hinsdale County
Sec. 9, lots 22 and 25;
Sec. 10, lots 34 and 39;
T. 34 N., R. 7 W., North of the Ute Line, La Plata County
Sec. 7, lot 4;
T. 35 N., R. 7 W.,
Sec. 2, lot 4;
Sec. 3, lot 1;
T. 36 N., R. 7 W.,
Sec. 34, lot 2;
Sec. 35, lots 1, 2, 7, 8, 9, 10, 11, and N½;
T. 34 N., R. 8 W., North of the Ute Line,
Sec. 10, SE¼SE¼;
Sec. 11, SW¼NE¼, SE¼NW¼ NE¼SW¼, NW¼SE¼ and S½S½;
Sec. 12, S½SW¼ and SE¼;
Sec. 13, lot 1 and N½
Sec. 14, lot 2, E½NE¼ and W½NW¼;

The areas described aggregate approximately 6,036.42 acres.

6. Rights-of-way granted by the Bureau of Land Management on the above lands will transfer with any of the above described land transferred to the state. Oil and gas leases will remain in effect under the terms and conditions of the leases. Individuals and corporations holding valid leases, permits, and/or rights-of-way on the public lands described above will be notified individually of this notice of proposed classification.

State law and State Board of Land Commissioners procedures provide for the offering to holders of Bureau of Land Management grazing permits, licenses,

or leases the first right to lease lands that may be transferred to the state. This classification notice constitutes official notice to present holders of grazing use authorizations from the Bureau of Land Management that such authorization will be terminated upon transfer of any of the land described above to the state of Colorado.

For a period of 45 days from the date of first publication indicated below, persons asserting a claim to or interest in the described lands, other than holders of leases, permits, or rights-of-way, may file such claim with the State Director, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, with evidence that a copy thereof has been served on the Board of Land Commissioners, State of Colorado, Room 620, 1313 Sherman Street, Denver, Colorado 80203.

Dated: January 29, 1997.

Robert Abbey,

Acting State Director.

[FR Doc. 3366 Filed 2–11–97; 8:45 am]

BILLING CODE 4310–JB–M

[CA–067–7122–6606; CACA–35511]

Environmental Impact Statement/ Environmental Impact Report for the Proposal Imperial Project, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment and notice of second public hearing.

SUMMARY: In the Federal Register of February 3, 1997 (Vol. 62, No. 22, pages 5033–5034) a notice was published pertaining to the holding of a public hearing on the draft Environmental Impact Statement/Environmental Impact Report for the proposed Imperial Project which is an open-pit, heap leach gold mine in eastern Imperial County. This amends that notice by adding a second public hearing in addition to the public hearing in Holtville on February 6, 1997. The second hearing, located in San Diego County, is scheduled for February 13, 1997 at the Comfort Inn, 800 Parkway Drive, La Mesa. The hearing will be held from 7 PM to 8:30 PM. Written comments should be sent to the Bureau of Land Management, 1661 South Fourth Street, El Centro, California, 92251, Attention: Keith Shone, and must be delivered or postmarked no later than February 13, 1997.

FOR FURTHER INFORMATION CONTACT: Keith Shone (619) 337–4412 or Thomas Zale (619) 337–4420.

Dated: February 6, 1997.

Henri R. Bisson,

District Manager.

[FR Doc. 97–3471 Filed 2–11–97; 8:45 am]

BILLING CODE 4310–40–M

[AZ–930–5440–A015; AZAR 035683]

Public Land Order No. 7243; Revocation of Secretarial Order Dated March 8, 1938; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order, insofar as it affects 3.75 acres of public land withdrawn for use by the Federal Aviation Administration. The revocation is needed to allow the conveyance of the land to the city of Tempe in accordance with the sale provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976. The land is temporarily closed to surface entry and mining due to the pending conveyance. The land has been and will remain open to mineral leasing. The Federal Aviation Administration has agreed to this revocation.

EFFECTIVE DATE: February 12, 1997.

FOR FURTHER INFORMATION CONTACT: Carol Kershaw, BLM Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011, 602–417–9235.

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

1. The Secretarial Order dated March 8, 1938, which withdrew public land for Air Navigation Site No. 118, is hereby revoked insofar as it affects the following described land:

Gila and Salt River Meridian

T. 1 N., R. 4 E.,
Sec. 17, N½N½NW¼NW¼NW¼ and N½NW¼NE¼NW¼NW¼.

The area described contains 3.75 acres in Maricopa County.

2. The land described above is hereby made available for conveyance under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719 (1988).

Dated: February 4, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–3422 Filed 2–11–97; 8:45 am]

BILLING CODE 4310–22–P

[OR–957–00–1420–00: G7–0084]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, on March 14, 1997.

Willamette Meridian

Oregon

T. 40 S., R. 10 E., accepted January 7, 1997
T. 35 S., R. 2 W., accepted January 17, 1997
T. 22 S., R. 4 W., accepted January 13, 1997
T. 20 S., R. 6 W., accepted January 8, 1997
T. 29 S., R. 6 W., accepted January 17, 1997
T. 6 S., R. 8 W., accepted January 8, 1997
T. 6 S., R. 8 W., accepted January 17, 1997

Washington

T. 33 N., R. 41 E., accepted January 15, 1997

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of land Management, (1515 S.W. 5th Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: January 31, 1997.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 97–3496 Filed 2–11–97; 8:45 am]

BILLING CODE 4310–33–M

[MT–924–1430–01; MTM 83729]

Cancellation of Proposed Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal of 82.19 acres of public lands requested by the Bureau of Land Management for protection of recreational values along the Madison River. This action will open the lands to mining. The lands have been and will remain open to surface entry and mineral leasing.

EFFECTIVE DATE: March 14, 1997.

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

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the Federal Register (60 FR 21004) April 28, 1995, which segregated the lands described therein for up to 2 years from location and entry under the mining laws, subject to valid existing rights, but not from the general land laws or the mineral leasing laws. The Bureau of Land Management has determined that the withdrawal will not be needed at this time and has canceled its application. The lands are described as follows:

Principal Meridian, Montana

Red Mountain Campground

T. 3 S., R. 1 E.,
Sec. 2, lot 2.

Warm Springs Creek Boat Access Site

T. 3 S., R. 1 E.,
Sec. 10, lots 2 and 4, excluding therefrom the area contained within the state highway right-of-way lines, more particularly described in Bargain and Sale Deed recorded in Book 162, Page 148, Records of Madison County, Montana.

The areas described aggregate 82.19 acres in Madison County.

At 9 a.m. on March 14, 1997 the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempting adverse possession under 30 U.S.C. 38 (1988) shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights, since Congress has provided for such determinations in local courts.

Dated: February 3, 1997.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 97–3491 Filed 2–11–97; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive, Environmental Response, Compensation and Liability Act (''CERCLA'')

In accordance with Department 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. *Lucent Technologies Inc.,* Civil Action No. 3:97–0271–17 was lodged on January 31, 1997, with the United States District Court for the District of South Carolina. This agreement resolves a judicial enforcement action brought by the United States against Lucent Technologies Inc., (''Lucent'') pursuant to Sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607. Lucent is the successor corporation of a generator of hazardous substances at the Palmetto Recycling Superfund Site (''Palmetto Site'' or ''Site'') located in Columbia, Richland County, South Carolina.

The consent decree requires Lucent to perform the final remedy for the Site which EPA selected in its Record of Decision (''ROD'') dated March 30, 1995. In the ROD, EPA selected a remedy which includes the excavation and off-site disposal of contaminated surface soil that exceeds the remediation level. The excavated area will be backfilled with clean soil and regraded with a vegetative cover. The ROD also provides for additional sampling of adjacent residential yards and roads to confirm the absence of soil contamination in those areas. Finally, the ROD provides for annual groundwater monitoring for at least five years.

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. *Lucent Technologies Inc.,* DOJ Ref # 90–11–3–1545.

The proposed consent decree may be examined at the office of the United States Attorney, First Union Building, 1441 Main Street, Suite 500, Columbia, South Carolina, 29201; the Region 4 office of the Environmental Protection Agency, 100 Alabama Street, SW., 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, Site Map, and Summary of Costs, then the amount of the check should be $19.50 (78 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 $71.25 (285 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. 97–3492 Filed 2–11–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be

properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning two proposed extension information collections: (1) the Wage Statement (English and Spanish) Forms, WH–501 and WH–501S and (2) the Airline Job Vacancies List and semi-annual reports of designated employees hired.

Copies of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 14, 1997. The Department of Labor is particularly interested in comments which:

- 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;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: For the Wage of Statement submission, contact Mr. Rich Elman, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 219–6375. For the Airline Vacancy Listing, contact Ms. Margaret Sherrill at the same address above, telephone 202–219–7601. (These are not toll-free numbers.) Fax 202–219–6592.

SUPPLEMENTARY INFORMATION:

I. Background

Section 201(d) and 301(c) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and section 500.80 of Regulations 29 CFR Part 500, Migrant and Seasonal Agricultural Protection, require that each farm labor contractor, agricultural employer, and agricultural association which employs any migrant or seasonal worker make, keep, and preserve records for three years for each such worker concerning: (1) the basis on which wages are paid; (2) the number of piece work units earned, if paid on piece work basis; (3) the number of hours worked; (4) the total pay period earnings; (5) the specific sums withheld and the purposes of each sum withheld; and, (6) the net pay. These sections also require that an itemized written statement of this information be provided to each migrant and seasonal worker. In addition, section 201(e) and 301(d) require that each farm labor contractor provide to other farm labor contractors, agricultural employers or agricultural associations to whom the contractor has furnished migrant or seasonal workers, copies of all records noted above for such workers. Forms WH–501 and WH–501S are optional forms which a farm labor contractor, agricultural employer and agricultural association can maintain as a record and provide as a statement of earnings to migrant and seasonal agricultural workers and users of such workers, listing the method of payment of wages.

II. Current Actions

The Department of Labor (DOL) seeks extension of approval to collect this information in order to carry out its responsibility to monitor compliance by employers of any migrant or seasonal workers to ensure that they maintain specific weekly payroll information and provide copies to each worker and the person(s) furnished the worker. Failure to require employers to maintain such records would make determination of compliance by DOL extremely difficult.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Wage Statement (English and Spanish).

OMB Number: 1215–0148.

Agency Numbers: WH–501 and WH–501S.

Affected Public: Individuals or households; Business or other for-profit, Farms.

Total Respondents: 1.5 million.

Frequency: On occasion.

Total Responses: 39 million.

Average Time Per Response for Reporting: ½ minute.

Average Time Per Response for Recordkeeping: ½ minute.

Estimated Total Burden Hours: 650,000.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

SUPPLEMENTARY INFORMATION:

I. Background

The Airline Deregulation (AirDereg) Act requires the Secretary of Labor to establish a program to implement the first-right-of-hire provisions of the legislation (29 CFR, Part 220), to insure that furloughed, protected employees (designated employees) may exercise their statutory rights. AirDereg provides a mechanism for the monitoring hiring activity in the airline industry. Section 43(d)(2) of the Regulations provides that covered air carriers submit a semi-annual list of all jobs filled and certify the reason if any job is filled with a ''non-designated employee''. All covered air carriers shall report their permanent job vacancies as they occur, to a central job center, for the preparation of a comprehensive list of jobs in the industry that is distributed to all state employment agencies. The Airline Vacancy Listing Form requests such information as name and location of airline, vacancy location, occupational specialty, job title, and salary. The information is submitted by the covered airlines semi-annually.

II. Current Actions

The Department of Labor seeks extension of approval to collect this information to enable airlines to meet the reporting requirement on their hiring activity and job vacancies. The reports will determine whether carriers have complied with the duty to hire and provide information that can be made available to protected employees. If this information was not collected, this source of information would not be available to designated employees to obtain work nor anyone seeking work in the airline industry.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Airline Vacancy Listing.

OMB Number: 1214–0004.

Affected Public: Business or other for-profit.

Total Respondents: 4.

Frequency: Semi-annually.

Total Responses: 223.

Average Time Per Response for Reporting: 15 minutes.

Estimated Total Burden Hours: 310.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $580.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection requests; they will also become a matter of public record.

Dated: February 7, 1997.

Cecily A. Rayburn,

Director, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 97–3476 Filed 2–11–97; 8:45 am]

BILLING CODE 4510–27–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 95–1 CARP DD 92–94]

Distribution of the 1992, 1993, and 1994 Musical Works Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Distribution order.

SUMMARY: The Librarian of Congress, upon recommendation of the Register of Copyrights, is announcing the distribution of the royalty fees collected for Digital Audio Recording Devices and Media (DART) in the 1992, 1993, and the 1994 Musical Works Funds. The Librarian is adopting in part and rejecting in part the decision of the Copyright Arbitration Royalty Panel (CARP).

EFFECTIVE DATE: The distribution percentages announced in this Order are effective on February 12, 1997.

ADDRESSES: The full text of the CARP's report to the Librarian of Congress is available for inspection and copying during normal business hours in the Office of the General Counsel, James Madison Memorial Building, Room LM–407, First and Independence Avenue, S.E., Washington, DC. 20540.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney, or Tanya M. Sandros, Attorney-Advisor, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380.

SUPPLEMENTARY INFORMATION:

I. Recommendation of the Register of Copyrights

Background

On October 28, 1992, Congress enacted the Audio Home Recording Act, Pubic Law No. 102–563 (1992). This Act requires manufacturers and importers to pay royalties on digital audio recording devices and media (DART) that are distributed in the United States. The royalties are collected by the Copyright Office and deposited with the Treasury of the United States. 17 U.S.C. 1005. These funds are distributed by the Copyright Office to interested copyright parties who filed claims with the Copyright Office each year during January and February pursuant to either a universal settlement negotiated by the claimants to a particular subfund, or by Order of the Librarian of Congress (Librarian) following a distribution proceeding conducted by a Copyright Arbitration Royalty Panel (CARP).

The Act provides that the royalties are to be divided into two funds: the Sound Recordings Fund, which accounts for 66⅔% of the royalties, and the Musical Works Fund, which accounts for the remaining 33⅓% of the royalties. The Act further divides each fund into subfunds.

The Sound Recordings Fund consists of four subfunds, two of which, the Nonfeatured Musicians Subfund and the Nonfeatured Vocalists Subfund, account for 2⅝% and 1⅜%, respectively, of the Sound Recordings Fund and are administered by an independent administrator. The remaining 96% of the Sound Recordings Fund is further distributed between two additional subfunds, the Featured Recording Artist Subfund and the Sound Recording Owners Subfund, which receive 40% and 60%, respectively, of the remaining 96% share of the fund. The Musical Works Fund consists of two subfunds, the Publishers Subfund and the Writers Subfund, each of which receives 50% of that Fund. 17 U.S.C. 1006(b).

Thus, the Act establishes the percentages for each fund and subfund, but directs the CARPs, when necessary, to determine what amount each claimant within a subfund is entitled to receive. The determination and a full explanation underlying the conclusions are set out in a written report to the Librarian.

Distribution of Royalties

Royalties are collected on a quarterly basis from any importer or manufacturer that distributes any digital audio recording device or digital audio recording medium that it manufactured in or imported into the United States. 17 U.S.C. 1003(c). As discussed above, these royalties are collected by the Copyright Office and invested in interest-bearing securities with the United States Treasury for subsequent distribution to interested copyright parties. 17 U.S.C. 1005.

An interested copyright party must submit each year a written claim to the Copyright Office during the months of January and February. 17 U.S.C. 1007(a). Within 30 days after the last day for filing claims, the statute instructs the Librarian to ascertain whether there are any controversies among the claimants as to the proper distribution of the royalties in their fund/subfund. If there are no controversies, the Librarian authorizes the distribution of the funds according to the terms of the negotiated agreements; otherwise, the Librarian is directed to convene a CARP or CARPs to decide the proper distribution of the royalties in each unresolved fund/subfund. 17 U.S.C. 1007(b)(c).

This Proceeding

The parties in this proceeding are Broadcast Music, Inc., the American Society of Composers, Authors, and Publishers, SESAC, Inc., the Harry Fox Agency, Inc. (a subsidiary of the National Music Publishers' Association, Inc.), Copyright Management Inc., The Songwriters Guild of America, and the Gospel Music Coalition (collectively, the ''Settling Parties''), and two pro se claimants, Eugene Curry and Alicia Carolyn Evelyn. Ms. Evelyn and Mr. Curry, both songwriters, chose to represent their own interests in the proceeding. Mr. Curry also represented the publishing interest of Tajai Music, Inc. (Tajai) for the three years in dispute. The Settling Parties represent the over 264,000 remaining publishers and songwriters with a claim to a share of the royalties. Settling Parties Direct Case at 2–3.

The CARP in this proceeding was convened to determine the distribution of the royalties in the 1992, 1993, and 1994 Musical Works Funds, which totaled approximately $355,500.00.[1] The Copyright Office received forty-one claims to the 1992 Musical Works Fund—twenty-one claims to the Writers Subfund and twenty claims to the Publishers Subfund. During the next filing cycle, the Office received twenty-two claims to the 1993 Musical Works Fund—twelve claims to the Writers Subfund and ten claims to the Publishers Subfund. In 1995, the Office received twenty-six claims to the 1994 Musical Works Fund, equally divided between the two subfunds.

This proceeding for the determination of the distribution of the DART royalties commenced on November 3, 1993, when the Settling Parties filed a motion with the Copyright Royalty Tribunal (Tribunal)[2] to consolidate the 1992 and

[1] Claimants to the royalties in the Sound Recordings Fund for 1992, 1993, and 1994 negotiated a settlement amongst themselves. The Library has made a full distribution of these funds to the interested copyright parties who filed timely claims for a share of these royalties. *See* Order, Docket No. 94–2 CARP–DD (December 15, 1994) and Order in Docket No. 95–1 CARP DD 92–94 (May 16, 1995).

[2] When the Audio Home Recording Act was passed, the Copyright Royalty Tribunal had the authority to conduct the DART distribution proceedings. The Tribunal, however, was abolished

1993 DART distribution proceedings. The CRT granted this motion on November 29, 1993, see Order, In the Matter of 1992 Audio Home Recording Act Distribution Proceeding, CRT Docket No. 93–1–92DRD (Nov. 29, 1993), but further proceedings were suspended upon the abolition of the CRT.

The Copyright Office instituted a new proceeding for the distribution of 1992 and 1993 DART royalties on March 1, 1994. 59 FR 9773 (March 1, 1994). In response to this notice, the Settling Parties and other claimants filed a motion with the Office requesting the Office to consolidate the 1992, 1993, and 1994 DART distribution proceedings. The Office granted this request and announced that it would set a schedule for a DART distribution proceeding in 1995. 59 FR 35762 (July 13, 1994).

On February 23, 1995, the Office published a notice requesting comments as to the existence of controversies in the consolidated proceeding, and notices of intent to participate. 60 FR 12251 (March 6, 1995). Twelve parties filed notices of intent to participate in this proceeding, including the Settling Parties, Ms. Evelyn, Mr. Curry and the publishing company he represents, Tajai.

Through a series of motions to dismiss certain parties and as a result of continued negotiations, nine parties remained in the DART distribution proceeding when the Librarian initiated a CARP to determine the distribution of the Musical Works Fund royalties for 1992, 1993, and 1994. 61 FR 40464 (August 2, 1996).

On October 4, 1996, the Parties met with the Panel which determined, for good cause shown, to proceed on the basis of the written pleadings alone.[3] CARP Order, Docket No. 95–1 CARP DD 92–94 (October 4, 1996). Accordingly, the CARP instructed the parties to file their respective proposed findings of fact and conclusions of law by November 4, 1996, and to file reply findings on or before November 14, 1996. The Panel limited the proposed findings of fact to the material contained in the written direct cases previously filed on March 25, 1996. Transcript of October 4, 1996 Meeting at 33–35.

On December 16, 1996, the chairperson of the CARP delivered the Panel's written report to the Librarian.

The CARP Report

The Panel, after reviewing the written record, determined that the royalties in the 1992, 1993, and 1994 Musical Works Funds should be allocated as follows:

To Mr. Curry: 0.007096% of both the Writers and Publishers Subfunds in 1992; 0.001608% of both the Writers and Publishers Subfunds in 1993; and 0.003398% of both the Writers and Publishers Subfunds in 1994.

To Ms. Evelyn: 0.000084% of only the Writers Subfund in 1993; and 0.000082% of only the Writers Subfund in 1994.

To the Settling Parties: 99.992904% of both the Writers and Publishers Subfunds in 1992; 99.998308% of the Writers Subfund and 99.998392% of the Publishers Subfund in 1993; and 99.99652% of the Writers Subfund and 99.996602% of the Publishers Subfund in 1994. CARP Report, paras. 71–73.

The Panel utilized the only formula presented for calculating a claimant's share of the royalties. CARP Report, para. 53. The formula determines each claimants' proportionate share of the royalties as a percentage of the total song titles sold during a particular year based on evidence of a claimants' total song title sales for that year. *Id.*

Standard of Review

The Copyright Royalty Tribunal Reform Act of 1993 created a unique system of review of a CARP's determination. Typically, an arbitrator's decision is not reviewable, but the Reform Act created two layers of review: The Librarian of Congress, and the Court of Appeals for the District of Columbia Circuit. Section 802(f) of the Copyright Act directs the Librarian to either accept the decision of the CARP or reject it. If the Librarian rejects it, he must substitute his own determination ''after full examination of the record created in the arbitration proceeding.'' *Id.* If the Librarian accepts it, then the determination of the CARP has become the determination of the Librarian. In either case, through issuance of the Librarian's Order, it is his decision that is subject to review by the Court of Appeals.

Section 802(f) of the Copyright Act directs that the Librarian shall adopt the report of the CARP ''unless the Librarian finds that the determination is arbitrary or contrary to the provisions of this title.'' Neither the Reform Act nor its legislative history indicates what is meant specifically by ''arbitrary,'' but there is no reason to conclude that the use of the term is any different from the ''arbitrary'' standard described in the Administrative Procedure Act, 5 U.S.C. 706(2)(A).

Review of the case law applying the APA ''arbitrary'' standard reveals six factors or circumstances under which a court is likely to find that an agency acted arbitrarily. An agency is generally considered to be arbitrary when it:

(1) Relies on factors that Congress did not intend it to consider;

(2) fails to consider entirely an important aspect of the problem that it was solving;

(3) Offers an explanation for its decision that runs counter to the evidence presented before it;

(4) Issues a decision that is so implausible that it cannot be explained as a product of agency expertise or a difference of viewpoint;

(5) Fails to examine the data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made; or

(6) When the agency's action entails the unexplained discrimination or disparate treatment of similarly situated parties.

Motor Vehicle Manufacturers Association v. State Farm Mutual Insurance Co., 463 U.S. 29 (1983); *Celcom Communications Corp. v. FCC*, 789 F.2d 67 (D.C. Cir. 1986); *Airmark Corp. v. FAA*, 758 F.2d 685 (D.C. Cir. 1985).

Given these guidelines for determining when a decision is ''arbitrary,'' prior decisions of the Court of Appeals for the District of Columbia Circuit reviewing the determinations of the former Copyright Royalty Tribunal (Tribunal) have been consulted. The decisions of the Tribunal were reviewed under the ''arbitrary and capricious'' standard of 5 U.S.C. 706(2)(A) which, as noted above, appears to be applicable to the Librarian's review of the CARP's decision.

Review of judicial decisions regarding Tribunal actions reveals a consistent theme: while the Tribunal was granted a relatively wide ''zone of reasonableness,'' it was required to articulate clearly the rationale for its decision. *See National Association of Broadcasters v. CRT*, 772 F.2d 922 (D.C. Cir. 1985); *Christian Broadcasting Network v. CRT*, 720 F.2d 1295 (D.C. Cir. 1983); *National Cable Television Association v. CRT*, 689 F.2d 1077 (D.C. Cir. 1982); *Recording Industry Association of America v. CRT*, 662 F.2d 1 (D.C. Cir. 1981). As one panel of the D.C. Circuit succinctly noted:

We wish to emphasize * * * that precisely because of the technical and discretionary nature of the Tribunal's work, we must

by Congress in 1993, and the authority to distribute DART funds was given to the CARPS, as administered by the Librarian of Congress. *See* the Copyright Royalty Tribunal Reform Act of 1993, Pubic Law No. 103–198.

[3] On June 14, 1996, the Settling Parties filed a motion to dispense with formal hearings and to conduct this proceeding on the basis of the written pleadings. The Librarian denied the motion, but designated the issue to the CARP for further consideration under their authority to suspend or waive the relevant provision of the regulations. Order, Docket No. 95–1 CARP DD 92–94 (July 25, 1996).

especially insist that it weigh all the relevant considerations and that it set out its conclusions in a form that permits us to determine whether it has exercised its responsibilities lawfully * * *.

Christian Broadcasting Network, Inc. v. CRT, 720 F.2d 1295, 1319 (D.C. Cir. 1983), *quoting National Cable Television Association v. CRT,* 689 F.2d 1077, 1091 (D.C. Cir. 1982).

Because the Librarian is reviewing the CARP decision under the same ''arbitrary'' standard used by the courts to review the Tribunal's decisions, he must be presented by the CARP with a detailed rational analysis of its decision, setting forth specific findings of fact and conclusions of law. This requirement of every CARP report is confirmed by the legislative history to the Reform Act which notes that a ''clear report setting forth the panel's reasoning and findings will greatly assist the Librarian of Congress.'' H.R. Rep. No. 286, 103d Cong., 1st Sess. 13 (1993). Thus, to engage in reasoned decisionmaking, the CARP must ''weigh all the relevant considerations and * * * set out its conclusions in a form that permits [a determination of] whether it has exercised its responsibilities lawfully.'' *National Cable Television Association v. CRT,* 689 F.2d 1077, 1091 (D.C. Cir. 1982). This goal cannot be reached by ''attempt[ing] to distinguish apparently inconsistent awards with simple, undifferentiated allusions to a 10,000 page record.'' *Christian Broadcasting Network, Inc. v. CRT,* 720 F.2d 1295, 1319 (D.C. Cir. 1983).

It is the task of the Register of Copyrights to review the CARP report and make her recommendation to the Librarian as to whether the report is arbitrary or contrary to the provisions of the Copyright Act and, if so, whether, and in what manner, the Librarian should substitute his own determination.

Petitions To Set Aside the Panel's Determination

On January 2, 1997, and on January 3, 1997, the two pro se parties filed their petitions with the Librarian to modify and/or set aside the decision of the CARP, along with motions requesting leave to file the petitions late. *See* 37 CFR 251.55(a). The Office accepted the late filings and issued an order requesting that any replies to the petitions be filed with the Office no later than January 17, 1997. Order, Docket No. 95–1 CARP DD 92–94 (January 3, 1997). The purpose of the petitions to modify or set aside the Panel's determination is to identify aspects of the Panel's report which are arbitrary with respect to record evidence or contrary to the applicable statutory provisions.

In her petition, Ms. Alicia Evelyn enumerated an array of reasons to set aside the determination of the CARP in this proceeding, stating that ''[t]he panel, in its report, failed to address matters in controversy * * *.'' Petition to Set Aside the Determination of the Copyright Arbitration Royalty Panel in the Above-Referenced Matter Submitted by Alicia Carolyn Evelyn, Individual, Pro Se, Claimant (Evelyn Petition) at 2. The purported controversies which the CARP failed to address include: (1) Failure on the part of the Settling Parties to identify their DART eligible associates and members and at least one DART eligible title for the 1992–94 period, *Id.* at 2; (2) failure on the part of the Settling Parties to provide data to individual claimants pertaining to their DART eligible songs, including, but not limited to the songs ''I'm Counting on You'' and ''I Thank You,'' *Id.* at 3; (3) selection of SoundScan to determine the extent of record sales rather than use of performance data, *Id.* at 7; (4) use by Mr. Michael Fine [4], expert witness for the Settling Parties, of an incomplete list of DART eligible songs when evaluating SoundScan data for record sales of Ms. Evelyn, *Id.* at 7; (5) unexplained use of total record sales, as reported by SoundScan, for 1992, rather than record sales for the relevant period, October 28, 1992—December 31, 1992, and concomitant use of total record sales for the claimant during this same period, *Id.* at 7–8; (6) failure to include record club sales and/or computer sales in the calculations for total record sales, *Id.* at 8; and (7) failure on the part of certain Settling Parties to fulfill their fiduciary obligations toward their members. *Id.* at 9–10.

Whereas Ms. Evelyn's petition stated her concerns with certain particularity, Mr. Curry's petition to set aside the panel's determination rests primarily on a fundamental assertion that the Settling Parties never proved their case. Petition to Set Aside the Determination of the Arbitration Royalty Panel, submitted by Eugene Curry (Curry Petition), at 1. Mr. Curry argues that he had to submit specific titles of his works and documentation of record sales whereas the Settling Parties produced no hard numbers for the record sales of any claimant represented by the Settling Parties. *Id.* at 2,3,4. Curry further argues that it was error for Ms. Smith [5] to supply Mr. Fine with authorship data and not present any data on the number of disseminations of his works through transmissions, i.e. radio play, *id.* at 2, implying that the Panel failed to properly apply the statutory criteria for making its determination. Additionally, Mr. Curry submits that he supplied the Settling Parties with documentation of record club sales in support of his argument that SoundScan was not the only source of record sales data, nor the best source, but this information was not utilized in the final report to adjust the sales figures. *Id.* at 4.

In reply, the Settling Parties request that the Librarian deny Ms. Evelyn's and Mr. Curry's petitions on both procedural and substantive grounds. The Settling Parties contend that the Panel's report was not arbitrary or contrary to the law, when analyzed under the applicable standard of review, and therefore, should be adopted as filed by the Librarian. Furthermore, the Settling Parties oppose the Evelyn and Curry petitions because each petition failed to reference applicable sections of the party's proposed findings of fact and conclusions of law. *See* 37 CFR 251.55(a).

Sufficiency of Ms. Evelyn's and Mr. Curry's Petitions To Modify

Before the Register can address the issues raised by Ms. Evelyn's and Mr. Curry's petitions to modify the determination of the Panel, the Register must first address the contention raised by the Settling Parties that the petitions must be dismissed for failure to comply with section 251.55(a) of the CARP rules. That section provides that each petition must ''state the reasons for modification or reversal of the panel's determination, and shall include applicable sections of the party's proposed findings of fact and conclusions of law.'' 37 CFR 251.55(a).

Review of Ms. Evelyn's and Mr. Curry's petitions reveals that neither comply with the second part of the rule which requires identification of applicable portions of a petitioner's proposed findings of fact and conclusions of law. The purpose of this requirement is to enable the Register, and the Librarian, to locate those portions of the testimony that support each party's petition. However, absent a showing of bad faith, the remedy for failure to comply with the requirement is not dismissal of a party's petition to modify. Rather, the remedy is for the Register to direct the offending party to amend his or her petition to include identification of the applicable portions of their proposed findings of fact and conclusions of law. This approach,

[4] Mr. Fine is the Chief Executive Officer of SoundScan, Inc. Witness Affidavit, Settling Parties' Direct Case.

[5] Ms. Smith is Vice President of Performing Rights of Broadcast Music, Inc. Witness Affidavit, Settling Parties' Direct Case.

however, is not necessary in this proceeding because the record is relatively small. Therefore, Ms. Evelyn's and Mr. Curry's petitions to modify were accepted.

Review of the CARP Report

In reviewing the determination of a CARP, the Register is required to confine her consideration to the record of the proceeding. 17 U.S.C. 802(f). The record in this proceeding consists solely of the written direct cases of the Settling Parties, Ms. Evelyn, and Mr. Curry. Consequently, despite the protestations of Ms. Evelyn and Mr. Curry, the Register will not address issues raised in their petitions to modify which go beyond the evidence presented in the written direct cases.

The Register's review is in three parts: (1) An analysis of the statutory criteria to be used in the current proceeding; (2) an analysis of the methodology adopted by the Panel to implement the statutory criteria; and (3) an analysis of the application of the adopted methodology to the record evidence.

1. *Statutory criteria.* The Audio Home Recording Act of 1992 clearly delineates the statutory criteria to be considered when making a distribution of DART royalties. Specifically, a CARP may only consider ''the extent to which, during the relevant period * * * each musical work was distributed in the form of digital musical recordings or analog musical recordings or disseminated to the public in transmissions.'' 17 U.S.C. 1006(c)(2). While a CARP is limited to these two statutory criteria in determining a DART royalty distribution, the statute does not require the application of both criteria. Thus, in circumstances where the parties to a DART distribution have presented evidence as to only one of the criteria, there is no requirement that a CARP request evidence as to the second criteria as well.

In this proceeding, the parties presented credible evidence only as to the distribution criteria (record sales).[6] The Register concludes that the Panel acted properly in basing its determination solely on the evidence of record sales, and was not required to take record evidence as to the dissemination of musical works in transmissions when no such evidence was submitted by the parties. Further, the Register determines that the Panel acted properly by refusing to consider evidence presented by Ms. Evelyn and Mr. Curry that was not relevant to the section 1006(c)(2) criteria. *See,* CARP Report, para. 52.

2. *Methodology.* The Settling Parties presented the only systematic method for determining the distribution of the royalties in the Musical Works Funds. The formula divided the total song title sales credited to a claimant during a particular year by the total song titles sold during the same year. This calculation determines the claimant's proportionate share of the royalties for that period of time. The Panel found this formulation acceptable for making its determination because it allows each claimant to receive credit for actual sales during the relevant period. CARP Report, para. 54. Additionally, the Panel noted that Ms. Evelyn and Mr. Curry failed to propose any alternative systematic method or formula for calculating a claimant's share of the royalties. CARP Report, paras. 40 and 48.

Although neither Ms. Evelyn nor Mr. Curry challenge the Settling Parties' formula for determining each claimant's share of the royalties, Mr. Curry does challenge application of the formula solely to himself and Ms. Evelyn,—that is, not the Settling Parties. The Register concludes that the Panel did not act arbitrarily by using the formula to determine Mr. Curry's and Ms. Evelyn's proportionate share of the royalties from actual sales data. First, the Panel found that the Settling Parties represent all claims except those of Mr. Curry and Ms. Evelyn. CARP Report, paras. 36 and 37. Second, based on this finding and application of the simple mathematical concept that the sum of the parts must equal the whole, the Panel accepted the presentation of evidence for the two individual claimants' share of the royalties and deducted this sum from 100% to determine the Settling Parties' share of the royalties. CARP Report, para. 69. Such an approach is logical and consistent and was fully within the discretion of the Panel.

Ms. Evelyn raises a second challenge to the methodology utilized by the Panel. Specifically, she challenges the fact that the Panel considered the total sales figures for 1992, rather than only those sales which occurred during the time period that the Audio Home Recording Act was in effect (October 28, 1992 to December 31, 1992). The Register determines that this challenge is not fatal to the Panel's action. First, Ms. Evelyn did not file a claim to DART royalties for 1992, and her distribution is not affected by the Panel's determination for 1992. Second, there is no evidence in the record that suggests that the Panel could have ascertained the universe of record sales, and the sales of Mr. Curry, for the period from October 28, 1992, through December 31, 1992. Nevertheless, the Panel determined Mr. Curry's percentage claim from the annual sales data under an apparent assumption that record sales occurred at the same rate throughout 1992. A careful review of the record reveals no evidence suggesting that the rate of record sales during the effective period of the Audio Home Recording Act was statistically different from the rate of sales throughout the remainder of the calendar year. Consequently, the Register finds the Panel's use of the annual sales figures not arbitrary, although evidence of record sales from this period would have provided the ideal precision for application of the formula. *See, National Association of Broadcasters* v. *Copyright Royalty Tribunal,* 675 F.2d 367, 379 n.10 (D.C. Cir. 1982) (Tribunal's findings acceptable ''though of less than ideal clarity,'' so long as ''the path which the agency follows can reasonably be discerned.'').

3. *Application of Methodology to Record Evidence.* The Register finds that the Panel did act arbitrarily in determining Mr. Curry's[7] share of the 1992, 1993, and 1994 Publishers Subfunds. The Panel erred by determining that Mr. Curry, as writer, and Mr. Curry, as publisher, were to receive the same award.

In determining Mr. Curry's record sales for the Writers Subfunds, the Panel prorated his sales based on his percentage contribution as author to each musical work. For example, the Panel accorded Mr. Curry credit for one-half, 50%, of the total record sales for the musical work ''Burnin'' because he was the co-author of the work. CARP Report, para. 34. While this approach is appropriate in determining Mr. Curry's share of the Writers Subfunds, it is contrary to the evidence in determining his share of the Publishers Subfunds. There is no evidence in the record which demonstrates that Mr. Curry was entitled to anything less than a one hundred percent publishing interest from the sales of the musical works credited to him by the Panel for the Publishers Subfunds. The Register is, therefore, recommending that Mr. Curry's award for the 1992–1994 Publishers Subfunds be adjusted to reflect a one hundred percent

[6] The Panel found that while the Settling Parties and Mr. Curry did not present any evidence of performances, the evidence presented by Ms. Evelyn as to performances of her works was not competent. Report, paras. 46–47. After reviewing the record, the Register concludes that this determination by the Panel was not arbitrary.

[7] In his capacity as sole representative of Tajai Music, Inc., Mr. Curry filed claims to the 1992, 1993, and 1994 Publishers Subfunds.

publishing interest for Mr. Curry as sole representative of Tajai.

One final point raised by Mr. Curry and Ms. Evelyn concerns the use of SoundScan as the definitive source of record sales data. The Report, however, clearly indicates that the Panel did consider evidence submitted by Mr. Curry regarding sales through record companies, and that after due consideration, the Panel rejected the evidence because he failed to provide the universe of record sales for these companies during the relevant time. CARP Report, para. 40. The Panel's decision to reject the record sales data submitted by Mr. Curry and rely upon the SoundScan data was not arbitrary.

Similarly, Ms. Evelyn's contention that the Settling Parties failed to provide additional data concerning additional DART eligible songs is without merit. The Panel carefully analyzed her direct case and found no credible evidence of sales or performances in the U.S. during the relevant period, CARP Report, paras. 41–48; the Panel did credit her with sales of musical works introduced by the Settling Parties. CARP Report, para. 35. Furthermore, the Register notes that the evidence presented by the Settling Parties, and adopted by the Panel, for record sales of Ms. Evelyn and Mr. Curry credit them both with greater sales than the evidence they presented in their written direct cases, thereby increasing the size of their respective awards. CARP Report, para. 62 and 64.

As discussed earlier in this Order, the Librarian's scope of review is very narrow. The limited scope certainly does not extend to reconsideration of the relative weight to be accorded particular evidence, and the Librarian cannot second guess a CARP's balance and consideration of the evidence, unless it runs counter to the evidence presented to it. *Motor Vehicle Manufacturers Association* v. *State Farm Mutual Auto Insurance Co.*, 463 U.S. 29, 43 (1983).

Conclusion

For the above stated reasons, the Register recommends that the following should be the percentages for the distribution of the royalties in the 1992, 1993, and 1994 Musical Works Funds:

	1992		1993		1994	
	Writers	Publishers	Writers	Publishers	Writers	Publishers
Curry	00.007096	00.014745	00.001608	00.003802	00.003398	00.007066
Evelyn	NA	NA	00.000084	NA	00.000082	NA
Settling Parties	99.992904	99.985255	99.998308	99.996198	99.99652	99.992934
Total	100.00	100.00	100.00	100.00	100.00	100.00

II. Order of the Librarian of Congress

Having duly considered the recommendation of the Register of Copyrights regarding the report of the Copyright Arbitration Royalty Panel in the distribution of the 1992–1994 Musical Works Funds, the Librarian of Congress fully endorses and adopts her recommendation to accept the Panel's decision in part and reject it in part. For the reasons stated in the Register's recommendation, the Librarian is exercising his authority under 17 U.S.C. 802(f) and is issuing an order setting the distribution of the royalties in the 1992–1994 Musical Works Funds.

Wherefore, *it is ordered* that the royalties in the 1992–1994 Musical Works Funds shall be distributed according to the following percentages:

	1992		1993		1994	
	Writers	Publishers	Writers	Publishers	Writers	Publishers
Curry	00.007096	00.014745	00.001608	00.003802	00.003398	00.007066
Evelyn	NA	NA	00.000084	NA	00.000082	NA
Settling Parties	99.992904	99.985255	99.998308	99.996198	99.99652	99.992934
Total	100.00	100.00	100.00	100.00	100.00	100.00

As provided in 17 U.S.C. 802(g), the period for appealing this Order to the United States Court of Appeals for the District of Columbia is 30 days from the effective date of this Order.

Dated: February 3, 1997.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 97–3316 Filed 2–11–97; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–013)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

Copies of patent applications cited are available from the Office of Patent Counsel, Goddard Space Flight Center. Claims are deleted from the patent applications to avoid premature disclosure.

DATES: February 12, 1997.

FOR FURTHER INFORMATION CONTACT: Guy M. Miller, Patent Counsel, Goddard Space Flight Center, Mail Code 204, Greenbelt, MD 20771; telephone (301) 286–7351.

NASA Case No. GSC–13,524–2: A Dual Amplitude and Dual-Time-of Flight Ultrasonic Imaging System;

NASA Case No. GSC–13,681–1: Low Cost GPS Receiver;

NASA Case No. GSC–13,708–1: Segmented Cold Cathode Display Panel;

NASA Case No. GSC–13,801–2: Using A 3–D Sprag in Ratcheting Tools Based on Pat. No. 5,482,144.

Dated: February 4, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–3414 Filed 2–11–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

TYPE: Quarterly Meeting.

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, P.L. 94–409).

DATES: March 23–24, 1997, 8:30 a.m. to 5:00 p.m.

LOCATION: Sheraton Uptown Albuquerque Hotel, 2600 Louisiana Boulevard, NE, Albuquerque, New Mexico 87110; 505–881–3736.

FOR INFORMATION CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW., Suite 1050, Washington, DC 20004–1107; (202) 272–2004 (Voice), 272–2074 (TT), (202) 272–2022 (Fax); mquigley@cnd.gov (e-mail).

AGENCY MISSION: The National Council on Disability is an independent federal agency comprised of 15 members appointed by the President of the United States and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature or severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council on Disability shall be open to the public.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Strategic Planning
Unfinished Business
New Business
Announcements
Adjournment

Records shall be kept of all National Council on Disability proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on February 3, 1997.

Ethel D. Briggs,

Executive Director.

[FR Doc. 97–3612 Filed 2–10–97; 3:23 pm]

BILLING CODE 6820–MA–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Microelectronic Information Processing Systems; 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: Special Emphasis Panel in Microelectronic Information Processing Systems (1206).

Date and Time: February 26, 1997; 8:30 a.m. to 5:00 p.m.

Place: Room 360, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Michael Foster, Program Director, Microelectronic Information Processing Systems Division, National Science Foundation, Rm. 1155, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1936.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Computer Systems Research and Experimental Systems programs in the area of microelectronic information processing systems.

Reasons For Closing: The proposals being reviewed include information of a confidential nature including technical information; financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b.(c) (4) and (6) of the Government in the Sunshine Act.

Linda Allen-Benton,

Deputy Director, Division of Human Resource Management, Acting Committee Management Officer.

[FR Doc. 97–3459 Filed 2–11–97; 8:45 am]

BILLING CODE 7555–01–M

Sunshine Act Meeting

AGENCY HOLDING MEETING:

National Science Foundation

National Science Board

DATE AND TIME:

February 20, 1997, 3:45 p.m., Executive Closed Session

February 20, 1997, 4:00 p.m., Open Session

February 21, 1997, 8:20 a.m., Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, Virginia 22230.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, February 20, 1997
Executive Closed Session (3:45 p.m.–4:00 p.m.)

—Minutes, November 1996 Meetings
—Personnel

Thursday, February 20, 1997
Open Session (4:00 p.m.–6:30 p.m.)

—Discussion Item: Mechanisms for Setting Priorities in Science & Engineering (Guests: Dr. Frank Press; Dr. Ed David)

Friday, February 21, 1997
Open Session (8:20 a.m.–9:15 a.m.)

—Minutes, November 1996 Meeting
—Closed Session Agenda Items—March 1997 Meeting
—Chairman's Report
—Director's Report
—Program Approval: The Science and Technology Centers Program
—Reports from Committees
—Other Business
—Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 97–3644 Filed 2–10–97; 2:24 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–530]

Arizona Public Service Company, et al., (Palo Verde Nuclear Generating Station, Unit 3); Exemption

I.

On November 25, 1987, the Commission issued Facility Operating License No. NPF–74 to Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, El Paso Electric Company, Southern California Edison Company, Public Service Company of New Mexico, Los Angeles Department of Water and Power, and Southern California Public Power Authority for the Palo Verde Nuclear Generating Station, Unit 3. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II.

Several sections of Title 10 of the Code of Federal Regulations discuss requirements for fuel that is used in light water nuclear power reactors. Since these requirements refer to specific cladding types of zircaloy or ZIRLO, the use of fuel clad with other zirconium-based alloys, or any other cladding material, that do not conform to these two designations requires an exemption from the code.

Specifically, 10 CFR 50.44, ''[s]tandards for combustible gas control system in light-water-cooled power reactors,'' contains requirements for the control of hydrogen gas that may be generated after a postulated loss-of-coolant accident in light-water nuclear power reactors fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding. Section 50.46 of Title 10 of the Code of Federal Regulations, ''[a]cceptance criteria for emergency core cooling systems for light water nuclear power reactors,'' contains acceptance criteria for emergency core cooling systems (ECCS) for light-water nuclear power reactors fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding. Appendix K to Part 50, ''ECCS Evaluation models,'' contains the required and acceptable features for ECCS evaluation models to meet the requirements of 10 CFR 50.46. Paragraph I.A.5 of Appendix K states that the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. The Baker-Just equation presumes the use of Zircaloy or ZIRLO clad fuel.

Testing of advanced clad materials is necessary to provide data to justify full-core use of clad materials and a subsequent rule change to implement the advanced clad designs.

III.

By letter dated September 12, 1996, as supplemented by letter dated December 13, 1996, Arizona Public Service Company (APS, or the licensee), submitted a request for exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and Appendix K to Part 50, to allow use of three lead fuel assemblies (LFAs) that contain advanced zirconium-based cladding materials. These assemblies would be used to evaluate the performance of the advanced cladding materials for three fuel cycles, which are cycles 7, 8, and 9.

Pursuant to 10 CFR 50.12(a), ''[t]he Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever—* * * (ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *''. As discussed in Section II. above, three separate sections of Title 10 to the Code of Federal Regulations establish requirements for performance of fuel used in light-water nuclear power reactors. These regulations refer to the use of zircaloy or ZIRLO cladding material, but do not specify what constitutes zircaloy. Therefore, the use of fuel that is clad with other zirconium-based alloys may not be within the regulatory basis for use of other alloys and would, in effect, place the licensee outside the applicability of these sections of the code. The licensee would require an exemption to these portions of the code to allow use of advanced zirconium-based alloys in its reactor.

The information provided by the licensee in its September 12, 1996, letter demonstrates that the predicted chemical, mechanical, and material performance characteristics of the advanced zirconium-based cladding is within the parameters approved for zircaloy under anticipated operations occurrences and postulated accidents. In addition, nominal fuel performance characteristics of the advanced zirconium-based clad test rods continue to be the same as, or superior to, those experienced with existing Zircaloy-4 fuel rods. The information provided in the licensee's December 13, 1996, letter demonstrated that although two of the three proposed lead fuel assemblies will be in relatively high power and rodded positions during Unit 3 Cycle 7, these assemblies will not be in limiting (the highest power) regions of the core. The licensee also proposes to include up to six fuel rods that have already been exposed for three fuel cycles in one of the three fuel assemblies. These rods are being tested to determine the effects on the cladding of extended burnup. These rods will be measured after Cycle 6, and before use in Cycle 7, to ensure that end of cycle (EOC) 7 maximum circumferentially averaged oxide thickness projected for each rod transferred will remain below the approved oxide thickness limit, and that adequate shoulder gap will exist at EOC 7 for each rod using conservative assumptions for fuel rod and fuel assembly growth. The staff concludes that the use of advanced zirconium-based cladding materials in three lead fuel assemblies in non-limiting core locations will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

The underlying purpose of 10 CFR 50.44 is to ensure that adequate means is provided for the control of hydrogen gas that may be generated following a loss of coolant accident (LOCA). The hydrogen produced in a post-LOCA scenario comes from cladding oxidation in a metal-water reaction. Most of the high temperature oxidation occurs during that portion of the LOCA scenario that results in a molecular phase of zirconium (the beta-phase) that allows a significantly higher diffusion coefficient for oxygen than that molecular phase of zirconium that exists during normal operation (the alpha-phase). The beta-phase oxidation resistance of the proposed alloys is expected to be as good as, or better than, that of the existing Zircaloy–4. In addition, the elemental composition used in the proposed alloy to improve the corrosion resistance of the alpha-phase of these alloys will also improve the corrosion resistance of the beta-phase of these alloys as well. The staff therefore concludes that the beta-phase oxidation rate of the proposed alloys will be at or lower than that of the

existing Zircaloy–4. A strict interpretation of the rule in this instance would conclude that the criteria of 10 CFR 50.44 are not met by advanced zirconium-based alloys, since these alloys are not specifically zircaloy or ZIRLO. Since the advanced zirconium-based alloys meet the underlying purpose of the rule, strict application of the rule to only apply to zircaloy or ZIRLO cladding is not necessary to achieve the underlying purpose of the rule. Since strict application of 10 CFR 50.44 is not necessary to meet the underlying purpose of the rule, special circumstances exist to grant an exemption from this regulation to allow a reactor to contain three lead fuel assemblies containing fuel rods clad with advanced zirconium-based alloys.

The underlying purpose of 10 CFR 50.46 is to specify acceptance criteria for ECCS performance at light-water nuclear power reactors. The fuel rods clad with the advanced zirconium-based alloys will be identical in design and dimensions to the fuel rods clad with the existing Zircaloy–4. The advanced cladding materials used in the proposed fuel assemblies were chosen to improve corrosion resistance exhibited in ex-reactor autoclave corrosion tests in both high-temperature water and steam environments. Fuel rods clad with similar types of advanced zirconium-based alloys have been successfully irradiated in high-temperature PWRs in Europe. The mechanical properties of the advanced zirconium-based alloy clad meets all the mechanical requirements of the existing Zircaloy–4 procurement specifications. Thus the cladding and structural integrity of the fuel rods and fuel assemblies with advanced zirconium-based alloy cladding will be maintained. In addition, although the staff has not yet reviewed and generically approved the overall behaviors of alloys A and F to meet the limits of ECCS performance criteria requirements, the three lead fuel assemblies will be placed in non-limiting locations within the core. Based on the above considerations, the staff concludes that the lead fuel assemblies will perform acceptably under postulated LOCA conditions. Thus, the underlying purpose of the rule has been met. A strict interpretation of the rule in this instance would conclude that the criteria of 10 CFR 50.46 are not met by advanced zirconium-based alloys, since these alloys are not strictly zircaloy or ZIRLO. Since the advanced zirconium-based alloys meet the underlying purpose of the rule, strict application of the rule to only apply to zircaloy or ZIRLO cladding is not necessary to achieve the underlying purpose of the rule. Therefore, special circumstances exist to grant an exemption from 10 CFR 50.46 that would allow the licensee to apply the acceptance criteria of 10 CFR 50.46 to a reactor containing a limited number of fuel rods with advanced zirconium-based alloys.

Paragraph I.A.5 of Appendix K to 10 CFR Part 50 states that the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for advanced zirconium-based alloys for determining acceptable fuel performance. The underlying intent of this portion of the Appendix, however, is to ensure that analysis of fuel response to LOCAs is conservatively calculated. Due to the similarities in the composition of the advanced zirconium-based alloys and Zircaloy/ZIRLO, the application of the Baker-Just equation in the analysis of advanced zirconium-based clad fuel will conservatively bound all post-LOCA scenarios. Thus, the underlying purpose of the rule will be met. Thus, special circumstances exist to grant an exemption from Appendix K to 10 CFR Part 50 that would allow the licensee to apply the Baker-Just equation to advanced zirconium-based alloys.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a)(i), that an exemption as described in Section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has determined, pursuant to 10 CFR 50.12(a)(2)(ii), that special circumstances exist, as noted in Section III above. Therefore, the Commission hereby grants Arizona Public Service Company, *et al.*, an exemption from 10 CFR 50.44, 10 CFR 50.46, and Appendix K to 10 CFR Part 50 for use of lead fuel assemblies.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant impact on the quality of the human environment (62 FR 3925).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 4th day of February 1997.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–3463 Filed 2–11–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2 Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–58 and DPR–74, issued to Indiana Michigan Power Company, (the licensee), for operation of the D. C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of the Proposed Action

By letter dated February 26, 1996, the licensee requested amendments to the Technical Specifications (TS) to allow an increased limit for the nominal enrichment of new (unirradiated) Westinghouse fabricated fuel stored in the new fuel storage racks. The proposed changes would allow for the storage of fuel with an enrichment not to exceed a nominal 4.95 weight percent (w/o) U–235, subject to certain integral fuel burnable absorber (IFBA) requirements, in the new fuel storage racks. Plant operation using the higher enriched fuel will be demonstrated to be acceptable by a cycle specific reload safety evaluation performed prior to each fuel loading.

Need for Proposed Action

The licensee intends to use higher enrichment fuel in subsequent fuel load cycles which does not currently meet the new fuel storage limits in the TSs. By increasing the fuel enrichment, the licensee will implement the fuel strategies developed for D.C. Cook Units 1 and 2.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TSs and concludes that storage of fuel enriched with U–235 up to 4.95 weight percent at D.C. Cook Units 1 and 2 is acceptable. The safety considerations associated with higher enrichments have been evaluated by the NRC staff and the staff has concluded

that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. As a result, there is no increase in individual or cumulative radiation exposure.

The environmental impacts of transportation resulting from the use of higher enrichment and extended irradiation are discussed in the staff assessment entitled ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation.'' This assessment was published in the Federal Register on August 11, 1988 (53 FR 30355), as corrected on August 24, 1988 (53 FR 32322), in connection with the Shearon Harris Nuclear Power Plant, Unit I: Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of an increase in fuel enrichment of up to 5 weight percent U–235 and irradiation limits of up to 60 Gigawatt Days per Metric Ton (GWD/MT) are either unchanged, or may in fact be reduced from those summarized in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to the proposed amendment for D.C. Cook Units 1 and 2. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed changes involve systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The 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 this action was published in the Federal Register on April 24, 1996 (61 FR 18172).

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for D.C. Cook, Units 1 and 2, dated August 1973.

Agencies and Persons Contacted

In accordance with its stated policy, on December 20, 1996, the Commission consulted with the Michigan State official, Mr. Dennis Hahn of the Michigan Department of Public Health, Nuclear Facilities and Environmental Monitoring, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the application for license amendment dated February 26, 1996. Copies are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland, this 28th day of January 1997.

For the Nuclear Regulatory Commission.

John B. Hickman,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–3462 Filed 2–11–97; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on February 19, 1997, Room T–2B3, at 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting may be closed to public attendance pursuant to 5 U.S.C. 552b(c)(4), which authorizes closure of meetings to protect proprietary information, and 5 U.S.C. 552b(c)(9)(B), which authorizes closure of meetings to protect information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action.

The agenda for the subject meeting shall be as follows:

Wednesday, February 19, 1997—8:30 a.m. until the conclusion of business

The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions for deliberation by the full Committee, regarding technical issues associated with AP600 test data generated at the ROSA and Oregon State University APEX test facilities. The Subcommittee may hear separate presentations by representatives of the NRC staff and the Westinghouse Electric Corporation regarding the test data.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: February 6, 1997.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 97–3461 Filed 2–11–97; 8:45 am]

BILLING CODE 7590–01–P

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 January 17, 1997, through January 31, 1997. The last biweekly notice was published on January 29, 1997 (62 FR 4341).

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 March 14, 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.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: November 26, 1996

Description of amendment request: The proposed amendment would change the definition of ''Primary Containment Integrity,'' Note 6 on Table 3.2.A, correct a typographical error on Table 3.2 D, correct Table 3.2.F to reflect modifications to the plant and changes to Bases sections 3/4.6G and 3/4.7.A. These changes are considered administrative and have no effect on plant design, safety limit settings or plant system operation.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed administrative changes involving typographical errors, additions for clarity and consistency, and updating the Bases do not affect plant design, safety limit settings, or plant system operation and, therefore, do not modify or add any initiating parameters that would significantly increase the probability or consequences of any previously analyzed accident.

The changes to instrument numbers and type do not change the parameters being surveyed or the number of operable channels for these parameters. These changes do not modify or add any initiating parameters and do not affect plant design, safety limit settings, or plant system operation. Therefore, these instrument changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

These proposed changes do not involve any potential initiating events that would create any new or different kind of accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

These changes do not affect any safety analysis assumptions, system operation, structures, potential initiating events or safety limits. Therefore, it is concluded that the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 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: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Patrick D. Milano, Acting

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: January 24, 1997

Description of amendment request: The proposed amendment will update the Safety Limit Minimum Critical Power Ratio (SLMCPR) in Technical Specification (TS) 2.1.2 and the associated Bases section to reflect the results of the latest cycle-specific calculation performed for the Pilgrim Nuclear Power Station Operating Cycle 12. In addition, the values provided in Note 5 of Table 3.2.C.1, which are based on the SLMCPR values, have been revised as a result of the changes to the SLMCPR value.

Basis for proposed no significant hazards 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: 11.The proposed technical specification changes do not involve a significant increase in the probability of an accident previously evaluated.

The derivation of the revised SLMCPR for Pilgrim for incorporation into the TS, and its use to determine cycle-specific thermal limits, have been performed using NRC approved methods. Additionally, interim implementing procedures that incorporate cycle-specific parameters have been used which result in a more restrictive value for SLMCPR. These calculations do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

The basis of the MCPR [minimum critical power ratio] Safety Limit is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPR preserves the existing margin to transition boiling, and the probability of fuel damage is not increased.

The basis of the MCPR criteria that define a limiting rod pattern is to ensure the SLMCPR is not violated in the event a control rod is fully withdrawn from the core. The new MCPR criteria that define a limiting rod pattern continue to ensure the SLMCPR is not violated in the event a control rod is fully withdrawn from the core. These new criteria do not change the method of operating the plant and have no effect on the probability of an accident initiating event or a transient.

Therefore, the proposed 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 changes result only from a revised method of analysis for the Cycle 12 core reload. These changes do not involve any new method for operating the facility and do not involve any facility modifications. No new initiating events or transients result from these changes. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident 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 TS bases will remain the same. The new SLMCPR is calculated using NRC approved methods which are in accordance with the current fuel design and licensing criteria. Additionally, interim implementing procedures, which incorporate cycle-specific parameters, have been used. The SLMCPR remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity.

The new MCPR criteria that define a limiting rod pattern continue to ensure the SLMCPR is not violated in the event a control rod is fully withdrawn from the core.

Therefore, the proposed TS changes do not involve a 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 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: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Patrick D. Milano, Acting

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: January 29, 1997

Description of amendment request: The proposed change adds a new entry 3.0.5 to the plant Technical Specifications (TS) to provide specific guidance for returning equipment to service under administrative control for the sole purpose of performing testing to demonstrate operability.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not affect the operation or design of the plant in any way. Operation of plant equipment under this change will not differ in any way from its normal operational mode. The normal operation of plant equipment is not a precursor to any accident. The purpose of tests performed using this change are to demonstrate that required automatic actions are carried out. Equipment will be operated under administrative control for only a short period of time. Personnel will be immediately available to take appropriate manual action if it should be required. Therefore operation of equipment under this change is not expected to increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed testing allowance does not involve any physical alterations or additions to plant equipment or alter the manner in which any safety-related system performs its function. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3.

The proposed amendment does not involve a signifcant reduction in the margin of safety.

Equipment will be operated under administrative control for only a short period of time. Personnel will be immediately available to take appropriate manual action if it should be required. The purpose of the testing is to restore required equipment to an OPERABLE state which increases the automatic protection available and reduces the reliance on the compensatory measures provided by ACTION statements. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: 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

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: October 24, 1996

Description of amendment request: The proposed amendment to the Perry Nuclear Power Plant Technical Specifications revises those specifications associated with the Minimum Critical Power Ratio (MCPR) Reactor Core Safety Limit. The revision would increase the MCPR Safety Limit values to make them more conservative.

Basis for proposed no significant hazards determination: The NRC staff provides its analysis of the issue of no significant hazards consideration below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

There is no change to any plant equipment, and increasing the MCPR Safety Limit is more conservative. Therefore, the proposed change does not significantly increase the probability or consequences of any 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.

There are no physical changes to the plant, and increasing the MCPR Safety Limit is more conservative. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed MCPR Safety Limit values are more conservative, and were calculated using NRC approved methods. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed the amendment request and the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Gail H. Marcus

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: August 19, 1996

Description of amendment request: The proposed amendments revise the steam generator (SG) repair criteria in the Byron, Unit 1, and Braidwood, Unit 1, Technical Specifications (TS). These revisions, if approved, would continue the use of the voltage-based SG tube repair criteria added by Amendment No. 77, dated November 9, 1995, to the Byron 1 TSs and by Amendment No. 69, dated November 9, 1995, to the Braidwood 1 TSs. The subject voltage-based repair criteria are applicable only for a specific form of SG tube degradation identified as outer diameter stress corrosion cracking (ODSCC), which is confined entirely within the thickness of the SG tube support plates (TSPs). Specifically, the pending amendments for both units would continue for one more operating cycle, the present use of a lower voltage repair limit of 3.0 volts on the hot leg side of the SGs using the Locked-Tube model. The cold leg side of the SGs and certain hot leg side tube/TSP intersections (e.g., dented SG tube intersections) would continue to be repaired using the Free-Span model. The proposed amendments are needed because the applicability of the revised voltage-based SG tube repair criteria for ODSCC which were added in the prior amendments cited above, was limited to only one full operating cycle for Braidwood 1 ending in spring 1997 and for the operating cycle ending in late 1997 for Byron 1.

Additionally, the inspection and reporting requirements added to the Byron 1 and Braidwood 1 TSs by the prior amendments cited above, would also be continued for one more operating cycle for both units. The maximum permissible value of the iodine-131 concentration in the primary coolant in both the Byron 1 and Braidwood 1 TSs remains unchanged at 0.35 microcuries per gram of coolant. Finally, the Bases sections in the Byron 1 and Braidwood 1 TSs are proposed to be revised to introduce the terminology associated with the Locked-Tube SG tube model and that of the Free-Span model.

Basis for proposed no significant hazards 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.

This amendment request proposes to renew the SG tube plugging/repair criteria previously approved by the NRC in Amendments 69 and 77 to Braidwood and Byron Technical Specifications, respectively.

The previously evaluated applicable accidents are steam generator tube burst and Main Steam Line Break (MSLB). The postulated MSLB outside of containment but upstream of the Main Steam Isolation Valve (MSIV) represents the most limiting radiological condition relative to the IPC. The potential impact on public health and safety as a result of renewing the SG tube interim plugging criteria contained in the current Braidwood and Byron Technical Specifications is very low as discussed below. Tube burst due to predominantly axially oriented ODSCC at the TSP intersections is precluded during normal operating plant conditions since the tube support plates are adjacent to the degraded regions of the tube in the tube-to-tube support plate crevices.

During accident conditions, i.e., MSLB, the tubes and TSP may move relative to each other. This can expose the crack length portion to free-span conditions. Testing has shown that the burst pressure correlates to the crack length that is exposed to the free-span, regardless of the length that is still contained within the TSP bounds.

Therefore, a more appropriate methodology has been established for addressing leakage and burst considerations. This methodology is based on limiting potential TSP displacements (Locked-Tube Model Intersections) during postulated MSLB events, thus reducing the free-span exposed crack length to minimal levels. The tube expansion process employed in conjunction with this tube plugging criteria is designed to provide postulated TSP displacements that result in negligible tube burst probabilities due to the minimal free-span exposed crack lengths. The tube expansions were performed during the first outage that the 3.0 volt IPC was applied (Braidwood refuel outage A1R05 -Fall 1995, and Byron midcycle outage B1P02 - Fall 1995). These expansions will be inspected in accordance with an eddy current inspection probe that is sensitive to axial and circumferential indications. This program will ensure the integrity of the expansions for the additional cycle of operation. It has been demonstrated that axial indications in the expansion region will not result in a reduction of the load carrying capability of the expanded tubes.

Thermal hydraulic modeling was used to determine TSP loading during MSLB conditions. A safety factor was conservatively applied to these loads to envelope the collective uncertainties in the analyses. Various operating conditions were evaluated and the most limiting operating condition was used in the analyses. Additional models were used to verify the thermal hydraulic results.

Assessment of the tube burst probability for the Locked-Tube Model Intersections was based on a conservative assumption that all hot-leg TSP intersections (32,046) contained through wall cracks equal to the postulated TSP displacement and that the crack lengths were located within the boundaries of the TSP. Alternatively, it was assumed that all hot-leg TSP intersections contained through wall cracks with lengths equal to the thickness of the TSP. The postulated TSP motion was conservatively assumed to be uniform and equal to the maximum displacement calculated.

The total burst probability for all 32,046 through wall indications, given a uniform MSLB TSP displacement of 0.31 inches, was calculated to be $1x10^{-5}$. This is a factor of 1000 less than the GL 95-05 burst probability limit of $1x10^{-2}$. Therefore, the functional design criteria for tube expansion was to limit the TSP motion to 0.31'' or less. However, the design goal for tube expansion limits the TSP MSLB motion to less than 0.1''. This design goal results in a total tube burst probability of $1x10^{-10}$ for all 32,046 postulated through wall indications. Additional tubes were expanded to provide redundancy for the required expansions.

The structural limit for the Locked-Tube Model Intersection SG tube repair criteria was based on axial tensile loading requirements to preclude axial tensile severing of the tube. Axially oriented ODSCC does not significantly impact the axial tensile loading of the tube. Based on the current voltage distributions and growth rates, Monte Carlo projections were performed for Braidwood Unit 1 and Byron Unit 1 for the additional cycle of operation that this proposed amendment is requesting. The End of Cycle (EOC) voltage projections for Braidwood Unit 1 Cycle 7 predict that the maximum voltage to be seen will be less than 10.5 volts. The number of indications predicted greater than ten volts at the end of Cycle 7 for Braidwood Unit 1 is 0.3. The EOC voltage projections for Byron Unit 1 Cycle 9 predict that the maximum voltage to be seen will be less than 13.5 volts. The number of indications predicted greater than ten volts at the end of Cycle 9 for Byron Unit 1 is 4.59.

Using a tensile rupture probability for a ten volt indication of $3x10^{-6}$, the probability of tensile rupture from the predicted 0.3 indications at Braidwood is $1-(1-3x10^{-6})^{0.3} = 9.0x10^{-7}$. The probability of tensile rupture from the predicted 4.59 indications at Byron is $1-(1-3x10^{-6})^{4.59} = 1.38x10^{-5}$. Both of these probabilities result in a negligible contribution to the total burst probability when compared to the $1x10^{-2}$ GL 95-05 limit.

Cellular corrosion is a more limiting mode of degradation at the TSPs with respect to affecting the tube structural limit. Tensile tests that measure the force required to sever a tube with cellular corrosion and uncorroded cross sectional areas are used to establish the lower bound structural limit. Based upon these tests, a lower bound 95% confidence level structural voltage limit of 37 volts was established for cellular corrosion. This limit meets the Regulatory Guide (RG) 1.121, ''Basis for Plugging Steam Generator Tubes,'' structural requirements based upon the normal operating pressure differential with a safety factor of 3.0 applied. Due to the limited database supporting this value, the

structural limit was conservatively reduced to 20 volts. Accounting for voltage growth and Non-Destructive Examination (NDE) uncertainty, the full IPC upper limit exceeds ten volts. However, for added conservatism a single voltage repair limit of 3.0 volts for the Locked-Tube Model Intersection indications is specified in the current plugging/repair criteria. All indications at the Locked Tube Model Intersections with bobbin coil probe voltages greater than 3.0 volts will be plugged or repaired.

The free-span tube burst probability must be calculated for the indications at the Free-Span Model Intersections. The total burst probability must be within the requirements of GL 95-05. The free-span structural voltage limit is calculated using correlations from the database described in GL 95-05, with the inclusion of the recent Byron, Braidwood, and South Texas tube pull results. The structural limit for the Free-Span Model Intersections is 4.745 volts. The lower voltage repair limit for the indications at the Free-Span Model Intersections continues to be 1.0 volt. The upper voltage repair limit for the indications at the Free-Span Model Intersections will be calculated in accordance with GL 95-05.

Since IPC will not be applied to indications at the Flow Distribution Baffle (FDB), no leakage or burst analyses are required for these indications.

Per GL 95-05, MSLB leak rate and tube burst probability analyses are required to be performed prior to returning the unit to power. The results of these analyses are to be included in a report to the NRC within 90 days of restart. If allowable limits on leak rates and burst probability are exceeded, the results are to be reported to the NRC and a safety assessment of the significance of the results is to be performed prior to returning the SGs to service.

A site specific calculation has determined the site allowable leakage limit for Braidwood and Byron. These limits use the recommended Dose Equivalent Iodine-131 transient spiking values consistent with NUREG-0800, ''Standard Review Plan'' and ensure site boundary doses are within a small fraction of the 10 CFR 100 requirements.

The projected leakage rate calculation methodology described in WCAP-14046, ''Braidwood Unit 1 Technical Support for Cycle 5 Steam Generator Interim Plugging Criteria,'' and WCAP-14277, ''SLB Leak Rate and Tube Burst Probability Analysis Methods for ODSCC at TSP Intersections,'' will be used to calculate the EOC leakage. This method includes a Probability of Detection (POD) value of 0.6 for all voltage amplitude ranges and uses the accepted leak rate versus bobbin voltage correlation methodology (full Monte Carlo) for calculating the leak rate, as described in GL 95-05. The database used for the leak and burst correlations is consistent with that described in GL 95-05 with the inclusion of the Byron Unit 1, Braidwood Unit 1, and South Texas tube pull results. The EOC voltage distribution is developed from the POD adjusted beginning-of-cycle (BOC) voltage distributions and uses Monte Carlo techniques to account for variances in growth and NDE uncertainty.

The Electric Power Research Institute (EPRI) leak rate correlation has been used. This correlation is based on free-span indications that have burst pressures above the MSLB pressure differential. There is a low but finite probability that indications may burst at a pressure less than MSLB pressure. With limited TSP motion for the Locked-Tube Model Intersections, the tube is constrained by the TSP and tube burst is precluded. However, the flanks of the crack may open up to contact the Inside Diameter (ID) of the TSP hole and result in a primary-to-secondary leak rate potentially exceeding that obtained from the EPRI correlation. This phenomenon is known as an Indication Restricted from Burst (IRB) condition.

ComEd has performed laboratory testing to determine the bounding leak rate obtainable in an IRB condition (6.0 gallons per minute). The bounding leak rate value was then applied to a leak rate calculation methodology that accounts for the MSLB leak rate contribution from IRB indications to the total leak rate calculated as described above. Results indicate that the IRB contribution to the total leak rate value is negligible. However, ComEd will conservatively add a leakage contribution due to IRBs in addition to the leakage calculated in accordance with GL 95-05. When this is done, the dose at the site boundary resulting from the predicted leakage will be a small fraction (less than 10%) of the 10 CFR 100 limits.

Modification of the Braidwood and Byron TS to clarify application of the proposed tube plugging/repair criteria is purely administrative and will not have any effect on the probability or consequences of an accident previously evaluated.

Operating experience over the last cycle with this plugging criteria applied has not revealed any unpredicted or unusual effects.

For these reasons, renewal of the current Braidwood and Byron tube plugging criteria does not adversely affect SG tube integrity and results in acceptable dose consequences. By effectively eliminating tube burst at the Locked-Tube Model TSP intersections, the likelihood of a tube rupture is substantially reduced and the probability of occurrence of an accident previously evaluated is reduced.

This conclusion is not affected by foreign or domestic plant SG experiences (NRC Information Notice 96-09 and its supplement). As the following evaluation shows, these experiences are not relevant to Braidwood or Byron.

A foreign unit detected eddy current signal distortions in one area of the top TSP during a 1995 inspection. The steam generators had been chemically cleaned in 1992. Visual inspection showed that a small section of the top TSP had broken free and was resting next to the steam generator tube bundle wrapper. The support plate showed indications of metal loss.

The chemical cleaning process used by the foreign unit was developed by the utility and differs significantly from the modified EPRI/SGOG process performed at Byron Unit 1 in 1994. The foreign chemical cleaning process, coupled with the specific application of the process, resulted in TSP corrosion of up to 250 mils compared to a maximum of 2.16 mils (11 mils maximum allowed) measured at Byron. During the Byron eddy current inspection performed after the chemical cleaning, no distortion of the tube support plate signals was reported. Therefore, these differences in cleaning processes imply that this foreign experience is irrelevant to the effects of the chemical cleaning process on the TSPs at Byron. Chemical cleaning of the SGs has not occurred at Braidwood.

A number of units have experienced TSP cracking associated with severe tube denting due to TSP corrosion at the tube-to-TSP crevice. WCAP-14273, Section 12.4, shows that a diametral reduction of a SG tube of 0.065 inches is required to develop stress levels above yield in the TSP ligaments at dented intersections. The bobbin voltage range associated with a one mil radial dent is twenty to twenty-five volts.

Although Braidwood Unit 1 and Byron Unit 1 have not seen corrosion induced denting, a 0.610 inch diameter bobbin coil probe will be used as a go/no-go gauge to assess dents at the Locked-Tube Model Intersections, if they occur in the future. If a tube has a dent at a Locked-Tube Model TSP intersection that fails to pass the go/no-go test probe, IPC will not be applied to that intersection. In addition, if the dent is determined to be corrosion induced, the Free-Span Model repair criteria will be applied to the intersections adjacent to the dented intersection. IPC repair limits will not be applied to tubes with dents greater than 5.0 volts since dent signals of this magnitude could mask a 1.0 volt ODSCC signal. Tube intersections with corrosion induced dents greater than 5.0 volts and the intersections adjacent to such an intersection were not selected for tube expansion to preclude adverse effects of the failure of such a tube on limiting TSP displacement. If corrosion induced denting, either greater than 5.0 volts or such that the tube is unable to pass a 0.610 inch diameter bobbin coil probe, are detected at an intersection adjacent to an expanded intersection, the dented intersection will be inspected by an EPRI developed technique to determine if the TSP is cracked. If a crack-like indication is identified in a TSP, a plus point inspection will be conducted per the EPRI TSP program. If the plus point inspection verifies the existence of a crack-like indication, the effect of that indication on TSP displacement will be evaluated. If this evaluation shows that TSP displacement would be greater than 0.1 inches during a MSLB event, the effected area will either be mechanically corrected or the Free-Span Model criteria will be applied to the affected area. Based on the information presented above, the SG tube denting experience at other plants is not relevant to Braidwood or Byron.

A foreign utility's SGs have experienced cracking at the top TSP. The cause of the cracking appears to be the configuration of the single anti-rotation device, connected between the SG shell and wrapper, and the wrapper internals. The single anti-rotation device carries the full load associated with the wrapper to shell motion. This rotational load is believed to be transferred to the TSP via the wrapper internals. The Byron/Braidwood Unit 1 SG design (D-4) uses three anti-rotation devices to spread the rotational load. The D-4 wrapper internals are configured such that this load is not directly transmitted to the TSP.

No top TSP cracking has been detected at Braidwood Unit 1 or Byron Unit 1 and very few (<1%) of the ODSCC indications in the SG tubes at Braidwood and Byron, to date, have been at the top TSP elevation. Nevertheless, an analysis was performed to assess the impact of cracking of the top TSP. The results show an increase in the deflection of the top TSP for a very limited number of tubes to greater than the 0.10'' limit used in the 3.0 volt IPC analysis. The deflections of the lower support plates also increased, but remain within the 0.10'' limit. Thus, a large majority of the Locked-Tube Model indications continue to be bounded by the existing analysis even with a cracked top TSP. The Locked-Tube Model repair criteria will not be applied to any SG tube ODSCC indication where the TSP has been shown to be displaced by more than 0.1 inches during accident conditions.

In response to these experiences at foreign and domestic utilities, ComEd developed an inspection plan for the SG internals to identify if indications detrimental to the load path components existed. This inspection plan was carried out at Braidwood during refueling outage A1R05 (Fall 1995) and at Byron during the midcycle outage B1P02 (Fall 1995) and refuel outage B1R07 (Spring 1996). These inspections revealed no degradation of the SG load path components necessary to support implementation of the 3.0 volt IPC. Inspections will be performed during the upcoming refuel outages at Braidwood Unit 1 and Byron Unit 1 to further ensure the integrity of the SG load path components necessary to support implementation of the 3.0 volt IPC.

A domestic utility reported several distorted TSP signals over the past three refueling outages' SG tube inspections. It was determined that these signals were associated with the TSP geometry in an area where an access cover is welded to the TSP. These signal distortions are not attributed to TSP cracking or degradation. Since the distorted signals were due to TSP geometry which did not indicate or result in a defect of the TSP, there is no increase in the probability or consequences of an accident previously evaluated due to Braidwood Unit 1 and Byron Unit 1 steam generator TSP geometries which may result in distorted eddy current signals.

One foreign unit observed a dislocation of the tube bundle wrapper when they were unable to pass sludge lancing equipment through a hand hole in the wrapper. The dislocation appears to be a result of improper attachment of the wrapper to the support structure. SG sludge lance operations have been successfully performed at Braidwood Unit 1 and Byron Unit 1 which indicates that no problem with the wrapper attachment exists. The foreign unit's wrapper support design is significantly different than that used on Braidwood Unit 1 and Byron Unit 1. Therefore, a similar wrapper dislocation will not occur and the foreign experience is not applicable to Braidwood or Byron. An inspection was conducted during the last Braidwood Unit 1 and Byron Unit 1 refueling outages which verified this conclusion.

ComEd will continue to apply a maximum primary-to-secondary leakage limit of 150 gallons per day (gpd) through any one SG at Braidwood and Byron to help preclude the potential for excessive leakage during all plant conditions. The RG 1.121 criterion for establishing operational leakage limits that require plant shutdown are based on detecting a free-span crack prior to it resulting in primary-to-secondary operational leakage which could potentially develop into a tube rupture during faulted plant conditions. The 150 gpd limit provides for leakage detection and plant shutdown in the event of an unexpected single crack leak associated with the longest permissible free-span crack length.

Therefore, the proposed amendment does not result in any significant increase in the probability or consequences of an accident previously evaluated within the Braidwood and Byron Updated Final Safety Analysis Report (UFSAR).

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment request proposes to renew the SG tube plugging/repair criteria previously approved by the NRC in Amendments 69 and 77 to Braidwood and Byron Technical Specifications, respectively.

Renewal of the proposed steam generator tube plugging criteria with tube expansion does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in an accident outside of the region of the tube support plate elevations as ODSCC does not extend beyond the thickness of the tube support plates and IPC is not allowed to be applied to indications that extend beyond the thickness of the tube support plate. Neither a single nor multiple tube rupture event would be expected in a SG in which the plugging criteria has been applied.

The tube burst assessment involves a Monte Carlo simulation of the site specific voltage distribution to generate a total burst probability that includes the summation of the probabilities of one tube bursting, two tubes bursting, etc. For the Locked-Tube Model TSP Intersections, the maximum total probability of burst, by design, is estimated to be $1x10^{-10}$ with all tube expansions functional. The burst probability for the Free-Span Model TSP intersections will be dependent on the number and size of indications at these applicable intersections. The total burst probability will be within the limit specified in GL 95-05.

Accounting for the unlikely event of a failure of the expanded tubes, a sufficient number of redundant expansions exist to ensure that the burst probability remains below $1x10^{-5}$. This includes the conservative assumption that all 32,046 hot-leg TSP intersections contain through wall indications. This level of burst probability is considered to be negligible when compared to the GL 95-05 limit of $1x10^{-2}$.

In addressing the combined effects of a Loss Of Coolant Accident (LOCA) during a Safe Shutdown Earthquake (SSE) on the SG as required by General Design Criteria (GDC) 2, it has been determined that tube collapse may occur in the steam generators at some plants. The tube support plates may become deformed as a result of lateral loads at the wedge supports located at the periphery of the plate due to the combined effects of the LOCA rarefaction wave and SSE loadings. The resulting pressure differential on the deformed tubes may cause some of the tubes to collapse. There are two issues associated with SG tube collapse. First, the collapse of SG tubing reduces the Reactor Coolant System (RCS) flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase the Peak Clad Temperature (PCT). Second, there is a potential that partial through wall cracks in the SG tubes could progress to through wall cracks during tube deformation or collapse. The tubes subject to collapse have been identified via a plant specific analysis and are excluded from application of any voltage-based criteria. This analysis is included in revision 3 to WCAP-14046 which was submitted to the NRC June 19, 1995.

Modification of the Braidwood and Byron Technical Specifications to clarify application of the proposed tube plugging/repair criteria is purely administrative and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operating experience over the last cycle with this plugging criteria applied has not revealed any unpredicted or unusual effects.

SG tube integrity will continue to be maintained following renewal of the 3.0 volt IPC voltage repair limit through inservice inspection, tube repair and primary-to-secondary leakage monitoring. By effectively eliminating tube burst at the Locked-Tube Model TSP Intersections, the potential for multiple tube ruptures is essentially eliminated.

ComEd has evaluated industry experiences with TSP degradation, eddy current signal distortions, and component misalignment. Eddy current signal distortions due to TSP geometry are not indicative of TSP degradation and do not result in any kind of new or different accident.

The component misalignment experienced by one unit is not applicable to Braidwood Unit 1 or Byron Unit 1 and, thus, will not result in any kind of new or different accident. Specific limitations, as discussed in response to Question 1, will be applied to indications at the Locked-Tube Model Intersections which contain dents. These limitations ensure that the integrity of the SG tubes is maintained consistent with the current analyses should tube denting or TSP cracking occur.

Therefore, renewal of the current tube plugging/repair criteria at Braidwood Unit 1 and Byron Unit 1 will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The use of the voltage-based, bobbin coil, tube support plate plugging criteria with tube expansion at Braidwood Unit 1 and Byron Unit 1 is demonstrated to maintain SG tube integrity commensurate with the criteria of RG 1.121. RG 1.121 describes a method

acceptable to the NRC staff for meeting GDC 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture.

Reducing the probability or the consequences of steam generator tube rupture is accomplished by determining an eddy current inspection voltage value which represents a limit for leaving an axial, crack-like indication at an in service SG tube TSP intersection. Tubes with ODSCC voltage indications beyond this limiting value must be removed from service by plugging or repaired by sleeving. Implementation of a 3.0 volt IPC voltage repair limit for the Locked-Tube Model Intersections has been evaluated and shown not to present a credible potential for a steam generator tube rupture event during normal or faulted plant conditions, even with worst case assumptions. The total tube burst probability will include a contribution from the indications at the Locked-Tube Model Intersections and from indications at the Free-Span Model Intersections. The projected EOC voltage distribution of crack-like indications at the TSP elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions such that radiological consequences are not adversely impacted.

Addressing RG 1.83 considerations, implementation of the increased Locked-Tube Model Intersection bobbin coil voltage-based repair criteria is supplemented by enhanced eddy current inspection guidelines to provide consistency in voltage normalization and a 100% eddy current inspection sample size at the affected TSP elevations.

For the leak and burst assessments, the population of indications in the EOC voltage distribution is dependent on the POD function. The purpose of the POD function is to account for new indications that may develop over the cycle, and to account for indications not identified by the data analyst. In implementing this proposed IPC renewal, ComEd will continue to use the conservative GL 95-05 POD value of 0.6 for all voltage amplitude ranges.

Modification of the Braidwood and Byron Technical Specifications to clarify application of the proposed tube plugging/repair criteria is purely administrative and will not reduce any safety margins.

Operating experience over the last cycle with this plugging criteria applied has not revealed any unpredicted or unusual effects.

Implementation of the TSP elevation repair limits will decrease the number of tubes which must be repaired. Installation of steam generator tube plugs or sleeves reduces the RCS flow margin. Thus, implementation of the IPC will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging or sleeving.

As discussed previously, ComEd has evaluated industry experiences with TSP degradation, eddy current signal distortions, and component misalignment. Eddy current signal distortions at tube support plates will be evaluated to attempt to determine the cause of the distortion. A signal distortion alone will not result in reduction in the margin of safety. The foreign unit that experienced the component misalignment was of a significantly different design than the Braidwood Unit 1 and Byron Unit 1 steam generators. Analysis of the design differences shows that component misalignment of that type is not applicable to Braidwood Unit 1 or Byron Unit 1 and, thus, will not result in a reduction in the margin of safety. An inspection was conducted during the last Braidwood Unit 1 and Byron Unit 1 refueling outages which verified this conclusion.

Specific limitations, as discussed previously, will be applied to indications at the Locked-Tube Model Intersections which contain dents. These limitations conservatively treat indications as free-span to ensure that the integrity of the SG tubes is maintained consistent with current analyses should tube denting or TSP cracking occur. Application of the 3.0 volt Locked-Tube Model Intersection IPC and the 1.0 volt Free-Span Model Intersection IPC at Braidwood Unit 1 and Byron Unit 1, with the limitations specified, will not result in a reduction in a margin of safety.

Thus, the implementation of this amendment does not result in 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 requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: January 6, 1997

Description of amendment request: The proposed amendment would clarify and maintain consistency between the operability requirements for protective instrumentation and associated automatic bypass features.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because of the following:

The proposed changes are administrative in nature and do not affect the probability or consequences of any previously evaluated accidents for Dresden or Quad Cities Stations. The proposed amendment is consistent with the current safety analyses and represents sufficient requirements for the continued assurance and reliability of the RPS and Rod Block Instrumentation equipment, which is assumed to operate in the safety analysis, or provides continued assurance that specified parameters associated with RPS and Rod Block Instrumentation remain within their acceptance limits. Therefore, these changes will not affect the probability or consequences of a previously evaluated accident.

The RPS and Rod Block Instrumentation related to this proposed amendment is not assumed in any safety analysis to initiate any accident sequence for Dresden or Quad Cities Stations; therefore, the probability of any accident previously evaluated is not affected by the proposed amendment.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed changes are administrative in nature and serve to maintain consistent and clear requirements for operability as specified in the Technical Specifications for the Limiting Conditions for Operation and Surveillance Requirements for the RPS and Rod Block Instrumentation. No new modes of operation or changes to any plant equipment are proposed by the proposed amendment request. The associated systems related to this proposed amendment are not assumed in any safety analysis to initiate any accident sequence for Dresden or Quad Cities. The proposed changes maintain the present level of operability; and therefore, the proposed changes do not create the possibility of a new or different kind of accident than any previously evaluated.

3) Involve a significant reduction in the margin of safety because:

The proposed changes are administrative in nature and do not affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The proposed changes have been evaluated and found to be acceptable for use at Dresden and at Quad Cities based on RPS and Rod Block Instrumentation system design, safety analysis requirements and operational performance. Since the proposed changes are administrative in nature and maintain necessary levels of the RPS and Rod Block reliability, the proposed changes do not involve a reduction in the margin of safety.

The proposed amendment for Dresden and Quad Cities Stations will not reduce the availability of the RPS and Rod Block Instrumentation System which is required to mitigate accident conditions; therefore, the proposed changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: October 22, 1996

Description of amendment request: The proposed amendments would allow continued plant operation at elevated Containment Lower Compartment temperatures between 125° and 135° F for a period not to exceed 72 cumulative hours.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of any accident previously evaluated in the UFSAR [Updated Final Safety Analysis Report]?

The increase in maximum Containment Lower Compartment temperature will not change the operation of any equipment which is important to safety. All components and instruments will continue to perform as designed in the higher temperature environment for the period that the revised Technical Specification allows. This temperature increase will not impact the ability of any component or instrument to perform its function in the event of an accident. Therefore, the probability of an accident is not impacted. The increased temperature will cause a decrease in the air mass in lower containment. This change has been evaluated for impact on containment temperature and pressure in accident conditions. The air mass change is conservative for peak containment pressure since the air mass is decreased. Maximum containment temperatures during a postulated accident are slightly increased as a result of higher initial Containment Lower Compartment temperature. The increase in peak temperature remains within the allowable values and thus does not increase the probability or consequence of an accident. The minimum containment pressure as a result of steam condensation in containment is lowered as a result of the decreased air mass in containment. Due to the conservative assumptions made in modeling containment for minimum pressure response, this change has no impact on the accident analysis.

Based on the analysis of the bounding accidents that may be impacted by increased Containment Lower Compartment temperature and the review of the effect of the increased temperature on components in lower containment, it is determined that the probability and consequence of any analyzed accident is unchanged as a result of this change.

2. Does the proposed amendment create the possibility of a new or different kind of accident not previously evaluated?

The revised maximum Containment Lower Compartment temperature will not change any systems or operations procedures except to procedurally respond should Containment Lower Compartment temperature remain elevated for a period near the revised limiting period. The response of the systems and components are unaffected by this change. All instruments are qualified for the revised service conditions and will perform in the same manner as before. Normal operation and transient response will remain unchanged. Review of previously analyzed accidents show that no new transients are created as a result of this change. Based on this review there are no new or different accidents made possible by this change.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The amendment could potentially affect the containment system. The operation and analysis of the reactor coolant system and fuel are unaffected by this change. The maximum containment temperature is slightly increased while the maximum containment pressure is decreased. The minimum containment pressure could be slightly decreased and minimum containment temperature is unaffected. All these parameters have been reviewed and determined to be within assumptions made in these analyses. The accident transient analyses are unaffected beyond these small changes and remains acceptable in all cases. Therefore, the margin of safety is unaffected by this amendment.

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: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina 28223-0001

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. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 6, 1997

Description of amendment request: The proposed amendments would allow a one-time revision to Technical Specifications 3.6.1.1, 3.6.1.2, 3.6.1.8, and 3.6.1.9 to allow operation of the Containment Purge Ventilation System (VP) during Modes 3 and 4 following the steam generator (SG) replacement outage. This one-time revision would be necessary due to respiratory hazardous gases released during heatup after the replacement of the SGs. The VP system would be used to remove the hazardous gases.

Basis for proposed no significant hazards 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 activity does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The VP [Containment Purge Ventilation] System has no interfaces with any primary system, secondary system, or power transmission system. It has no interfaces with any reservoir of radioactive gases or liquids. None of the systems listed above are modified by the activity. In summary, no ''accident initiator'' is affected with the proposed operation of the VP System in Modes 3 and 4. For this reason, the activity does not involve an increase in the probability of an accident previously evaluated.

Analyses have been performed to determine upper bounds to the source term, the offsite doses, and the Control Room dose. The results of that analyses are reported above. Both the source term and the doses were found to be significantly lower than the results of the corresponding design basis analyses. In addition, it has been determined that with no credit taken for any heat transfer from the fuel and cladding to the moderator channels, that sufficient time would exist for the operators to initiate recovery of flow from the ECCS [Emergency Core Cooling System] to the reactor core. The flow required from the ECCS to maintain the core in a coolable geometry was found to be well within the capacity of any one ECCS pump. Furthermore, it was determined that convective heat transfer to steam would be sufficient to prevent release of significant source term or a significant degree of fuel damage.

For the above reasons, it is determined that operation of the VP System in Mode 3 or 4 immediately following the steam generator replacement outage does not involve a significant increase in either the probability or the consequences of an accident previously evaluated.

2. The activity does not create the possibility of a new or different type of

accident from any accident previously evaluated.

As discussed above, no ''accident initiators'' are affected by the proposed activity. Operation of the VP System proposed for Modes 3 and 4 will be the same as that routinely carried in other modes of operation. For these reasons, the activity will not create the possibility of a new or different type of accident from any previously evaluated.

3. The activity does not involve a significant reduction in the margin of safety.

Margin of safety is associated with confidence in the ability of the fission product barriers (the fuel and fuel cladding, the Reactor Coolant System pressure boundary, and the containment) to limit the level of radiation doses to the public. The proposed operation of the VP System will occur at the end of an extended outage. The level of decay heat and activity in the reactor is very low compared to the level of decay heat and activity associated with full power operations. For this reason, the likelihood of damage to the fuel following a DBLOCA [design basis loss-of-coolant accident] occurring during the proposed purging is reduced, as determined above. Both offsite doses and doses to the Control Room were found to be small compared to the limits of 10 CFR [Part] 100 and GDC [General Design Criterion] 19. For these reasons, the activity 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: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina 28223-0001

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. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 13, 1997

Description of amendment request: The proposed amendments would implement the performance-based containment leak rate testing requirements of 10 CFR Part 50, Appendix J, Option B, for Type A testing.

Compliance with 10 CFR Part 50, Appendix J, provides assurance that the primary containment, including those systems and components that penetrate the primary containment, do not exceed the allowable leakage rate values specified in the Technical Specifications and Bases. The allowable leakage rate is determined so that the leakage assumed in the safety analyses is not exceeded.

On February 4, 1992, the NRC published a notice in the Federal Register (57 FR 4166) discussing a planned initiative to begin eliminating requirements marginal to safety that impose a significant regulatory burden. Appendix J to 10 CFR Part 50, ''Primary Containment Leakage Testing for Water-Cooled Power Reactors,'' was considered for this initiative and the staff undertook a study of possible changes to this regulation. The study examined the previous performance history of domestic containments and examined the effect on risk of a revision to the requirements of Appendix J. The results of this study are reported in NUREG-1493, ''Performance-Based Leak-Test Program.''

Based on the results of this study, the staff developed a performance based approach to containment leakage rate testing. On September 12, 1995, the NRC approved issuance of this revision to 10 CFR Part 50, Appendix J, which was subsequently published in the Federal Register on September 26, 1995, and became effective on October 26, 1995. The revision added Option B ''Performance-Based Requirements'' to Appendix J to allow licensees to voluntarily replace the prescriptive testing requirements of Appendix J with testing requirements based on both overall and individual component leakage rate performance.

Regulatory Guide 1.163, ''Performance-Based Containment Leak Test Program,'' was developed as a method acceptable to the staff for implementing Option B. Accordingly, the licensee has submitted, in its application dated January 13, 1997, proposed changes to the TS to implement 10 CFR Part 50, Appendix J, Option B, by referring to Regulatory Guide 1.163, ''Performance-Based Containment Leakage-Test Program.''

Basis for proposed no significant hazards 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 will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Containment leak rate testing is not an initiator of any accident; the proposed change does not affect reactor operations or accident analysis, and has no significant radiological consequences. ... Therefore, this proposed change will not involve an increase in the probability or consequences of any previously-evaluated accident.

2. The proposed change will not create the possibility of any new accident not previously evaluated.

The proposed change does not affect normal plant operations or configuration, nor does it affect leak rate test methods. The test history at McGuire (two consecutive successful tests) provides continued assurance of the leak tightness of the containment structure.

3. There is no significant reduction in a margin of safety.

The proposed changes are based on NRC-accepted provisions, and maintain necessary levels of reliability of containment integrity. The performance-based approach to leakage rate testing recognizes that historically good results of containment testing provide appropriate assurance of future containment integrity; this supports the conclusion that the impact on the health and safety of the public as a result of extended test intervals is negligible. In addition, local leak[]rate testing will continue to provide assurances of overall containment integrity.

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: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina 28223-0001

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Herbert N. Berkow

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 16, 1996

Description of amendment request: The amendment requests to change the Waterford 3 Technical Specifications Table 4.3-1 to expand the applicability for Core Protection Calculator operability and to allow for the application of a Cycle Independent Shape Annealing Matrix.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change will reduce the amount of non-conservatism presently allowed for linear power level, the CPC delta T power, and CPC nuclear power signals.

Changing the tolerance range from plus or minus 2% to between -0.5% and 10% between 15% and 80% RATED THERMAL POWER, except during physics testing, will allow more conservative settings than currently allowed. The consequences of an accident will be reduced due to the proposed change because it is less likely to be non-conservative in power.

This proposed change will allow use of Cycle Independent Shape Annealing Matrix (CISAM) elements. These elements will be validated, during startup testing, by monitoring the same parameters used for cycle specific shape annealing matrix (SAM) elements. If the CISAM is determined to be no longer valid, a cycle specific SAM will be calculated and used in the CPC's. In addition, use of CISAM gives better agreement throughout the cycle.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change to TS power calibration tolerance limits is conservative relative to the current TS requirement. CPC's cannot cause an accident and this change will not create the possibility of a new or different type accident. The changes ensures that the reactor will trip prior to the current condition due to higher CPC power.

As stated previously, CISAM modeling removes some of the uncertainty associated with axial shape and provides increased assurance that the CPC is appropriately modeling the core.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the TS reduces the amount of non-conservatism in safety system power indications and maintains the margin of safety for design basis events which take credit for the linear power level, the CPC delta T power, and CPC nuclear power signals.

CISAM will be validated each cycle during startup testing and must meet the same parameters as cycle specific SAM elements. Since CISAM has a better accuracy than the cycle dependent SAM, the margin of safety is improved.

Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: November 27, 1996

Description of amendment request: The proposed change request would change the acceptance criteria for the individual cell voltage from 2.0v to 2.09v, change the surveillance frequency for battery specific gravities to implement the recommendations of IEEE 450-1995, delete surveillance requirement 4.7.B.4.d, add a clarifying phrase ''while on a float charge....'' where appropriate, and update the Basis to reflect these changes.

Basis for proposed no significant hazards 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:

This request has been determined to involve No Significant Hazards in that it does not:

1. Involve a significant increase in the probability or consequences

of an accident previous[ly] evaluated; (or)

The proposed change in ICVs [individual cell voltages] does not increase the probability of an accident previously evaluated, as it increases the required voltage for each ICV.

The proposed change in frequency does not increase the probability or consequences of an accident previously evaluated, as the change in the frequency of specific gravity testing is the result of industry experience gained over the years. The weekly reading of pilot cell specific gravity and cell voltage, along with the quarterly reading of all ICVs and a 10% sample of specific gravities from designated cells provides an acceptable means of determining cell operability as specified in IEEE 450-1995.

The proposed deletion of Technical Specification Surveillance Requirement 4.7.B.4.d only removes an unnecessary Technical Specification surveillance and is consistent with NUREG-1433, Standard Technical Specifications General Electric Plants, BWR/4, Revision 1, April 1995. No change to plant systems, components or operating conditions are associated with this change. Existing Technical Specification station and diesel generator battery inspection and testing requirements adequately verify battery operability and condition.

2. Create the possibility of a new or different kind of accident from any accident previous[ly] evaluated; (or)

The proposed change does not create the possibility of a new or different kind of accident than previously evaluated, as the change only involves raising a required voltage, performing an existing surveillance on a different frequency, and removing an unnecessary annunciator surveillance requirement. The station battery and diesel generator battery low voltage annunciator setpoints do not meet any of the criteria codified in 10 CFR 50.36 for determining content of Technical Specifications and removal of surveillance requirement is consistent with NUREG-1433, Standard Technical Specifications General Electric Plants, BWR/4, Revision 1, April 1995. There is no change to hardware or operating conditions.

3. Involve a significant decrease in the margin of safety.

The proposed change to the ICV does not decrease the margin of safety, as increasing the required voltage actually increases the margin of safety. The proposed change to the frequency does not decrease the margin of safety as it continues to require testing and evaluation of the requisite surveillance points and implements requirements which have been determined to provide an adequate level of safety by the IEEE. The removal of Technical Specification surveillance requirements for the battery low voltage annunciator setpoints does not affect any plant systems, components or operating conditions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Patrick D. Milano, Acting

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: January 23, 1997, as revised by letter dated January 28, 1997.

Description of amendment request: The proposed amendment would make changes to Section 3.5/4.5.C of the technical specification (TS) bases to clarify the minimum residual heat removal (RHR) and residual heat removal service water (RHRSW) pump requirements for post-accident containment heat removal. In conjunction with the proposed amendment, the licensee requested NRC staff review and approval of an update to the design basis accident containment temperature and pressure response for the limiting single failure (loss of diesel generator) which results in minimum RHR and RHRSW pump availability.

Basis for proposed no significant hazards determination: As required by

10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will change TS bases to clarify the minimum RHR and RHRSW pump requirements for post-accident containment heat removal. The proposed amendment will also correct an error in a previous analysis on containment temperature and pressure response following a design basis accident (DBA) that was submitted for the NRC staff review on May 1, 1986. The proposed amendment does not affect the physical configuration of the plant or how it is operated. The licensee's analysis, using a new decay heat model, determined that the calculated maximum suppression pool temperature will be 2 degrees Fahrenheit greater (184 degrees Fahrenheit vs. 182 degrees Fahrenheit) than that predicted in its previous analysis, based on an earlier decay heat model, that was submitted for the NRC staff review on May 1, 1986. The licensee evaluated the effects of this increase on emergency core cooling system (ECCS) pump net positive suction head, wetwell attached piping, and environmental conditions in the ECCS pump rooms, and concluded that the change is acceptable. The consequences or probability of a previously evaluated accident will, therefore, not be significantly increased.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendment does not affect the physical configuration of the plant or how it is operated. The proposed amendment revises the TS bases to clarify the minimum RHR and RHRSW pump requirements for post-accident containment heat removal.

(3) The proposed changes do not result in a significant reduction inthe margin of safety.

The proposed amendment will change TS bases to clarify the minimum RHR and RHRSW pump requirements for post-accident containment heat removal. The proposed amendment will also correct an error in a previous analysis on containment temperature and pressure response following a design basis accident (DBA) that was submitted for the NRC staff review on May 1, 1986. The proposed amendment does not affect the physical configuration of the plant or how it is operated. The licensee's analysis, using a new decay heat model, determined that the calculated maximum suppression pool temperature will be 2 degrees Fahrenheit greater (184 degrees Fahrenheit vs. 182 degrees Fahrenheit) than that predicted in its previous analysis, based on an ealier decay heat model, that was submitted for the NRC staff review on May 1, 1986. The licensee evaluated the effects of this increase on emergency core cooling system (ECCS) pump net positive suction head, wetwell attached piping, and environmental conditions in the ECCS pump rooms, and concluded that the change is acceptable. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW. Washington, DC 20037

NRC Project Director: John N. Hannon

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: December 9, 1996

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to revise the surveillance frequencies from at least once every 18 months to at least once per refueling interval (nominally 24 months) for the reactor trip system (RTS) and engineering safety features actuation systems (ESFAS) instrumentation channels, and make certain changes in trip setpoints and allowance values due to a setpoint methodology change in support of the calibration extensions. Channel operational tests (COTs) and trip actuating device operational tests (TADOTs) associated with these channels are also being extended. Revisions to the appropriate TS Bases are being revised to support the TS revisions.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS channel calibration, COT, and TADOT interval increases from 18 to 24 months, the setpoint change, and the allowable value changes do not alter the intent or method by which the channel calibrations are conducted, do not alter the way any structure, system, or component functions, and do not change the manner in which the plant is operated. The calibration and maintenance histories indicate that the equipment will continue to perform satisfactorily with longer surveillance intervals. With the exception of the pressurizer water level - high instrument, no recurring surveillance or maintenance problems were identified for the RTS or ESFAS instrumentation channels.

The pressurizer water level instruments do not have a safety limit and are not credited in the DCPP safety analysis. The recurring surveillance problems were mainly due to calibration zero shift which is reflected in the statistically determined drift and in the proposed pressurizer water level high setpoint. The zero shift problem of these transmitters was a recurring problem with the calibration procedure. The procedures for calibrating these instruments have been revised to improve the repeatability of the surveillance activity.

The trip setpoint and allowable value changes for pressurizer water level - high are each in the more restrictive direction. The revised setpoint would tend to trip the reactor sooner than the present settings. These changes ensure that sufficient margin is maintained for the pressurizer water level to accommodate the channel statistical uncertainty resulting from a 30-month operating cycle.

A statistical analysis of channel uncertainty for a bounding 30-month operating cycle has been performed. There is sufficient margin between the existing TS limits and the licensing basis safety analysis limits to accommodate the channel statistical uncertainty resulting from a 30-month operating cycle. The existing margin between the TS limits and the safety analysis limits provides assurance that plant protective actions will occur as required. However, a change to the safety analysis limit is proposed in order to provide additional margin for the RCS loss of [f]low-low setpoint.

Westinghouse has evaluated the safety analysis limit for the RCS loss of flow-low setpoint and has determined that the limit can be changed from 87 percent of MMF to 85 percent of MMF with no impact on the probability and insignificant impact on the consequences of accidents already analyzed. The existing conclusions of the DCPP FSAR Update remain valid with the safety analysis limit change. Using the new safety analysis limit, sufficient margin exists between the TS limit and the safety analysis limit to accommodate the channel statistical uncertainty resulting from a 30-month operating cycle.

The proposed changes to the allowable values ensure that drift assumptions regarding the protection racks and direct input functions are met.

There are no known mechanisms that would significantly degrade the performance of the evaluated instrument channels during normal plant operation. All potential time-

related degradation mechanisms have insignificant effects in the time frame of interest (maximum of 30 months). PG&E will continue to perform the maintenance required to maintain the qualification of this safety related equipment.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed pressurizer water level trip setpoint, RCS flow safety analysis limit, and various allowable value changes provide adequate margin to accommodate instrument channel uncertainty over a 30-month operating cycle. Plant equipment, which will be set at, or more conservative than, the trip setpoints, will provide protective functions to assure that the safety analysis limits are not exceeded. The change to the RCS loss of flow safety analysis limit does not create the possibility of a new or different kind of accident since the setpoint will remain as currently specified and only results in an insignificant delay in the plant response to the accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

For almost all the existing DCPP RTS/ESFAS setpoints, the existing difference between the safety analysis limit and the setpoints was sufficient to accommodate any changes in instrument uncertainty.

The change in the pressurizer water level - high setpoint does not affect a safety analysis limit and, therefore, has no effect on a margin to safety. Since the normal pressurizer level is maintained at 60 percent span and the no-load T_{avg} control level is 22 percent span, a change in the setpoint from less than or equal to 92 percent span to less than or equal to 90 percent span is not significant to either DCPP plant operation or safety.

The change in the RCS loss of flow-low safety analysis limit from 87 percent MMF to 85 percent MMF does not affect the existing plant setpoint and was evaluated to have a negligible effect on the limiting conditions of a partial loss of flow accident, a single RCP locked rotor, or RCP shaft break accident. This safety limit change was also found to have no effect on the DCPP minimum DNBR since the minimum DNBR is associated with the complete loss of flow accident. The complete loss of flow accident was evaluated to the Condition II fault criteria applicable to the partial loss of flow accident evaluation and was acceptable.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: William H. Bateman

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: December 23, 1996

Description of amendment request: The proposed amendment would allow the use of Vantage Plus fuel.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

The probability of occurrence or the consequences of an accident previously evaluated is not significantly increased. The VANTAGE + fuel assemblies containing ZIRLO™ clad fuel rods, thimble and instrument tubes, IFMs, [intermediate fuel mixing assemblies] and LPD [low-pressure-drop] mid-grids meet the same fuel assembly and fuel rod design bases as VANTAGE 5 (without IFMs) fuel assemblies in the other fuel regions. In addition, the 10 CFR 50.46 criteria will be applied to the ZIRLO™ clad fuel rods, thimble and instrument tubes, IFM grids, and LPD mid-grids. The use of these fuel assemblies will not result in a change to the proposed Indian Point Unit 3 VANTAGE 5 (without IFMs) transition core design and safety analysis limits. The ZIRLO™ clad material is similar in chemical composition and has similar physical and mechanical properties as that of Zircaloy-4. Thus the cladding integrity is maintained and the structural integrity of the fuel assembly is not affected. The ZIRLO™ clad fuel rod improves corrosion resistance and dimensional stability. In addition, the incorporation of LPD mid-grids and IFMs improves dimensional stability. Since the dose predictions in the safety analyses are not sensitive to the fuel assemblies material changes as specified in this report, the radiological consequences of accidents previously evaluated in the safety analyses remain valid. Therefore, the probability or consequences of an accident previously evaluated is not significantly increased.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The possibility for a new or different type of accident from any accident previously evaluated is not created, since the VANTAGE + fuel assemblies containing ZIRLO™ clad fuel rods, thimble, and instrument tubes, IFMs, and LPD mid-grids will satisfy the same design bases as that used for VANTAGE 5 (w/o IFMs) fuel assemblies in the other fuel regions. Since the original design criteria is being met, the ZIRLO™ clad fuel rods, thimble and instrument tubes, IFMs, and LPD mid-grids will not be an initiator for any new accident. All design and performance criteria will continue to be met and no new single failure mechanisms have been created. In addition, the use of these fuel assemblies does not involve any alterations 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) Does the proposed amendment involve a significant reduction in a margin of safety?

The margin of safety is not significantly reduced, since the VANTAGE + fuel assemblies containing ZIRLO™ clad fuel rods, thimble and instrument tubes; IFMs, and LPD mid-grids do not change the proposed Indian Point 3 VANTAGE 5 (w/o IFMs) transition core design and safety analysis limits. The use of these fuel assemblies containing fuel rods, thimble and instrument tubes with ZIRLO™ cladding alloy; IFMs and LPD mid-grids will take into consideration the normal core operating conditions allowed in the Technical Specifications. For the transition core and each future cycle reload core, these fuel assemblies will be specifically evaluated using standard reload design methods and approved fuel rod design models and methods. This will include consideration of the core physics analysis, peaking factors and core average linear heat rate effects. In addition, the 10 CFR 50.46 criteria will be applied each cycle to the ZIRLO™ clad fuel rods, thimble and instrument tubes, IFMs, and LPD mid-grids. Analyses or evaluations will be performed each cycle to confirm the 10 CFR 50.46 will be met. Therefore, the margin of safety as defined in the Bases to the Indian Point Unit 3 Technical Specifications and VANTAGE 5 (w/o IFMs) ZIRLO™ licensing amendment approval 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: 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

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: July 9, 1996 (TXX-96393)

Brief description of amendments: The proposed changes would increase the minimum allowable value of the Unit 1 Steam Line Pressure--Low Safety Injection and Steam Line Isolation functions. These changes are needed to ensure that the instrumentation error is properly accounted for in the Technical Specifications.

Basis for proposed no significant hazards 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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The changes in the License Amendment Request proposes more restrictive setpoint Allowable Values for the Steam Line pressure--Low channels of the Engineered Safety Features Actuation System (ESFAS). These more restrictive values assure that all applicable safety analysis limits are being met. Changing an Allowable Value in the Technical Specifications has no impact on the probability of occurrence of any accident previously evaluated. None of the accident analyses were affected, therefore, the consequences of all previously evaluated accidents remain unchanged.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes involve the use of a more conservative value for the Allowable Value for the Steam Line Pressure--Low Safety Injection and Steam Line Isolation functions. As such, none of the changes effect plant hardware or the operation of plant systems in a way that could initiate an accident. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

There were no changes made to any of the accident analyses or safety analysis limits as a result of this proposed change. Further, the proposed change does not affect the acceptance criteria for any analyzed event. ESFAS will remain capable of performing its safety function, and the new requirement will continue to provide adequate assurance of that capability. Making the Allowable Value more restrictive provides increased assurance that the channels will function within the safety analysis limits assumed in the safety analyses. The margin of safety established by the Limiting Conditions for Operation also remains unchanged. Thus there is no effect on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036

NRC Project Director: William D. Beckner

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: July 10, 1996 (TXX-96405), as supplemented by letter dated October 1, 1996 (TXX-96475)

Brief description of amendments: The proposed change would take credit for the addition of train oriented Fan Coil Units for each UPS & Distribution Room and would provide redundancy to the existing Air Conditioning Units.

Basis for proposed no significant hazards 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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The UPS HVAC System is a support system for other safety related equipment, primarily the Uninterruptible Power Supplies and some of their distribution equipment. The only impact that this system can have on the probability or consequences of an accident must result from the failure of the system to provide adequate support to the supported safety related equipment when that supported safety related equipment is required to operate.

Allowing same train cooling to satisfy the LCO is considered equivalent to the existing Technical Specification. The proposed changes allow the use of the same train UPS Room Fan Coil Units or the same train UPS A/C Train to support a UPS & Distribution Room.

Surveillance requirements are added or modified to ensure that the credited support equipment will be available when needed. Unnecessary starts of the UPS A/C Trains have been eliminated from the specifications. Overall, this is considered an enhancement that will increase the reliability of the UPS HVAC Systems. Because both the existing specification and the proposed revision to the specification continue to ensure normal support and the availability of at least one train of equipment in the event of a design basis accident, with the same or increased reliability, the consequences of an accident previously evaluated is not affected.

Changing the specification from a ''common'' specification which impacts both units simultaneously to a specification which applies to both units separately is basically just an administrative change. Having ''common'' specifications is an aid to the operator to provide an alert that both units are affected. With the new LCO, both units may not be affected because rooms may now be cooled separately. Because both CPSES Units remain properly covered, however, this change will not significantly increase the probability of consequences of an accident.

The revision to the existing ACTION is considered equivalent except for the change of the Allowed Outage Time (AOT) from seven days to 30 days. This change is based on the significance of the heating and cooling function but does represent an increase in AOT and thus an increase in the probability that the supported functions could be unavailable. This increase is not considered significant based on the following several factors:

a)the systems design is based on a conservative assessment of the worst postulated conditions in the rooms;

b) generally, less than design cooling is required and a short duration or partial failure may have little or no impact on the system—s ability to perform its function;

c) the multiple backups available (two UPS A/C Trains and only one UPS Room Fan Coil Unit per each room) increase the potential of restoring additional cooling if needed;

d) the ability to perform alternate actions if normal cooling is lost such as circulating air via existing fans or portable fans thereby extending the time before cooling must be restored; and

e) the extended AOT would allow more time and opportunity to perform corrective maintenance to ensure high equipment reliability.

The new ACTION for loss of cooling reflects requirements that already exist in the Technical Specifications. The AOT for this ACTION statement is 72 hours which is based on the risk from an

event occurring requiring the inoperable UPS A/C Train, and the remaining UPS Room Fan Coil Units and A/C Train fans providing the required protection.

The new ACTION for loss of cooling and ventilation reflects a conservative response to the potential impact of such a condition. The proposed AOT is one hour. One hour is based on the time lag available from the operating temperature to the maximum Technical Specification limit of the UPS & Distribution Rooms. The addition of a specific ACTION in lieu of relying on Specification 3.0.3, although essentially equivalent, is consistent with the methodology of the improved Standard Technical Specifications and alerts the operator to the significance of the situation.

The changes made to the surveillance ensure that the UPS Room Fan Coil Units will operate. The UPS Room Fan Coil Units are connected to the emergency busses and TS 4.8.1.1.2f. demonstrates the energization of emergency busses with permanently connected loads. The changes made to the 18

month surveillances on the UPS A/C trains were changed from the Safety Injection signal with the Blackout Test signal to ''... actual or simulated actuation signal''. This is consistent with NUREG-1431, ''Standard Technical Specifications Westinghouse Plants''.

The changes to the BASES are descriptive in nature to reflect the other changes and by themselves have no impact on the probability or consequences of an accident.

The ability to cope with station blackout and design basis fires is maintained or enhanced. For station blackout coping, the UPS A/C fans are considered to remain available while additional cooling is provided by a single available Fan Coil Unit.

In summary, the proposed changes take advantage of the increased reliability offered by the revised system design. It also maintains the level of support provided by the system while at worst, allowing a slight decrease in availability (in certain situations) which is not considered significant. As a result, it is concluded that none of the changes made to the existing Technical Specification involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Revising this specification to take credit for the new UPS Room Fan Coil Units, to take credit for same train UPS A/C Train support for a UPS and Distribution Room, to make the specification unit specific instead of common, to make the surveillances appropriate for the credited equipment, and to make the action statements appropriate for the credited equipment and their significance, does not by itself alter plant hardware. Plant procedures are only altered to the extent that the revised specification will allow different configurations of equipment in the UPS HVAC System to be operated at different times. These changes ensure continued support of the safety related equipment in the affected areas and do not affect the equipment—s failure or failure modes. As a result, these changes to the Technical Specification do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

None of the changes being proposed alter the environmental conditions which are to be maintained in the areas supported by an OPERABLE UPS HVAC System during normal operations and following an accident. As a result, the margin of safety for these functions remains the same. The only potential adverse impact is the system's postulated availability, as discussed in the response to question 1 above. This reduction in availability is to a great extent mitigated by the projected increase in system reliability. As noted in the response to question 1, there is no significant impact on the accident analyses. Thus, even if system availability issues were considered an aspect of margin of safety, the proposed changes do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC 20036

NRC Project Director: William D. Beckner

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: December 17, 1996

Description of amendment request: The proposed changes will allow one of the two service water loops to be isolated from the component cooling water heat exchangers (CCHXs) during power operation in order to refurbish sections of the isolated service water headers. The proposed temporary changes will be valid for two periods of up to 35 days each for implementation of the service water upgrades associated with the repair of the sections of the 24-inch service water supply and return piping to/from the CCHXs.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of North Anna Power Station in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The piping refurbishment project and the proposed temporary changes to the SW [service water] and CC [component cooling] Technical Specifications have been evaluated to assess their impact on the normal operation of the SW and CC systems and to ensure that the design basis safety functions of each system are preserved. The SW system is required to function during all normal and emergency operating conditions. During normal plant operation, the SW system provides cooling water to the CCHXs, charging pump coolers, instrument air compressor coolers, and control room chiller condensers of both units. Within the first 168 hour Section 3/4.7.4.1.d TS AS [Action Statement] of isolation of the header which is to be repaired, temporary 10'' diameter SW lines (one supply and one return) will be installed to supply the SW to the charging pumps coolers, instrument air compressors coolers, Unit 2 CR chillers and spent fuel pool (SFP) coolers to satisfy design basis conditions. These temporary lines will be routed from the operating part of the 36'' SW headers while the 24'' headers to CCHXs are being repaired. The temporary lines will be dismantled when the repaired header is returned to operation (second 168 hour AS). During the two 35-day periods, one header will operate with its 24-inch piping to/from the CCHXs temporarily blanked. To avoid operation of the SW pump at abnormal conditions (low flow) on this ''partially deadlocked'' header, a temporary cross-connect will be installed to by-pass the CCHXs.

SW system operation with the cross-connect installed was evaluated for design basis accident (DBA) conditions. The DBA condition for the SW system is a loss-of-coolant accident on one unit with simultaneous loss-of-offsite-power to both units. [An] SW system hydraulic analysis has been performed to verify that adequate flow is provided to the containment recirculation spray heat exchangers (RSHXs) with the temporary cross-connect installed and throttled open, assuming the occurrence of the most limiting single failure. Therefore, there is no increase in probability or consequences of the DBA condition.

Utilizing only one SW header to supply flow to the CCHXs has the potential to affect the reliability of the CC system and all of the equipment cooled by CC. A review of the equipment affected by this phase of the SW restoration project was performed to evaluate the impact on initiating event frequency. Since the SW system and CC system are support systems used to remove heat, a failure in either of these systems does not affect the initiating event frequency of any design basis event. Additionally, an estimate of the impact on core damage frequency is provided below. The impact on the North Anna Probabilistic Safety Assessment (PSA) during implementation of this DCP [design change package] is similar to impact of work performed under DCP-94-010 since the scope of work of both DCPs is repair/replacement of different portions of the same 24'' SW headers to CCHXs. The only difference from a PSA standpoint is that CDF [core damage frequency] for DCP-94-010 was calculated based on 140 days supply of CCHXs from one SW header while per this DCP it is only 70 days. Therefore, results of PSA evaluation for DCP-94-010 are conservatively applied to this DCP. The activities to be performed during the refurbishment project and the various system alignments required have been evaluated using the Individual Plant Examination (IPE) Probabilistic Safety Assessment (PSA) model for North Anna Power Station. This model is used in a manner that is generally consistent with the Electric Power Research Institute (EPRI) PSA Applications Guide TR-105396. The effect on the PSA model is a slight increase in the frequency of reactor trips and an increase in the probability of RHR [residual heat removal] failure.

The increased frequency of reactor trips is due to the decreased reliability of the CC system to supply cooling to the RCP [reactor coolant pump] motor. When only one SW header is available to the CC heat exchangers

the frequency of losing this single header is dominated by the probability of both SW pumps failing. Also considered was the frequency of pipe rupture anywhere in the single available header. When the single SW header fails to supply cooling to the CC heat exchangers, the CC system will heatup causing inadequate cooling for sustained operation of the RCPs. Tripping these pumps results in a reactor trip. The second SW header can be expected to supply other equipment with cooling. This scenario is appropriately modeled as a reactor trip with main feedwater available initiating event. A sensitivity analysis shows the increase in CDF to be about 1E-8/year. The total effect of this DCP includes a failure analysis of the reactor coolant pump and motor in case of loss of CCW.

The CC system is also included in the PSA model as a support system for RHR cooling. The RHR system is used to reduce reactor coolant system temperatures from 350°F (hot shutdown) to 140°F (cold shutdown). The only accident initiator that requires the unit to be cooled down and placed on RHR cooling are sequences which are initiated with a steam generator tube rupture. (Note that, for the North Anna plant design, RHR is separate from the safety injection system and the low head safety injection pumps.) The increased probability for the loss of RHR when only one SW header is available to the CCHXs is estimated using fault tree analysis and is dominated by the failure of both SW pumps. The probability for the loss of both SW pumps aligned to the CCHXs is estimated to be 1.5E-4. The effect of this increase in RHR failure probability was determined by adding this probability to the top single event in the RHR function and recalculating the new CDF. The resulting increase in CDF as a result of RHR system failure following a steam generator tube rupture is less than 1E-8 per year.

The CC system is further included in the PSA model as part of the loss of RCP seal cooling as an initiating event and as a loss of function during other initiating event scenarios. The effect on the probability for a loss of RCP seal cooling due to losing CC cooling to the RCP thermal barriers is negligible due to the high reliability of the charging system to provide seal injection.

The total effect of this DCP on core damage frequency (CDF) was estimated by a sensitivity analysis combining both the change in the reactor trip initiating event frequency and the increased failure probability of RHR. It was evaluated that during implementation of this DCP, CCHXs will be supplied from one SW header for 70 days (35 x 2=70), therefore, the increase in CDF previously evaluated in DCP-94-010 based on 140 days is conservative. This DCP does not affect the containment systems and there would not be any significant change in off-site dose since the containment heat removal portion of the SW system is not affected and the increase in CDF is insignificant. The small increase in CDF calculated for the repair activities and the procedure developed to provide contingency actions result in the conclusion that this work does not represent a significant increase in core damage frequency.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the allowed outage time only provide operational flexibility needed to perform necessary repairs. During the project, there will be a significant time period when all the CCHXs are aligned to one SW loop. The possibility of an interruption of SW supply to the heat exchangers during a DBA is eliminated by defeating the closure of the 24-inch SW isolation MOVs [motor-operated valves] to the CCHXs on [an] SI/CDA [safety injection/containment depressurization actuation] signal. Both SW headers will be available for equipment required for safe shutdown of the units (i.e., RSHXs, charging pumps, and CR/ESGR [control room/emergency switchgear room] chillers). The SW pipe repair activities and the installation/removal of the SW cross-connect and temporary piping do not create the possibility for a malfunction of equipment different than previously evaluated. Results of the Johnston Pump NPSH [net positive suction head] test proved to be satisfactory for the anticipated SW pump flow rates under modes of station operation for this project, therefore, the possibility for an accident of a different type than was previously evaluated in the Safety Analysis Report will not be created. Based on the above, implementation of the restoration project and approval of the proposed Technical Specifications changes will not introduce any new accident initiators nor affect the performance of accident mitigation systems.

3. Involve a significant reduction in a margin of safety.

The proposed changes to the schedule only provide operational flexibility to perform the required SW pipe refurbishment. The Technical Specifications continue to require the SW and CC systems to remain functional during the period with a single SW supply to the CCHXs. As stated in item (1) above, the SW system is fully capable of performing its DBA function during the course of the pipe refurbishment project with the proposed Technical Specification changes in place. The effect of this pipe refurbishment project on CC system reliability was estimated by a sensitivity analysis combining both the change in the reactor trip initiating event frequency and the increased failure probability of RHR resulting in about a 1E-8 per year increase in CDF. Since this project will not affect the containment systems, there would not be any significant change in off-site dose, except that resulting directly from the slight increase in CDF.

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: F. Mark Reinhart (Acting)

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.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: September 10, 1996

Brief description of amendments: The amendments extend the automatic actuation logic channel functional test interval of the Engineering Safety

Features Actuation System and the surveillances test interval of the containment sump isolation valves from monthly to quarterly.

Date of issuance: January 23, 1997

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 218 and 195

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 9, 1996 (61 FR 52963) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated January 23, 1997 No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: October 31, 1996

Brief description of amendments: The amendments relocate the requirements for seismic monitoring instrumentation from Technical Specification (TS) 3/4.3.7.2, ''Seismic Monitoring Instrumentation'' to licensee-controlled documents in accordance with Generic Letter 95-10, ''Relocation of Selected Technical Specifications Requirements Related to Instrumentation.'' The amendments also add a condition to the operating licenses which approves the relocation of the TS requirements to the UFSAR.

Date of issuance: January 29, 1997 Effective date: Immediately, to be implemented within 90 days.

Amendment Nos.: 117, 102

Facility Operating License Nos. NPF-11 and NPF-18: The amendments revised the Technical Specifications and the license.

Date of initial notice in Federal Register: December 18, 1996 (61 FR 66703) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Duquesne Light Company, et al., Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: September 9, 1996, as supplemented December 20, 1996

Brief description of amendment: The amendment revises the Minimum Channels Operable requirement of Item 4.c (Steam Line Isolation, Containment Pressure Intermediate--High-High) of Technical Specification (TS) Table 3.3-3 from 3 channels to 2 channels provided the provisions of Action Statement 14 are followed. This change makes this Beaver Valley Power Station, Unit No. 1 TS consistent with the comparable Beaver Valley Power Station, Unit No. 2 TS. The amendment also revises the minimum charging pump discharge pressure in TS 3/4.5.5 and associated Bases from 2311 psig to 2397 psig. This change ensures that safety analysis assumptions for safety injection flow are met.

Date of issuance: January 27, 1997

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No: 201

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 23, 1996 (61 FR 55032) The supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or the original notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: August 15, 1996, and as supplemented by letters dated October 28, November 15, 1996, and January 7, 1997.

Brief description of amendment: The amendment changes the Clinton Power Station (CPS) Technical Specifications to incorporate the revised Safety Limit Minimum Critical Power Ratio (SLMCPR) as calculated by General Electric (GE) for CPS Cycle 7. The need to change the SLMCPR resulted from the 10 CFR Part 21 condition reported by GE in their letter to the NRC dated May 24, 1996.

Date of issuance: January 22, 1997

Effective date: January 22, 1997

Amendment No.: 113

Facility Operating License No. NPF-62: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 11, 1996 (61 FR 47978). The licensee's letters of October 28, November 15, 1996, and January 7, 1997, provided clarifying information and did not make significant changes to the initial Federal Register notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 22, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: August 29, 1996

Brief description of amendment: The amendment revises the Technical Specifications to (1) modify the applicability requirements for certain radiation monitors so that the radiation monitors are required to be operable only when secondary containment integrity is required to be operable; (2) delineate when secondary containment integrity is required; (3) modify standby gas treatment operability requirements; (4) make editorial corrections to clarify the configuration of the radiation monitors; and (5) revise the associated Bases sections.

Date of issuance: January 14, 1997

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 98

Facility Operating License No. DPR-21: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 17, 1996 (61 FR 54242) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1997 No significant hazards consideration comments received: No.

Local Public Document Room location: : Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, CT 06385

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: June 28, 1996, as supplemented by letters dated November 4 and 5, and December 9, 1996

Brief description of amendments: These amendments revise the technical specifications to incorporate performance-based testing, in accordance with 10 CFR Part 50, Appendix J, ''Primary Reactor Containment Leakage Testing For Water-Cooled Power Reactors,'' Option B. This option allows utilities to extend the frequencies of the Type A Containment Leak Rate Test, and Type B and C Local Leak Rate Tests based on the performance and design of the containment and components.

Date of issuance: January 24, 1997

Effective date: Both units, as of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 118 and 81

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 23, 1996 (61 FR 55038) The supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or the original notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated Janaury 24, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: May 20, 1996

Brief description of amendments: These amendments revise Technical Specifications (TS) Sections 3/4.4.9.2, 3/4.9.11.1, 3/4.9.11.2, and the associated TS Bases 3/4.4.9 and 3/4.9.11, to more clearly describe that the Residual Heat Removal (RHR) system Shutdown Cooling mode of operation consists of four ''subsystems.'' These TS sections pertain to plant operations during Operational Conditions (OPCONs) 4, ''Cold Shutdown'' and 5, ''Refueling.'' In addition, the proposed TS change would make administrative changes to TS Section 3/4.4.9.1 to ensure consistency in terminology regarding the description of Shutdown Cooling ''subsystems.'' The proposed TS changes are consistent with the guidance delineated in the Improved TS (i.e., NUREG-1433, Revision 1, ''Standard Technical Specifications General Electric Plants, BWR/4,'' dated April 1995) which indicates that the RHR Shutdown Cooling mode of operation is comprised of two loops and four subsystems (i.e., two subsystems per loop).

Date of issuance: January 28, 1997

Effective date: As of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 119 and 82

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 23, 1996 (61 FR 55036) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 28, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Philadelphia Electric Company, Docket No. 50-353, Limerick Generating Station, Unit 2, Montgomery County, Pennsylvania

Date of application for amendment: August 5, 1996, as supplemented December 4, 1996

Brief description of amendment: The amendment revised TS Section 2.1 and its associated TS Bases to reflect the change in the Minimum Critical Power Ratio Safety Limit due to the plant specific evaluation performed by General Electric Company (GE), for Limerick Generating Station, Unit 2, Cycle 4.

Date of issuance: January 29, 1997

Effective date: As of date of issuance and shall be implemented within 30 days

Amendment No.: 83

Facility Operating License No. NPF-85. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: November 6, 1996 (61 FR 57491) The December 4, 1996, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 29, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: March 29, 1996, as supplemented by letters dated December 5, 1996, and January 15, 1997

Brief description of amendments: These amendments modify Technical Specification (TS) Section 4.5.1.d.2.b to delete the requirement to perform in-situ functional testing of the Automatic Depressurization System (ADS) valves once every 24-months as part of start-up testing activities.

Date of issuance: January 29, 1997

Effective date: Both units, as of date of issuance, to be implemented within 30 days.

Amendment Nos.: 120 and 84

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 6, 1996 (61 FR 57488) The December 5, 1996, and January 15, 1997, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination nor the initial notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: October 1, 1996

Brief description of amendment: The amendment allows for a one-time extension of the surveillance intervals for the containment isolation valve 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.

Date of issuance: January 28, 1997

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 172

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 4, 1996 (61 FR

64393) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 28, 1997 No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 1, 1996, supplemented October 31, 1996

Brief description of amendments: The amendments change Technical Specifications 3/4.7.1.5, ''Main Steam Line Isolation Valves (MSIVs),'' and 3/4.3.2, ''Engineered Safety Feature Actuation System Instrumentation.'' The amendments accommodate entry into Modes 3 and 2 prior to performing MSIV closure time testing in Mode 2, allow additional time for the repair and testing of inoperable MSIVs in certain operating Modes, delete footnotes that are no longer applicable, and change the low steam line pressure trip setpoint value for safety injection, turbine trip and feedwater isolation to make it consistent with the actual plant configuration.

Date of issuance: January 17, 1997

Effective date: Both units, as of date of issuance, to be implemented prior to entry into Mode 3 from the current outage.

Amendment Nos. 187 and 170

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: October 23, 1996 (61 FR 55040) The supplemental letter changed the TSs to provide greater consistency with requirements of NUREG-1431 ''Standard Technical Specifications - Westinghouse Plants,'' Revision 1, and did not change the initial proposed no significant hazards consideration determination or the Federal Register notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 17, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 24, 1996, as supplemented December 23, 1996

Brief description of amendments: The amendments changed Technical Specification 3/4.7.1.2, ''Auxiliary Feedwater System.'' The changes revised the 18-month surveillance performed on the system's pumps and valves because testing of the turbine driven Auxiliary Feedwater pump can only be performed in higher modes when there is sufficient secondary steam pressure.

Date of issuance: January 23, 1997

Effective date: As of date of issuance, to be implemented within 30 days

Amendment Nos. 188 and 171

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 19, 1996 (61 FR 58905) The December 23, 1996, letter proposed changes to TS 3/4.3.2 to provide consistency with those proposed in the October 24, 1996, letter and therefore did not change the initial proposed no significant hazards consideration determination and was within the scope of the initial notice. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 23, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: September 25, 1996

Brief description of amendments: The amendments relocate the list of containment isolation valves from the Technical Specifications to the Salem Updated Final Safety Analysis Report and correct references. Date of issuance: January 30, 1997

Effective date: Both units, as of date of issuance, to be implemented within 60 days.

Amendment Nos. 189 and 172

Facility Operating License Nos. DPR-70 and DPR-75. The amendments revised the Technical Specifications and the License.

Date of initial notice in Federal Register: October 23, 1996 (61 FR 55039) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 30, 1997. No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: January 31, 1996, as revised November 26, 1996. The November 26, 1996, submittal withdrew the proposed change to surveillance tests being performed at power.

Brief description of amendments: These amendments will revise the minimum emergency diesel generator day tank fuel oil volume.

Date of issuance: January 17, 1997

Effective date: January 17, 1997

Amendment Nos.: 203 and 184

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 28, 1996 (61 FR 7559) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 17, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: : The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: February 8, 1996, as supplemented August 15, December 2 and December 19, 1996, and January 6, 1997

Brief description of amendments: These amendments revise Technical Specification (TS) Section 15.3.10, ''Control Rod and Power Distribution Limits,'' to improve the clarity of this section and add surveillance requirements to Section 15.4.1, ''Operational Safety Review.''

Date of issuance: January 16, 1997

Effective date: January 16, 1997, with full implementation within 45 days

Amendment Nos.: Unit 1 - 171, Unit 2 - 175

Facility Operating License Nos. DPR-24 and DPR-27: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 13, 1996 (61 FR 10398) The August 15, December 2 and

December 19, 1996, and January 6, 1997, letters provided clarifying information and updated TS pages that were within the scope of the original application and did not change the NRC staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 16, 1997. No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the Federal Register on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point, Units 3 and 4, Dade County, Florida

Date of amendment request: December 17, 1996

Description of amendment request: The proposed amendments would modify the Turkey Point Units 3 and 4 Technical Specifications to change the Reactor Coolant Pump (RCP) flywheel surveillance requirement. The proposed change will require RCP flywheel inspections once every ten years.

Date of publication of individual notice in Federal Register: January 10, 1997 (62 FR 1476)

Expiration date of individual notice: February 10, 1997

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: December 13, 1996

Description of amendment request: The proposed amendment would approve transfer of Soyland Power Cooperative's 13.21% minority ownership interest in the Clinton Power Station to Illinois Power Company. This action would result in Illinois Power Company becoming the sole owner of the Clinton Power Station.

Date of publication of individual notice in Federal Register: January 29, 1997 (62 FR 4337).

Expiration date of individual notice: February 28, 1997

Local Public Document Room location: : Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental

Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By March 14, 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. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-001, 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 20555-001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: January 13, 1997, as resubmitted January 17, 1997, and supplemented January 22, 1997.

Brief description of amendments: The proposed amendments would: evaluate the Unreviewed Safety Question (USQ) associated with the operation of Dresden, Units 2 and 3, with the recently discovered error in the head loss across the Emergency Core Cooling System (ECCS) suction strainers; change the Technical Specification (TS) values by lowering the allowable water temperature in the suppression chamber and ultimate heat sink; change the basis of the TS to allow credit for two psig of containment pressure to compensate for a slight increase in the amount of Net Positive Suction Head (NPSH) deficiency during the first 10 minutes following a design basis accident (DBA); and add a license condition to allow the licensee to change the Updated Final Safety Analysis Report to reflect the use of two psig of containment pressure to compensate for the deficiency in NPSH during the first 10 minutes following a DBA.

Date of Issuance: January 28, 1997 Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 152/147

Facility Operating License Nos. DPR-19 and DPR-25. The amendments revised the Technical Specifications and the Operating Licenses. Press release issued requesting comments as to proposed no significant hazards

consideration: Yes January 25, 1997 Joliet Herald News Comments received: No. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Illinois and determination of no significant hazards consideration are contained in a Safety Evaluation dated January 28, 1997.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

NRC Project Director: Robert A. Capra

Dated at Rockville, Maryland, this 5th day of February, 1997.

For the Nuclear Regulatory Commission

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation

[Doc. 97-3324 Filed 2-11-97; 8:45 am]

BILLING CODE 7590-01-F

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, February 20, 1997 and Friday, February 21, 1997, at the Washington Marriott, 1221 22nd Street NW, Washington, D.C., in the DuPont Salon. The meetings are tentatively scheduled to begin at 10:00 a.m. on February 20 and at 9:00 a.m. on February 21.

In preparation for its March 31, 1997 Annual Report to Congress, the Commission will review the conclusions and recommendations to be contained in chapters on the following topics:

Context for Reform
The Medicare Risk-Contracting Program: Plan Participation and Enrollment
Revising the Method for Determining Medicare Capitation Payments
Implementing Risk Adjustment in the Medicare Program
Promoting Access to Care for Vulnerable Populations in Medicare Managed Care
Access to Care in Medicare Risk Plans
Using Quality and Performance Measures in Medicare
Health Plan Data Needs and Capabilities
Competitive Premium Contribution Models: Options for Medicare
Provider-Sponsored Organizations
Consumer Protection Initiatives for Managed Care
Constraining Spending in Medicare Fee for Service
Improving the Efficiency of Medicare Fee for Service Through Preferred Providers
Medicare Fee Schedule Payment Issues (Work Values, Practice Expense, GPCIs, Impact on Payments)
Access and Beneficiary Financial Liability Under the Medicare Fee Schedule
Secondary Insurance for Medicare Beneficiaries
The Changing Labor Market for Physicians
Academic Medical Centers and the Changing Health Care Marketplace
Payments from a Teaching Hospital and Graduate Medical Education Trust Fund
Managing Health Care for Dually Eligible Beneficiaries
Medicaid: Spending Trends and the Move to Managed Care

Final agendas will be mailed on February 14, 1997 and will be available on the Commission's web site (WWW.PPRC.GOV) at that time.

ADDRESSES: 2120 L Street, N.W.; Suite 200; Washington, D.C. 20037. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Debbie Kramer, Executive Assistant, at 202/653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call 202/653–7220 after February 14, 1997.

Lauren LeRoy,

Executive Director.

[FR Doc. 97–3480 Filed 2–11–97; 8:45 am]

BILLING CODE 6820–SE–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Employer's Quarterly Report of Contributions Under the RUIA.

(2) *Form(s) submitted:* DC–1.

(3) *OMB Number:* 3220–0012.

(4) *Expiration date of current OMB clearance:* March 31, 1997.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Businesses or other for profit.

(7) *Estimated annual number of respondents:* 550.

(8) *Total annual responses:* 2,200.

(9) *Total annual reporting hours:* 917.

(10) *Collection description:* Railroad employers are required to make contributions to the Railroad Unemployment Insurance fund quarterly or annually equal to a percentage of the creditable compensation paid to each employee. The information furnished on the report accompanying the remittance is used to determine the correctness of the amount paid.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–3494 Filed 2–11–97; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Nonresident Questionnaire.

(2) *Form(s) submitted:* RRB–1001.

(3) *OMB Number:* 3220–0145.

(4) *Expiration date of current OMB clearance:* March 31, 1997.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 1,700.

(8) *Total annual responses:* 1,700.

(9) *Total annual reporting hours:* 108.

(10) *Collection description:* Under the Railroad Retirement Act, the benefits payable to an annuitant living outside the United States may be subject to withholding under Public Laws 98–21

and 98–76. The form obtains the information needed to determine the amount to be withheld.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–3497 Filed 2–11–97; 8:45 am]

BILLING CODE 7905–01–M

Sunshine Act; Meeting

U.S. Railroad Retirement Board; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on February 19, 1997, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Impact of P.L. 104–193 on Benefits under Railroad Retirement and Railroad Unemployment Insurance acts
(2) Letter to Ken Apfel, Office of Management and Budget, re Bulletin No. 96–02, Consolidation of Agency Data Centers
(3) Supplemental Annuity Tax
(4) Streamlining the Approval Process for Change-of-Station
(5) Fiscal Year 1997 Medicare Carrier Budget
(6) Coverage Determinations:
  A. CSX Professional Services Group, Inc.
  B. Paladin Strategies, Ltd.
(7) Regulations:
  A. Part 216, Eligibility for an Annuity (Final Rule)
  B. Parts 222 and 229, Stepchild
  C. Part 295, Payments Pursuant to Court Decree or Court-Approved Property Settlement
  D. Part 335, Sickness Benefits
(8) Administrative Circular REF(RRB)–2, Committees at the Railroad Retirement Board
(9) Chief Information Officer Vacancy Announcement
(10) Composition of Performance Review Board
(11) Labor Member Truth in Budgeting Status Report

Portion Closed to the Public

(A) SES Performance Appraisal for FY 1996

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: February 7, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–3579 Filed 2–10–97; 9:38 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22496; File No. 812–10512]

American Skandia Trust, et al.

February 5, 1997.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: American Skandia Trust (the ''Fund''), American Skandia Investment Services, Inc. (the ''Adviser''), and INVESCO Trust Company (''INVESCO'').

REVELANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemption from Section 15(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit INVESCO to serve as the investment subadvisor to the INVESCO Equity Income Portfolio (the ''Portfolio'') of the Fund, without formal approval by the contract owners of the Portfolio, pursuant to a new investment management agreement (the ''New Agreement''). The order would cover an interim period not greater than 120 days (the ''Interim Period'') and would permit INVESCO to receive from the Adviser fees earned under the New Agreement during the Interim Period.

FILING DATE: The application was filed on February 4, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on March 3, 1997, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. The Fund and the Adviser: P.O. Box 883, One Corporate Drive, Shelton, Connecticut 06484–0883; INVESCO, P.O. Box 173706, Denver, Colorado 80217–3706.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. The Fund, a registered open-end management investment company organized as a Massachusetts business trust, currently offers twenty-three portfolios investment options. The Adviser and INVESCO are registered as investment advisors under the Investment Advisers Act of 1940, as amended. The Adviser serves as the investment adviser to each portfolio of the fund pursuant to investment management agreements that comply with Section 15 of the 1940 Act. In 1994, the Adviser entered into a subadvisory agreement (the ''Existing Agreement'') that authorized INVESCO to serve as the investment adviser to the Portfolio. Pursuant to the Existing Agreement, INVESCO received fees from the Adviser for services provided by INVESCO to the Portfolio.

2. On November 4, 1996, INVESCO PLC, the indirect parent of INVESCO, announced its intention to merge with AIM Management Group (''AIM''). Under the merger agreement, INVESCO PLC will acquire AIM by issuing new shares of INVESCO PLC to the existing shareholders of AIM. After the merger is completed, existing AIM shareholders will own approximately 45% of INVESCO PLC and the new merged entity will be named AMVESCO. The merger is subject to several conditions, one of which is that the shareholders of both INVESCO PLC and AIM must approve the merger. The merger should be completed by February 28, 1997 (the ''Effective Date''). The merger will result in a change in control of INVESCO because approximately 45% of the

outstanding stock of INVESCO PLC will then be owned by shareholders of AIM. The change in control also would result in an assignment of the Existing Agreement, thereby terminating that agreement in accord with its terms and the provisions of Section 15(a) of the 1940 Act.

3. On February 12, 1997, the board of trustees of the Fund is scheduled to meet to discuss the merger and the approval of the New Agreement. The board also will consider whether to call a special meeting of the Portfolio's shareholders to consider approving the New Agreement as required by the 1940 Act.

4. The trustees, including a majority of the trustees who are not ''interested persons'' of the Adviser or of INVESCO, as that term is defined in the 1940 Act, should evaluate, with the assistance of counsel, the New Agreement. The trustees will consider several factors in evaluating the New Agreement, for example: that the New Agreement contains substantially identical terms and conditions, including identical advisory fees, as contained in the Existing Agreement; and the assurances of INVESCO that it would provide investment advisory and other services to the Fund during the Interim Period and thereafter, and that the services provided will be of the same quality as those provided before the Interim Period.

5. The board also will consider the following factors: (a) whether payment of subadvisory fees to INVESCO during the Interim Period would be appropriated and fair since there will be no diminution in the scope and quality of services provided to the Portfolio; (b) that the fees to be paid during the Interim Period are the same as the fees paid under the Existing Agreement: (c) that the fees earned by INVESCO during the Interim Period will be maintained in an interest-bearing escrow account until the New Agreement is approved or disapproved by the shareholders of the Portfolio; (d) and whether the nonpayment of investment advisory fees during the Interim Period would be unduly harsh in light of the services provided by INVESCO to the Fund during the Interim Period.

Applicants' Legal Analysis

1. Applicants request an order of the Commission pursuant to Section 6(c) of the 1940 Act exempting them from the provisions of Section 15(a) of the 1940 Act. The order would permit INVESCO to serve as investment subadvisor, without formal approval by the shareholders, pursuant to the New Agreement. The order would cover the Interim Period and would permit INVESCO to receive from the Adviser the fees earned under the New Agreement.

2. Section 6(c) provides, in pertinent part, that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction from any provision of the 1940 Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and the provisions of the 1940 Act. Section 15(a) prohibits an investment advisor from providing investment advisory services to an investment company except pursuant to a written contract has been approved by a majority of the voting securities of such investment company. Section 15(a) further requires that such written contract provide for its automatic termination in the event of an assignment. Under Section 2(a)(4) of the 1940 Act, an assignment includes any direct or indirect transfer of a contract by the assignor or any direct or indirect transfer of a controlling block of the assignor's voting securities.

3. Applicants anticipate that the merger will take place on February 28, 1997, and that the indirect parent of INVESCO will change as a result of the merger. The merger, therefore, will result in an ''assignment'' of the Existing Agreement within the meaning of Section 2(a)(4) of the 1940 Act. Upon assignment, the Existing Agreement will terminate by its own terms and pursuant to Section 15(a).

4. Rule 15a–4 under the 1940 Act provides, in pertinent part, that if an investment advisor's, or, as here, a subadvisor's, investment advisory contract is terminated by assignment, the investment advisor may continue to act as such for 120 days at the previous compensation rate if a new contract is approved by the board of directors of the investment company, and if the investment advisor or a controlling person of the investment advisor does not directly or indirectly receive money or other benefit in connection with the assignment. Applicants concede that they may not rely on Rule 15a–4 because INVESCO, PLC and its shareholders may be deemed to receive a benefit in connection with the assignment of the Existing Agreement because INVESCO, PLC, the parent of INVESCO, will receive substantial consideration from AIM for the merger.

5. Applicants submit that the termination of the Existing Agreement, effected through the merger, will cause the board of trustees of the Fund to consider appropriate actions in the best interests of the Portfolio and its shareholders. Applicants submit that the scope and quality of services provided to the Portfolio during the Interim Period will not be diminished. Applicants further submit that, while they may not rely on Rule 15a–4, they believe that the requested belief is consistent with the spirit of that rule and in the best interests of the Fund. Applicants further submit that appropriate escrow arrangements will be established to collect fees payable to INVESCO during the Interim Period under the New Agreement.

Conditions for Relief

1. Applicants represent that the New Agreement will have the same terms and conditions, including identical investment management fees, as the Existing Agreement. The New Agreement will have a different effective date than the Existing Agreement and will have provisions for the escrow arrangement not contained in the Existing Agreement.

2. Applicants further represent that the advisory fees paid to INVESCO by the Adviser will be paid into an interest-bearing escrow account until paid to: (a) INVESCO in accordance with the New Agreement, after the requisite shareholder approval is obtained; or (b) in the absence of such approval, to the Portfolio.

3. The Portfolio will hold a meeting of the shareholders to vote on approval of the New Agreement on or before the expiration of the 120th day following the termination of the Existing Agreement, but in no event later than June 30, 1997.

4. Neither the Fund nor the Portfolio will pay any costs of preparing and filing the application, or any costs of soliciting a vote of the Portfolio's shareholders in connection with the merger.

5. INVESCO will take all appropriate steps to ensure that the scope and quality of advisory and other services provided to the Portfolio during the Interim Period will be at least equivalent, in the judgment of the board of the Fund, to the scope and quality of services previously provided. In the event of any material change during the Interim Period in the manner of or the personnel providing services pursuant to the Interim Agreement, INVESCO will apprise and consult with the board of the Fund to ensure that the board, including a majority of its independent trustees, is satisfied that the services provided will not be diminished in scope or quality.

6. Before the termination of the Existing Agreement, the board of the Fund, including a majority of its independent trustees, will have approved the New Agreement as required by Section 15(c) of the 1940 Act.

Conclusion

For the reasons set forth above, Applicants submit that the exemptive relief requested is necessary and appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–3431 Filed 2–11–97; 8:45 am]

BILLING CODE 8010–01–M

[File No. 500–1]

Twenty First Century Health, Inc.; Order of Suspension of Trading

February 10, 1997.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Twenty First Century Health, Inc. (''TFCH''), of Las Vegas, Nevada. Questions have been raised about publicly-disseminated information concerning, among other things: (1) TFCH's financial condition; (2) the existence, effectiveness, and marketability of a medical device for testing blood sugar purportedly licensed by TFCH; (3) the size of the market for that device; and (4) the ownership, value, and business of certain companies purportedly acquired by TFCH.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:00 a.m. EST, February 10, 1997 through 11:59 p.m. EST, on February 24, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–3625 Filed 2–10–97; 12:46 pm]

BILLING CODE 8010–01–M

[Release No. 34–38243; File No. SR–Amex–97–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to Amendments to Rules 103 and 950 Regarding Intra-day Trading

February 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 22, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'') or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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

Amex proposes to amend Exchange Rules 103 and 950 regarding new intra-day trading provisions. The text of the proposed rule change is available at the Office of the Secretary, the Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Rule 103(c), an Amex Floor member, with certain exceptions, may not exercise discretion with respect to the choice of security to be bought or sold, the total amount of the security to be bought or sold, or whether the transaction shall be a purchase or sale. Currently, there are no provisions in Rule 103(c), or otherwise, specifically governing the practice of intra-day trading. The term ''intra-day trading'' refers to the practice whereby a customer places orders on both sides of the market and attempts to profit by buying at the bid and selling at the offer.

The Exchange proposes to amend Rule 103 to add new intra-day trading provisions. These provisions will apply only when a Floor member simultaneously represents, for the same customer's account,[2] market or limit orders on both sides of a minimum variation market. Under the proposal, if a Floor member acquires a position on behalf of an intra-day trader's account, Rule 103(c)(2) will place certain restrictions on how the member can liquidate or cover that position during the same trading session. Specifically, the member will be required to obtain a new liquidating order (i.e., one entered subsequent to the acquisition of the contra-side position) from his or her customer. The new order must be time-recorded both upstairs and upon receipt on the Trading Floor.

Proposed Rule 103(c)(3) will thereafter require that the Floor member must execute the liquidating order entered pursuant to Rule 103(c)(2) before he or she can execute any other order for the same account on the same side of the market as that liquidating order. Pursuant to proposed Commentary .01 to Rule 103, the provisions of Rule 103(c) (2) and (3) will not apply, however, to the execution of: an order to liquidate or cover a position carried over from a previous trading session; a position assumed as part of a strategy relating to bona fide arbitrage; or a position assumed in reliance on the exemption for block positioners.

Proposed Commentary .02 to Rule 103 sets forth examples of how the provisions of Rule 103(c) (2) and (3) will operate, while proposed Commentary .03 to Rule 103 details the types of orders that a Floor member may handle simultaneously, without violating rule 103's prohibition against a member choosing whether a transaction will be a purchase or sale.

These new changes are intended to address trading situations where a Floor member, representing at the same time buy and sell orders at the minimum variation for the same customer, may be perceived as having a time and place advantage over other market participants in that he or she may be able to trade for the same customer without leaving the Trading Crowd. By requiring the entry of a new liquidating

[1] 15 U.S.C. § 78s(b)(1).

[2] For purposes of this Rule, an ''account'' would be deemed to be any account in which the same person or persons is directly or indirectly interested.

order, these amendments should minimize any such perceived advantage. It should be noted that the proposed changes will not apply to options trading, and Rule 950 will be amended accordingly. In addition, the proposed changes also will not apply to system orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[3] of the Act in general and furthers the objectives of Section 6(b)(5)[4] in particular in that the rules are designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

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 in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–97–02 and should be submitted by [insert date 21 days from date of publication].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–3428 Filed 2–11–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. § 78f(b).

[4] 15 U.S.C. § 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–38238; File No. SR–AMEX–96–39]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Various Updates to Amex Trading Rules and Company Guide Section 402.

February 4, 1997.

On October 16, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to incorporate various minor updates and clarifications into the Exchange's rules and *Company Guide.*

The proposed rule change was published for comment in the Federal Register on November 13, 1996.[3] No comments were received on the proposal. Subsequently, the Exchange clarified its rationale for the modification of Amex Rule 126, which governs order precedence.[4] This order approves the proposal.

The Exchange proposed that the following minor housekeeping changes be made:

A. Rule 135—delete the reference to sales sheets published by ''Francis Emory Fitch, Inc.'' because the Exchange no longer utilizes this company's service.

B. Rule 152—delete the reference to Rule 570 because Rule 570 was rescinded.

C. Rule 340—change the reference to the Exchange's ''Market Operations Division'' to the ''Exchange.''

D. Rule 171—remove the prohibition against specialist units of less than three natural persons to conform with a comparable NYSE provision.

E. Rule 904—change the reference to the Exchange's ''Membership Compliance Division'' to the ''Exchange.''

F. Rule 950—delete Rule 170 from the list of rules that are applicable in their entirety to option transactions because all of that rule's commentary is not applicable (paragraph (n) of Rule 950 already specifies which portions of Rule 170 are applicable).

G. Section 402 of the *Company Guide*—add Bloomberg Business News to the list of approved services for disclosure of material information.

In addition, the Exchange proposed a change to Amex Rule 126, which provides generally that the highest bid and lowest offer have priority in execution. When bids or offers are made at the same price, priority is determined by the time order in which they were placed. If bids and offers are made simultaneously at the same price, they are on parity and, as such, are entitled to share equally in an execution at the specified price. Amex Rule 108, which governs parity and priority at openings, contains similar provisions. In addition, Amex Rule 108 grants a specialist's agency limit orders a preference over other orders on parity whenever there is a substantial accumulation of orders on the book at a limit price equal to the proposed opening price. Under these circumstances, the specialist is entitled to execute its agency limit orders at the following percentages: 60% when there is one broker on parity, 40% when there are 2–5 brokers on parity, and 30% when there are 6 or more brokers on parity.

The Exchange believes that procedures similar to those contained in Amex Rule 108 should be utilized throughout the trading day. Thus, under the current proposal, when a specialist has a substantial accumulation of agency orders on its book and there are also floor brokers in the trading crowd that are on parity with those orders, the specialist's orders would be entitled to the same percentage of shares of the contra side order as is currently provided for in Amex Rule 108. The Exchange believes that keying the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] Securities Exchange Act Release No. 37924 (Nov. 6, 1996), 61 FR 58270.

[4] Letter from Claudia Crowley, Special Counsel, Amex, to Michael Walinskas, Senior Special Counsel, Division of Market Regulation, SEC, dated January 31, 1997.

percentage of contra side shares allotted to the specialist's orders to the number of competing floor brokers on parity would divide the specified execution as equally as possible, while providing an easy to use formula whose implementation is not unduly disruptive to trading. In addition, the Amex believes this change would facilitate the ability of the specialist, who normally represents multiple customer orders, to compete with floor brokers in the trading crowd, who normally only represent one customer order each.

The final aspect of the proposal concerns the adjustment of stop limit orders when a security is quoted ex-divided, ex-distribution, ex-rights, or ex-interest. When a security is quoted ex-divided, ex-distribution, ex-rights, or ex-interest (except for stock dividends and distributions), Amex Rule 132(a) generally provides that a specialist must reduce all open orders to buy and open stop orders to sell by the cash value of the payment or rights. However, there occasionally has been some confusion concerning stop limit orders because the rule does not specifically provide that both the limit and the stop price must be reduced. Therefore, the Exchange proposes to amend paragraph (a) to provide such specificity. This change also will conform Amex Rule 132 to New York Stock Exchange (''NYSE'') Rule 118.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[5] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, and, in general, to protect investors and the public interest.[7]

The Commission supports the Amex's efforts to continue to review the form and substance of its regulations. In this regard, the Commission agrees with the Exchange's assertion that the proposed to Amex rules 135, 152, 340, 171, 904, and 950 will eliminate or update requirements that no longer serve a meaningful regulatory purpose. In addition, the Commission believes that adding Bloomberg Business News to the Exchange's list of approved services for disclosure of material information should facilitate the dissemination of important information, thereby enhancing the quality of the markets.

The Commission also believes the changes concerning the precedence of orders are consistent with the Act. These changes should allow specialists, who often represent many orders, to compete more equitably with traders in the crowd, who often represent only one order. The Commission believes it is reasonable for the Exchange to conclude that the percentages selected should divide the specified execution in an equitable manner, while providing an easy to use formula whose implementation should not disrupt trading. Moreover, the Commission believes this practice serves the function addressed by procedures in place at other exchanges that facilitate the execution of customer limit orders.[8]

Finally, the Commission believes it is appropriate to require specialists to adjust open stop limit orders to sell when a security is quoted ''ex'' to ensure that these orders will continue to be handled according to the sellers' original intentions and to preserve the ability of these orders to obtain the best price available. Moreover, for the purposes of Amex Rule 132(a), open stop limit orders to sell and open stop orders to sell are essentially the same. The only difference between these orders is that a stop limit order to sell places a floor on an acceptable execution price whereas a stop order to sell will accept whatever the current market price is after a transaction occurs at or below the stop order's sell price.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–96–39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–3430 Filed 2–11–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] In making this finding, the Commission notes that the proposal should increase efficiency by eliminating a source of confusion among Amex members and removing outdated provisions. *See* 15 U.S.C 78c(f) (noting that it is in the public interest to consider whether an action will promote efficiency, competition, or capital formation).

[8] *See, e.g.,* NYSE Rule 72. NYSE Rule 72 permits the largest bid (offer) to ''size out'' other smaller bids (offers) that are on parity with it. However, all bids (offers) in ''the book'' that are on parity with the larger bids (offers) in the trading crowd are aggregated for precedence purposes to facilitate the ability of the book to compete with the trading crowd for contra side order flow. Moreover, a specialist may further increase the opportunity for bids (offers) in the book to size out bids (offers) in the trading crowd by combining his bid (offer) for his own account with the bids (offers) in the book, if he so chooses. NYSE Rule 108.10.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[Release No. 34–38237; File No. SR–CHX–97–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Specialist Fees

February 4, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 17, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' 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, pursuant to Rule 19b–4 of the Act, submits a proposed rule change amending the CHX's Schedule of Fees relating to specialists effective February 1, 1997. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

Membership Dues and Fees * * *

(b) Registration Fee:

Firm or Corporation—No change in text.

Office (other than principal)—No change in text.

Officers or Partners—No change in text.m

Salesmen—No change in text.

[Specialist—Fees will be determined based upon the monthly round lot activity of an issue on the MSE, and shall be paid monthly, according to the following:

The 300 most active issues shall be charged at a rate of $400 per year.

All other issues shall be charged at a rate of $100 per year.]

Specialist Assignment—There shall also be an assignment fee of $500 per issue upon the approval by the Committee on Specialist Assignment and Evaluation of an application of a member or member organization to act as specialist in a

[1] 15 U.S.C. 78s(b)(1).

security. However, this fee shall be applicable in competitive assignments only.

Subordinated Loans—No change in text.

Transfer—No change in text.

(4) Specialist Fees:

[25¢ per trade plus 1½¢ per $1,000 of valuation payable on round lot sales (or major fraction thereof) as principal whenever the Specialist makes such sale as principal on the Exchange.]

Specialists will be assessed a fixed fee per assigned stock on a monthly basis, to be calculated as follows:

Fixed Fee Per Stock=$345,000 × Percent of Fixed Costs Per Tier × CTA Trade Volume Per Stock/CTA Trade Volume Per Tier.

82% of the Fixed Fee Per Stock shall be designated as a ''Registration Fee,'' and 18% of such Fee shall be designated as a ''Clearing Support Fee.''

''Percent of Fixed Costs Per Tier'' is taken from the following table:

Tier	Description of tier	Percent of fixed costs per tier
1	1–25 Most Active Stocks	*11*
2	26–100	*11*
3	101–250	*12*
4	251–500	*13*
5	501–1000	*19*
6	1001–2700+	*34*

Classification of a particular stock for a particular Tier is based on the total number of trades reported to the Consolidated Tape Association in such stock for a specific month.

''CTA Trade Volume Per Stock'' means the total number of trades reported to the Consolidated Tape Association in a specific stock for a specific month.

''CTA Trade Volume Per Tier'' means the total number of trades reported to the Consolidated Tape Association in all stocks classified in a particular Tier for a specific month.

A specialist's Fixed Fee Per Stock will be waived until February 1, 1999, for any stock unassigned to any specialist as of December 1, 1996 and assigned to such specialist without competition by May 1, 1997.

(o) Clearing Support Fees *

(1) Account Fees, No change in text.

(2) CUSIP Fees:

Specialist *OTC* CUSIP—$50 per *OTC* CUSIP per—

Fee	Month
Market Maker CUSIP Fee.	No change in text.
Odd Lot Dealer CUSIP Fee.	No change in text.
Floor Broker as Principal.	No change in text.

*(minimum clearing support fee is $600 per month). Discounts

The above Specialist *OTC* CUSIP Fee will be subject to the following discounts:

If between 20 and 200 trades occur in a particular CUSIP in a given month, the Specialist *OTC* CUSIP Fee for that CUSIP shall be $40 for that month.

If less than 20 trades occur in a particular CUSIP in a given month, the Specialist *OTC* CUSIP Fee for that CUSIP shall be $20 for that month.

(s) Specialist Credits

Total monthly fees owed by a specialist to the Exchange (excluding rebills) will be reduced (but to no less than zero) by the application of the following transaction credits:

CHX monthly CTA trade volume percentage by stock	Transaction credit (in percent)
<7%	18
7%–12%	36
>12%	54

''Transaction Credit'' means the applicable percentage of monthly CHX tape revenue from the Consolidated Tape Association generated by a particular stock. To the extent that CHX tape revenue is subject to a year end adjustment, specialist credits may be adjusted accordingly.

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 amend the CHX's pricing schedule relating to specialist fees on listed securities. Currently, specialists pay usage-based transaction fees which are variable, based on ''Trade Volume'' (the number of executed trades) and ''Dollar volume'' (the value of executed trades) when acting as principal on the sell side. Specialists also pay certain semi-variable fees (issue registration fees and clearing support fees) which are tiered based upon Trade Volume.[2] In operating trading floor facilities and providing services to specialists, the Exchange incurs primarily fixed expenses in any given year that is largely independent of Trade Volume. The Exchange's current fee schedule, therefore, causes those specialists that have higher trading volumes to pay a disproportionate portion of the fixed expenses of the Exchange. The revised specialist fee schedule provides a more equitable allocation of the recoupment of the Exchange's fixed expenses by imposing a fixed fee primarily based upon the Consolidated Market Trade Volume in each stock. Further, the revised fee schedule both recognizes the existence of externally-generated revenue as an offset to Exchange fixed expenses and the role of the specialists in obtaining this revenue, by providing a transaction credit to specialists as further described below.

The determination of the fixed fee per stock will be calculated monthly and will be based on the Consolidated Market Trade Volume of each stock. All stocks in which transactions are reported to the consolidated tape will be categorized in one of six tiers monthly, based upon the Consolidated Tape Association (''CTA'') Trade Volume (in descending order). These six tiers are described as follows:

Tier Nos.	Tier description
1	1–25 Highest Trade Volume Stocks.
2	26–100.
3	101–250.
4	251–500.
5	501–1000.
6	1001–2700+.

A substantial portion ($345,000 per month) of the Exchange's fixed costs relating to the provision of service to specialists will be recovered through this fixed fee. The Exchange will assign a percentage of this $345,000 to each tier and a specialist's monthly fixed fee per stock will then be calculated as follows:

Fixed Fee Per Stock=Total CHX Fixed Fee ($345,000) × Percent of Fixed Costs

[2] Under the proposal, specialists in listed securities no longer will pay CUSIP clearing support fees. Telephone conversation between J. Craig Long, Attorney, Foley & Lardner, and George A. Villasana, Attorney, Market Regulation, SEC, on Feb. 4, 1997.

Per Tier × (CTA Trade Volume Per Stock/CTA Trade Volume Per Tier).

For example, if Stock ABC had 3,000 consolidated market trades and was the 420th most active stock (Tier 4, as described above) in the month, and there were a total of 300,000 Consolidated Market trades in the tier, the specialist's fixed fee would equal:

Total CHX fixed fee		Tier 4 fixed cost percent		Stock ABC CTA volume		Tier 4 CTA volume		Stock ABC fixed monthly fee
$345,000	×	13%	×	(3000	/	300,000)	=	$448.50

The Exchange will waive the specialist fixed monthly fee described above for a period of two years beginning February 1, 1997 for any stock unassigned to any specialist as of December 1, 1996, that is assigned to a specialist without competition by May 1, 1997.

Specialists' total monthly fees owed to the Exchange will be reduced by the application of certain transaction credits. The transaction credits will be based upon a percentage of the externally-generated CTA tape revenue obtained in each stock.[3] This percentage will increase as the level of this externally-generated revenue, that offsets Exchange fixed costs, also increases. These credits, however, may not exceed a specialist's total monthly billing invoice (excluding directly rebilled services).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(4)[5] in particular in that it provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (e) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of The Chicago Stock Exchange. All submissions should refer to File No. SR–CHX–97–01 and should be submitted by March 5, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–3427 Filed 2–11–97; 8:45 am]

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[3] The applicable transaction credit percentage is applied on a marginal basis to the CHX monthly CTA trade volume percentage by stock. For example, if the CHX monthly CTA trade volume percentage for a particular stock is 15%, the applicable transaction credit rates are 18% for the first 7% of the trade volume, 36% for the next 5% of the trade volume, and 54% for the remaining 3% of the trade volume. Conversation among Lou Klobuchar, Jr., Executive Vice President, CHX, George T. Simon, Foley & Lardner, and Howard L. Kramer, Associate Director, Market Regulation, SEC, Michael Walinskas, Senior Special Counsel, Market Regulation, SEC, and George A. Villasana, Attorney, Market Regulation, SEC, on February 3, 1997.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4.

[8] 17 CFR 200.30–3(a)(12).

[Release No. 34–38241; File No. SR–PSE–96–36]

Self—Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to a Requirement That all Non-Self-Clearing PSE Floor Brokers Maintain Error Accounts

February 5, 1997.

I. Introduction

On October 17, 1996, the Pacific Stock Exchange, Incorporated (''PSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''ACT'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to provide that each non-self clearing floor broker on the Exchange must establish and maintain an error account for carrying positions resulting from errors.

The proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 37903 (October 31, 1996), 61 FR 57507 (November 6, 1996). No comments were received on the proposal. The Exchange filed Amendment No. 1 with the Commission on February 4, 1997.[3] This

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 was filed with the Commission on February 4, 1997. The amendment changed the numbering of the proposed rule change from 4.10(c) to 4.21, further explained the Exchange's purpose for the rule change, and explained why the rule change distinguishes

order approves the proposed rule change, as amended.

II. Description

The rule change adopts new Rule 4.21 to provide that each member organization whose principal business is as a floor broker on the Exchange and who is not self-clearing must establish and maintain an account with a clearing member of the Exchange, for the sole purpose of carrying positions resulting from bona fide errors made in the course of its floor brokerage business. The new rule further provides that with respect to options floor brokers only, such an account for options transactions must be maintained with an entity that is also a member of the Options Clearing Corporation.

The purpose of the proposed rule change is to strengthen the Exchange's ability to detect and deter rule violations that may occur in connection with floor brokers' trading errors. The proposed rule change would assist routine examinations of the floor brokers' trading by the PSE's Department of Member Examinations. The Exchange notes that the proposed rule change is consistent with Rule 703(c)(vi) of the Philadelphia Stock Exchange, Inc. (''PHLX''). The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[4] in particular in that it is designed to promote just and equitable principles of trade and to protect investors and public interest.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[5] More specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public, because the proposed rule change facilitates the enhanced surveillance of floor brokers' error trades.

The Commission believes that the proposed rule change may enhance the Exchange's ability to detect and prevent rule violations committed by floor brokers that may arise in connection with trading errors, by facilitating routine surveillance examinations of floor brokers with regard to error trades. This enhanced surveillance capability results from the Exchange's ability to more easily review trades designated by floor brokers as errors by reviewing the required error account for each floor broker. The Commission notes that the proposed rule change will conform the treatment of error trades by non-self-clearing floor brokers with that conducted by self-clearing floor brokers, whose practice is to have one or more trading accounts in which to segregate errors.[6]

The Commission also notes that the proposed rule change is similar to rule 703(c)(vi) of the PHLX, previously approved by the Commission, which requires all non-self-clearing floor brokers to have error accounts. Accordingly, the Commission believes that the proposed rule change does not raise any new significant regulatory issues.

The Commission finds good cause for approving Amendment No. 1 on an accelerated basis prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Specifically, the Commission believes that accelerated approval of Amendment No. 1 is appropriate because the amendment does not change the substance of the proposal. Rather, it simply clarifies and explains certain aspects of the proposed rule change.[7]

Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. 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 rules change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available at the principal office of the Exchange. All submissions should refer to File No. SR–PSE–96–36 and should be submitted by [insert date 21 days from date of publication].

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PSE–96–36), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–3429 Filed 2–11–97; 8:45 am]

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between non-self-clearing floor brokers and self-clearing floor brokers. *See* letter from Michael D. Pierson, PSE, to Heather Seidel, Attorney, Market Regulation, Commission, dated February 4, 1997.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b).

[6] *See* Amendment No. 1.

[7] *See* supra note 3.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[Release No. 34–38252; File No. SR–PTC–96–07]

Self-Regulatory Organizations; Participants Trust Company; Order Approving a Proposed Rule Change Relating to the Right of Set-Off Upon the Default of a Participant

February 6, 1997.

On December 2, 1996, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–PTC–96–07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to clarify PTC's right of setoff upon the default of a participant. Notice of the proposal was published in the Federal Register on December 26, 1996.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change clarifies that upon a participant's default in payment of a debit balance PTC will set-off any credit balances in the participant's accounts to reduce the unpaid obligation of the participant. Participants maintain their securities positions at PTC in one or more master accounts, each of which is comprised of one or more accounts of the following types: proprietary accounts for securities that are held by the participant as principal; agency accounts for securities that are held by the participant as agent; pledgee accounts for securities that are held by

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 38059 (December 19, 1996), 61 FR 68087.

the participant as pledgee or pursuant to financing arrangements; and various seg and hold-in-custody accounts associated with the proprietary and agency accounts for purposes of segregation.

Each proprietary account, agency account, and pledgee account has a cash balance associated with it against which credits and debits are posted, including amounts owing with respect to securities delivered versus payment intraday to the transfer account associated with the account. Each cash balance is either a credit balance or debit balance depending on whether the participant is in a net funds credit position or debit position with respect to the applicable account to which the cash balance relates at the time the determination is made.

PTC restricts the net debit amount each participant may owe PTC by imposing a net debit cap by means of a Net Debit Monitoring Level (''NDML'').[3] A participant's NDML is compared to the total of the net cash balances in its proprietary accounts, agency accounts, and pledgee accounts. PTC will not process a transaction that will result in a net debit balance that exceeds a participant's NDML. If a participant is at its NDML limit, it must take steps to reduce the net debit balance. The ability to apply a defaulting participant's proprietary, agency, and pledgee credit balances against its unpaid settlement obligations is implicit in the NDML structure to assure that the failure of a single participant is covered by PTC's committed line of credit for settlement.

PTC's rules however are silent on the application of pledgee and agency credit balances in the event a participant does not make complete payment of all account obligations at settlement. In addition, PTC's ''default rule'' states that PTC will set-off any credit balance in a proprietary account of a defaulting participant against an unpaid debit balance in another account. This rule does not make reference to PTC's right to set-off against agency and pledgee credit balances of a defaulting participant.

The proposed rule change clarifies that upon a participant's default in payment of a debit balance PTC is authorized to apply any credit balances in the participant's proprietary accounts, pledgee accounts, and agency accounts to reduce any unpaid obligations of the participant. The proposed rule change also will extend PTC's right of set-off in the event of a participant's default to include any agency seg credit balances of the defaulting participant.

II. Discussion

Section 17A(b)(3)(F)[4] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. As discussed below, the Commission believes that PTC's rule change is consistent with this obligation under the Act.

One of the principal risks to PTC and its participants is that a participant will not pay its net debit balance and will cause PTC or its participants to incur substantial losses. Default by one or more participants with a large net debit balance relative to PTC's committed lines of credit would strain PTC's ability to meet its settlement obligations on the day of default.

As previously discussed, the proposed rule change clarifies PTC's right to apply any credit balances in the participant's proprietary accounts, pledgee accounts, and agency accounts to reduce the unpaid obligation of the participant upon the participant's default, modifies the NDML calculation to include agency seg credit balances, and authorizes PTC to set-off against agency seg credit balances in the event a participant defaults in the payment of its debit balances.

The Commission believes that clarifying and extending PTC's right of set-off upon the default of a participant reduces the risks to PTC and its participants. PTC's set-off and NDML procedures are designed to safeguard PTC and its participants against the risk of participant default and provide PTC with sufficient liquidity to complete settlement in the event of a participant default. PTC's NDML also assures PTC and its participants that one or more participants will not accumulate an intraday net debit so large as to compromise the integrity of PTC's system. The proposed rule change should not only better enable PTC to fulfill its safeguarding obligations under the Act but should benefit participants by including agency seg credit balances in the NDML calculation which will allow participants to have the benefit of these credits in the calculation of their net obligation to PTC.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PTC–96–07) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–3478 Filed 2–11–97; 8:45 am]

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[3] The maximum NDML for any participant is the amount of PTC's committed line of credit for settlement, which is currently $2 billion.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

[Release No. 34–38247; File No. SR–Phlx–97–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., To Reduce the Value of the Super Cap Index

February 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 9, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 reduce the value of its Super Cap Index (''Index'') option (''HFX'') to one-half its present value by doubling the divisor used in calculating the Index. The Index is comprised of the top five options-eligible common stocks of U.S. companies traded on the New York Stock Exchange, as measured by capitalization. The other contract specifications for the HFX will remain unchanged.

The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange began trading the HFX in November, 1995.[1] The Index value was created with a value of 350 on its base date of May 31, 1995 and has risen to 540 on January 29, 1997. Thus, the value of the Index has increased 54% since it was first created.[2] Consequently, the premium for HFX options has also risen. In May, 1996, the Exchange filed a proposed rule change to reduce the value of the Index by one-third; although this proposal was approved by the Commission, operational limitations prevented its implementation.[3] Thus, the Index has never been split.

As a result, the Exchange proposes to conduct a ''two-for-one split'' of the Index, such that the value would be reduced to one-half of its present value. In order to account for the split, the number of HFX contracts will be doubled, such that for each HFX contract currently held, the holder would receive two contracts at the reduced value, with a strike price one-half of the original strike price. For instance, the holder of a HFX 540 call will receive two HFX 270 calls. In addition to the strike price being reduced by one-half, the position and exercise limits applicable to the HFX will be doubled, from 5,500 contracts[4] to 11,000 contracts, for a six month period after the split is effectuated.[5] This procedure is similar to the one employed respecting equity options where the underlying security is subject to a two-for-one stock split, as well as previous reductions in the value of other Phlx indexes.[6] The trading symbol will remain HFX.

In conjunction with the split, the Exchange will list strike prices surrounding the new, lower index value, pursuant to Phlx Rule 1101A.[7] The Exchange will announce the effective date by way of an Exchange memorandum to the membership, also serving as notice of the strike price and position limit changes.[8]

The purpose of the proposal is to attract additional liquidity to the product in those series that public customers are most interested in trading. For example, a near-term, at-the-money call option series currently trades at approximately $2,125 per contract.[9] The Exchange believes that certain investors and traders currently may be impeded from trading at such levels. With the Index split, that same option series (once adjusted), with all else remaining equal, could trade at approximately $1,062 per contract. The Phlx believes that a reduced premium value should encourage additional investor interest.

The Exchange believes that Super Cap Index options provide an important opportunity for investors to hedge and speculate upon the market risk associated with the underlying stocks. By reducing the value of the Index, such investors will be able to utilize this trading vehicle, while extending a smaller outlay of capital. This, in turn, should attract additional investors and create a more active and liquid trading environment.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, as well as to protect investors and the public interest, by establishing a lower index value, which should, in turn, facilitate trading in Super Cap Index options. The Exchange believes that reducing the value of the Index does not raise manipulation concerns and would not cause adverse market impact, because the Exchange will continue to employ its surveillance procedures and has proposed an orderly procedure to achieve the index split.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such 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 the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–05 and should be submitted by [insert date 21 days from date of publication].

[1] *See* Securities Exchange Act Release No. 36369 (October 13, 1995), 60 FR 54274 (October 20, 1995).

[2] *See* letter from Theresa A. McCloskey, Vice President, Regulatory Services, Phlx, to James T. McHale, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, dated January 31, 1997 (''Phlx letter'').

[3] *See* Securities Exchange Act Release No. 37536 (August 7, 1996) (SR–Phlx–96–17). The Options Clearing Corporation was not able to accept certain strike prices resulting from a three-for-one split, because dividing certain strike prices by three resulted in a strike price with too many decimal places. This operational limitation does not arise in a two-for-one split.

[4] *See* Phlx Rule 1001A(c).

[5] After this six month period, the position and exercise limits will return to the current level of 5,500 contracts.

[6] *See* Securities Exchange Act Release Nos. 36577 (December 12, 1995), 60 FR 65705 (December 20, 1995) (reducing the value of the Phlx National Over-the-Counter Index); and 35999 (July 20, 1995), 60 FR 38387 (July 26, 1995) (reducing the value of the Phlx Semiconductor Index).

[7] Specifically, because the Index value would be less than 500, the applicable strike price interval would be $5 in the first four months and $25 in the fifth month. *See* Rule 1101A(a).

[8] The Exchange will issue more than one memorandum, including one naming the effective date of the split and the specific strike prices for the new, split option.

[9] With the Index at 540, a February 540 call on January 29, 1997 was priced at approximately 21¼, multiplied by 100=$2125. *See* Phlx letter, *supra* note 2.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–3477 Filed 2–11–97; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Request for Emergency Review by the Office of Management and Budget

The Social Security Administration publishes a list of information collection packages that will require clearance by OMB in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection listed below has been submitted to OMB for emergency clearance. OMB approval has been requested by February 7, 1997:

0960–NEW. The information collected on form SSA–538 will be used by SSA and the State Disability Determination Services (DDS) to record medical and functional findings concerning the severity of impairments of children claiming SSA benefits based on disability. The form will be used for initial determinations of eligibility, in appeals and in initial continuing disability reviews. The respondents are State DDS offices.

Number of Respondents: 1,066,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 355,333 hours.

To receive a copy of the form or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to her at the address listed below. Written comments and recommendations regarding the information collection(s) should be directed to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB), Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA), Social Security Administration, DCFAM, Attn: Judith T. Hasche, 6401 Security Blvd, 1–A–21 Operations Bldg., Baltimore, MD 21235

Dated: February 5, 1997.

Frederick W. Brickenkamp,

Team Leader, FMRCT, Social Security Administration.

[FR Doc. 97–3343 Filed 2–11–97; 8:45 am]

BILLING CODE 4190–29–P

Supplementary Agreement on Social Security Between the United States and Austria; Entry Into Force

The Commissioner of Social Security gives notice that a supplementary agreement entered into force on January 1, 1997, which amends the Social Security agreement between the United States (U.S.) and Austria that has been in effect since November 1, 1991. The supplementary agreement, which was signed on October 5, 1995, was concluded pursuant to section 233 of the Social Security Act.

The supplementary agreement amends the original agreement to update and clarify several of its provisions. The most important of these amendments introduces a new method of computing Austrian benefits under the agreement. The new computation method replaces a provision in the original agreement that would have resulted in reduced Austrian Social Security benefits for certain individuals who have divided their careers between the U.S. and Austria. This reduction provision was scheduled to take effect on November 1, 1996 (5 years after the effective date of the original agreement) but, as a result of the supplementary agreement, it will not be implemented.

Individuals who wish to obtain copies of the supplementary agreement or want general information about its provisions may write to the Social Security Administration, Office of International Policy, Post Office Box 17741, Baltimore, Maryland 21235. Individuals who wish to obtain information about how the new computation method will affect their Austrian benefits should write to the Main Association of Austrian Social Insurance Agencies (Hauptverband der Oesterreichischen Sozialversicherungstraeger), Kundmanngasse 21, 1030 Vienna, AUSTRIA.

Dated: February 3, 1997.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 97–3468 Filed 2–11–97; 8:45 am]

BILLING CODE 4890–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Jim Air, Inc. for New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 97–2–3), Dockets OST–96–1676.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding Jim Air, Inc., fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than 02–28–97.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–96–1676 and addressed to the Department of Transportation Dockets (SVC–120.30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366–2337.

Dated: February 7, 1997.

Charles A. Hunnicutt,

Assistant Secretary for International and Aviation Affairs.

[FR Doc. 97–3511 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–62–P

White House Commission on Aviation Safety and Security; Open Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: The White House Commission on Aviation Safety and Security will hold its final meeting to discuss aviation safety and security issues. Part of the meeting is open to the public and part is not. This meeting supplements the open meeting already announced for February 12, 1997 in the Commerce Department Auditorium.

DATES: The meeting will be held on Tuesday, February 11, 1997, from 9:00 AM to 5:00 PM.

ADDRESSES: The meeting will take place in the GSA Auditorium, 18th & F Streets, NW., Washington, DC.

[9] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: Richard K. Pemberton, Administrative Officer, Room 6210, GSA Headquarters, 18th & F Streets, NW., Washington, DC 20405; telephone 202–501–3863; telecopier 202–501–6160.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 USC Appendix), DOT gives notice of a meeting of the White House Commission on Aviation Safety and Security (''Commission''). The Commission was established by the President to develop advice and recommendations on ways to improve the level of civil aviation safety and security, both domestically and internationally. The principal purpose of the meeting on February 11 and 12 is to formulate the Commission's final recommendations to the President.

The portion of the meeting from 9:00 AM–2:00 PM, during which the Commissioners will formulate their recommendations on measures to improve aviation security, will be closed to the public pursuant to the following exemptions in the Government in the Sunshine Act, which apply to public meetings under the Federal Advisory Committee Act:

Exemption 1: Classified information. In order properly to formulate their recommendations, the Commissioners may need to discuss or refer to information properly classified in the interest of national security, which may not be done in public.

Exemption 3: Information exempted from public disclosure by some other statute. Under 49 USC 40119(b), the Administrator of the Federal Aviation Administration (FAA) may prohibit public disclosure of certain categories of information relating to aviation security, if disclosure would constitute an unwarranted invasion of personal privacy, reveal company confidential information, or create a risk to the safety of individuals traveling in inter- or intra-state air transportation. These categories are described at 14 CFR Part 191. Such information will be discussed or referred to at the meeting.

Exemption 4: Company confidential information. There is competition in the aviation industry in many forms: among carriers, among equipment manufacturers, and among software manufacturers, among others. Public discussion of some of these matters could violate 18 USC 1905, which makes it a crime to reveal improperly company confidential information that has come into the possession of the Government.

Exemption 9: Premature disclosure would lead to frustration of proposed agency action. The final recommendations of the Commission have not been formulated; it is possible, however, that public knowledge of some of the security recommendations may frustrate their acceptance and implementation by the FAA and other agencies. The Commission is authorized to protect against this possibility.

Limited seating for the public portion of the meeting is available on a first-come, first-served basis. The public may submit written comments to the Commission at any time; comments should be sent to Mr. Pemberton at the address and telecopier number shown above.

Issued in Washington, DC on February 6, 1997.

Nancy E. McFadden,

General Counsel, Department of Transportation.

[FR Doc. 97–3444 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Advisory Circular 20–139, Commercial Assistance During Construction of Amateur-Built Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular 20–139, Commercial Assistance During Construction of Amateur-Built Aircraft. Advisory Circular 20–139 provides information and guidance concerning an acceptable means, but not the only means, of demonstrating compliance with the requirements of Federal Aviation Regulations Part 21, Certification Procedures for Products and Parts. It is directed to persons involved in the construction of amateur-built aircraft, the manufacturer of kits designed to be assembled into aircraft by amateur-builders, builders of aircraft fabricated from plans for certification as amateur-built, and persons providing assistance to amateur-builders.

ADDRESSES: Copies of AC 20–139 can be obtained from the following: U.S. Department of Transportation, Subsequent Distribution Office, M–483.6, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20785.

Issued in Washington, DC, on April 3, 1996.

Frank P. Paskiewicz,

Acting Manager, Production and Airworthiness Certification Division.

[FR Doc. 97–3506 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

Receipt of Noise Compatibility Program and Request for Review for Laughlin Bullhead International Airport, Bullhead City, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Laughlin Bullhead International Airport, Bullhead City, Arizona, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereinafter referred to as ''the Act'') and 14 CFR Part 150 by the Mohave County Airport Authority, Inc. This program was submitted subsequent to a determination by the FAA that the associated noise exposure maps, submitted under 14 CFR Part 150 for Laughlin Bullhead International Airport, were in compliance with applicable requirements effective July 9, 1996. The proposed noise compatibility program will be approved or disapproved on or before October 13, 1997.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is February 14, 1997. The public comment period ends April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Charles B. Lieber, Airport Planner, AWP–611.1, Planning Section, Western-Pacific Region, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone (310) 725–3614. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Laughlin Bullhead International Airport which will be approved or disapproved on or before October 13, 1997. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA formally received the noise compatibility program for Laughlin Bullhead International Airport, effective on December 4, 1996. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before October 13, 1997.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, National Headquarters, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region Office, 15000 Aviation Boulevard, Room 3012, Hawthorne, California 90261

Mr. Norm Hicks, Executive Director & Chief Operating Officer, Laughlin Bullhead International Airport, 600 Highway 95, Bullhead City, Arizona 86429.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California, on January 28, 1997.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 97–3405 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

Approval of Noise Compatibility Program; Riverside Municipal Airport, Riverside, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Notice Compatibility Program submitted by the city of Riverside, California, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On September 12, 1995 the FAA determined that the noise exposure maps submitted by the city of Riverside, California, under Part 150 were in compliance with applicable requirements. On January 3, 1997, the Associate Administrator for Airports approved the Riverside Municipal Airport Noise Compatibility Program. All fourteen (14) of the program elements were approved. Six (6) elements were approved as a voluntary measure, seven (7) elements were approved outright, and one (1) element was approved subject to confirmation of a detailed acoustical/design study to confirm the benefits of a noise barrier and refinement of the barrier's location.

EFFECTIVE DATE: The effective date of the FAA's approval of the Riverside Municipal Airport Noise compatibility program is January 3, 1997.

FOR FURTHER INFORMATION CONTACT: Charles Lieber, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Wordway Postal Center, Los Angeles, California 90009–2007. Telephone: (310) 725–3614. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for the Riverside Municipal Airport, effective January 3, 1997.

Under Section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator who has previously submitted a Noise Exposure Map, may submit to the FAA, a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 of the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division office in Hawthorne, California.

The city of Riverside, California, submitted to the FAA on July 6, 1995, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from May 1994 through July 1995. The Riverside Municipal Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on September 12, 1995. Notice of this determination was published in the Federal Register on September 22, 1995.

The Riverside Municipal Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1999. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in Section 104(b) of the Act. The FAA began its review of the program on July 8, 1996 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained fourteen (14) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Associate Administrator for Airports effective January 3, 1997.

All fourteen (14) of the program elements were approved. The following six (6) elements were approved as voluntary measures: Continue designation of Runway 09/27 as the preferential runway; continue IFR departure turns over the Santa Ana River for Runway 27 IFR departures; continue the use of helicopter training pattern procedures north of the airport; encourage the use of AOPA Noise Awareness Steps and NBAA noise abatement departure and arrival procedures; encourage the use of the Sears store as a visual fix for Runway 27 VFR approaches; require that propeller aircraft conduct pre-flight run-ups on Taxiway C, at the end of Runway 27, be oriented to a 315 degree heading whenever possible. The following seven (7) elements were approved outright: Amend the General Plan to establish airport noise compatibility standards; designate land on the east side of Hillside Avenue (on runway centerline) for open space on the General Plan; promote informal means of providing fair disclosure of potential noise impacts in airport area; maintain system for receiving and responding to noise complaints; publish a pilot guide; review Noise Compatibility Plan implementation; and, update the Noise Exposure Maps and Noise Compatibility Program as necessary on an ongoing basis. One (1) element was approved upon confirmation of a detailed acoustical/design study to confirm the benefits of a noise barrier and refinement of the barrier's location.

These determinations are set forth in detail in a Record of Approval endorsed by the Associate Administrator for Airports on January 3, 1997. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the city of Riverside, California.

Issued in Hawthorne, California, on January 27, 1997.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 97–3406 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–97–8]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 18, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

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

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9781 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on February 6, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 28794.

Petitioner: Atlantic Southwest Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.313(f) and (g).

Description of Relief Sought: To permit the petitioner to operate its 63

Embraer EMB–120 aircraft under part 121 with key locks not meeting the standards required for part 121 operations for a temporary period until June 1, 1997, when the replacement locks required by part 121 can be obtained from the supplier and installed in the aircraft.

[FR Doc. 97–3404 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–97–7]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 4, 1997.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: nprmcmts@faa.dot.gov.

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

FOR FURTHER INFORMATION CONTACT: Fred Haynes (202) 267–3939 or Angela Anderson (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on February 6, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Disposition of Petitions

Docket No.: 25245.

Petitioner: Department of the Air Force.

Sections of the FAR Affected: 14 CFR 91.215(b).

Description of Relief Sought: To permit the Department of the Air Force to conduct certain military training flight operations in designated airspace above 10,000 feet above mean sea level (MSL) without being required to operate the aircraft transponders. *Grant, December 31, 1996, Exemption No. 4633F.*

Docket No.: 27396.

Petitioner: Northwest Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.401(c), 121.433(c)(1)(iii), 121.440(a), 121.441 (a)(1) and (b)(1), Appendix F to part 121, and Special Federal Aviation Regulation (SFAR) No. 58, paragraph 6(b)(3)(ii)(A).

Description of Relief Sought: To permit the petitioner to combine recurrent flight and ground training and proficiency checks for NWA's flight crewmembers in a single annual training and proficiency evaluation program and meet the line check requirements of § 121.440(a) and SFAR No. 58 through an FAA approved alternative line check program. *Grant, December 26, 1996, Exemption No. 5815B.*

Docket No.: 28097.

Petitioner: Columbia Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 133.19(a)(3) and 133.51.

Description of Relief Sought: To permit the petitioner to conduct external-load operations in the United States using Canadian-registered rotorcraft. *Grant, December 30, 1996, Exemption No. 6045A.*

Docket No.: 28397.

Petitioner: Tulsa Technology Center.

Sections of the FAR Affected: 14 CFR 65.17(a), 65.19(b), 65.75 (a) and (b).

Description of Relief Sought:

To permit Tulsa Technology Center to: 1. Administer the FAA oral and practical tests to students at times and places identified in TTC's Operations Handbook.

2. Conduct oral and practical mechanic tests as an integral part of the education process rather than conducting the tests upon students' successful completion of the mechanic written tests;

3. Approve students for retesting within 30 days after failure without requiring a signed statement certifying that additional instruction has been given in the failed area; and

4. Administer the AMG written test to students immediately following successful completion of the general curriculum, prior to meeting the experience requirements of § 65.77. *Grant, January 10, 1997, Exemption No. 6569.*

Docket No.: 28677.

Petitioner: Bulldog Airlines, Inc.

Sections of the FAR Affected: 14 CFR 133.43 (a) and (b).

Description of Relief Sought: To allow the petitioner to use its helicopters to perform external load operations for the purpose of conducting human aerial performances, without using an approved external-load-attaching means or an approved quick-release device. *Grant, December 26, 1996, Exemption No. 6563.*

Docket No.: 28706

Petitioner: National Warplane Museum.

Sections of the FAR Affected: 14 CFR 91.315.

Description of Relief Sought: To permit the petitioner to carry passengers on local flights for compensation or hire in its limited category Boeing B–17 aircraft (B–17) in support of the petitioner's fundraising efforts. *Grant, December 27, 1996, Exemption No. 6565.*

Docket No.: 28709.

Petitioner: William L. Hale.

Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).

Description of Relief Sought: To permit the petitioner to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *Grant, December 27, 1996, Exemption No. 6564.*

Docket No.: 28711.

Petitioner: Trans World Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought: To permit Trans World Airlines, Inc., to substitute a qualified and authorized check airman for an FAA inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a

landing when completing initial or upgrade training. *Grant, December 26, 1996, Exemption No. 6562.*

[FR Doc. 97–3410 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rapid City Regional Airport, Rapid City, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rapid City Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 14, 1997.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William E. Bacon, Executive Director, of the Rapid City Regional Airport at the following address: Rapid City Regional Airport, 4550 Terminal Road, Suite 102, Rapid City, South Dakota 57701–8706.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Rapid City Regional Airport under section 158.23 of part 1258.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Rapid City Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 31, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Rapid City Regional Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 13, 1997.

The following is a brief overview of the application.

PFC application number: 97–01–C–00–RAP.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1997.

Proposed charge expiration date: December 31, 1999.

Total estimated PFC revenue: $1,109,115.00.

Brief description of proposed project(s): Airport Planning Studies; PFC Application; Rehabilitate Runway 14/32; Taxiway Rehabilitation; Airport Equipment; Airport Safety/Security; Land Acquisition; Pilot Controlled Lighting; Grade Runway 14 Overrun; Air Safety/Security; Sand Storage Building; Exit Road Rehabilitation; Overlay GA Apron; Airfield Equipment; Emergency Power System; Snow Equipment; Airport Planning; Overlay Ramp.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rapid City Regional Airport.

Issued in Des Plaines, Illinois, on February 5, 1997.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 97–3505 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements to Support the Demonstration and Evaluation of Safe Communities Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of discretionary cooperative agreements to support the demonstration and evaluation of Safe Communities Programs

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the second year of a discretionary cooperative agreement program to demonstrate and evaluate the effectiveness of the Safe Communities concept for traffic safety initiatives. The Safe Communities program offers communities a new way to control traffic injuries. This approach recognizes that traffic-related deaths and injuries are primarily a local community problem that is best solved at the local level. The Safe Communities program adopts a comprehensive injury control approach to address traffic injury problems. Recognizing that traffic fatalities are only a small part of the total traffic injury problem, Safe Communities focuses on non-fatal injuries as well as fatal injuries to define the traffic safety problem, and asks who is paying the costs of the injuries. Four characteristics define the Safe Communities approach: Data analysis of crash and injury data bases (and linkage where possible), expanded partnerships, citizen involvement in setting priorities, and movement towards an integrated and comprehensive injury control system.

In 1996 under Phase I of this demonstration and evaluation program, cooperative agreements were awarded to the Greater Dallas Injury Prevention Program and the East Carolina University/Eastern Carolina Injury Prevention Program. This notice solicits applications from public and private, non-profit, and non-for-profit organizations, governments and their agencies, or a consortium of these organizations that are interested in developing, implementing and evaluating the Safe Communities approach in their community. The funds from this program may only be used to support traffic safety activities within the larger context of community injury control efforts. Private contractors, working on behalf of community groups are not eligible to apply. Preference will be given to those applications which help NHTSA meet its needs to obtain geographic diversity, urban/rural mix, diversity in lead organization(s); potential for replication in other communities, and/or other factors deemed relevant by NHTSA.

NHTSA anticipates awarding two (2) demonstration and evaluation projects for a period of three years each as a result of this announcement.

DATES: Applications must be received at the office designated below by 3:00 PM on or before May 1, 1997.

ADDRESSES: Applications must be submitted to the National Highway Traffic Administration, Office of Contracts and Procurement (NAD–30), ATTN: Amy Poling, 400 7th Street, S.W., Room 5301, Washington, D.C. 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–97–H–05108. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions along with requests for copies of the OMB Standard Form 424-Application for Federal Assistance and Certified Assurances may be directed to Amy Poling, Office of Contracts and Procurement. All questions and requests may be directed by e-mail at apoling@nhtsa.dot.gov or, if necessary, at 202–366–9552. Programmatic questions relating to this cooperative agreement program should be directed to Barbara Sauers, Traffic Safety Programs, NHTSA, NTS–22 400 7th Street, S.W., Washington, D.C. 20590, by e-mail at bsauers@nhtsa.dot.gov or, if necessary, at 202–366–0144. NHTSA intends to post this Federal Register Announcement and OMB Standard Form 424 on the NHTSA home page at http://www.nhtsa.dot.gov under ''What's Hot''.

SUPPLEMENTARY INFORMATION:

Background

The past several decades witnessed dramatic advances in medical care and shifts in health behaviors. Despite the advances, injuries remain a major health care problem, and the leading cause of death for persons from age 1 to 44. Fatalities, however, are only a small part of the total injury picture. For each injury-related death, there are 19 injury hospitalizations and over 300 injuries that require medical attention. These injuries account for almost 10 percent of all physician office visits and 38 percent of all emergency department visits. For an individual, these injuries can vastly diminish quality of life. For society, injuries pose a significant drain on the health care system, incurring huge treatment, acute care and rehabilitation costs.

Motor vehicle injuries, in particular, are the leading cause of all injury deaths and the leading cause of death for each age from 5 through 27. Motor vehicle-related injuries are the principal cause of on-the-job fatalities, and the third largest cause of all deaths in the U.S. Only heart disease and cancer kill more people. However, far more people are injured and survive motor vehicle crashes than die in these crashes. In 1995, for example, while over 41,000 persons were killed in motor-vehicle related incidents and almost 3.4 million were injured. These injured persons often required medical care and many required long-term care. The costs of these injuries are enormous, over $150.5 billion each year in economic costs and $17 billion in medical costs.

The vast majority of these injuries and deaths are not acts of fate, but are predictable and preventable occurrences. Injury patterns, including traffic-related injury patterns, vary by age group, gender, and cultural group. There are also seasonal and geographic patterns to injury. Once the populations, types and locations of crashes and causes of injuries that are associated in the community with increased severity and high costs are identified, interventions can be designed to address these factors specifically.

Safe Communities: A New Generation of Community Programs

American traffic safety advocates have traditionally worked in partnerships with many organizations and groups to achieve a successful, long and established history in preventing and reducing traffic-related injuries and fatalities. For over 15 years, community-based traffic safety programs have been and remain an effective means for identifying local crash problems and providing local solutions.

Building on past success, the Safe Communities program offers communities a new way to control traffic injuries. This approach recognizes that traffic-related deaths and injuries are primarily a local community problem. Effective preventive efforts require a coordinated approach involving Federal, State and local organizations. The Safe Communities approach adopts a comprehensive injury control model to address traffic injury problems within the context of all injuries. Recognizing that traffic fatalities are only a small part of the total traffic injury problem, Safe Communities focus on fatal and non-fatal injuries (as opposed to only fatalities) to define the traffic safety problem, and ask who is paying the costs of the injuries. Safe Communities recognize the importance of citizens in identifying community problems and solutions, as well as the importance of partnerships in implementing solutions to community problems.

The Safe Communities approach represents an evolutionary (rather than revolutionary) way in which community programs are established and managed. Four characteristics define the Safe Communities approach: Data analysis of crash and injury data bases (and linkage where possible), expanded partnerships, citizen involvement in setting priorities, and movement towards an integrated and comprehensive injury control system. Each of these characteristics is described below.

Analysis of Multiple Data Bases is critical to Safe Communities because addressing traffic-related injuries suggests that not only fatalities are reduced, but injuries and health care costs as well. This shift from an emphasis on fatalities to one emphasizing injuries and cost reduction means that different data bases need to be identified. Police crash reports tell only part of the story. Analysis of data from health departments, hospitals, EMS providers, business, rehabilitation programs, and insurance companies helps project managers', community leaders' and others' understanding of the magnitude and consequences of traffic injuries and monitoring progress in reducing the problem. Even more effective is data linkage which can provide opportunities, for example, to identify when and where young people in the community drink and drive, their risk for impaired driving which result in crashes, the types of injuries which occur, and how much these injuries cost the community compared to other types of injuries caused by young people who drink. Thus, countermeasures can be designated to address these risk factors (e.g., traffic safety and violence prevention efforts can join forces to reduce youth access to alcohol).

Expanded partnerships are important to solve local injury problems effectively through comprehensive and collaborative strategies. Traffic safety advocates have long recognized that traffic problems are too complex and resources too limited for them to solve in isolation. As a result, over the years, the traffic safety community has worked with law enforcement, emergency medical services, local government, schools, courts, business, health departments, and community and advocacy organizations to reduce traffic injuries. Safe Communities continue to work with these existing partners, but also seek to expand the partnership base to involve actively the medical, acute care and rehabilitation communities. These groups, which have traditionally been focused on treating disease, need to be engaged as integral partners in preventing injuries.

Safe Communities enlist business and employers as full partners in community injury prevention activities. Employers need to understand how traffic-related injuries contribute to their overall costs, and how participation in community-wide injury prevention efforts can help them reduce their own costs due to motor vehicle injuries. Through partnerships and collaboration, Safe Communities spread program ownership and delivery systems throughout the community. Finally, Safe Communities provide an opportunity for traditional traffic safety partners—such as law enforcement and schools—to understand better the linkages among risk-taking behaviors. For example, individuals who commit traffic offenses may also be involved with other kinds of problem or illegal behaviors.

Citizen involvement and input are essential to establish community priorities for identified problems. Town meetings and other techniques are routinely used to solicit wide-spread citizen input and feedback about community injury problems. Citizens are actively involved identifying, designing and implementing solutions to their injury problems. Citizens actively participate in problem identification, assume responsibility and ownership for shaping solutions, and share in both the successes and challenges of their program.

Movement towards an integrated and comprehensive injury control system incorporates the elements of prevention, acute care, and rehabilitation as active and essential participants insolving community injury problems. This is the crux of the Safe Communities approach, and often one or more of these groups have not traditionally been involved in addressing community traffic injury problems or their involvement has focused only on prevention and not their role in the overall system. Involvement of the three component groups will not happen overnight or in every community, but it is something to strive for over time.

The ''evolutionary shift'' from current programs to Safe Communities is summarized in Table 1 (below). Community partners participate as equals in developing solutions, sharing success, assuming programming risks, planning for self-sufficiency, and building a community infrastructure and process for continual improvement of community life through reduction of traffic-related injuries, fatalities, and costs.

TABLE 1.—NEW THINKING ABOUT COMMUNITY PROGRAMS

Current program emphasis	Evolving program emphasis
Reducing fatalities	Reducing fatal and non-fatal injuries & health care and social costs.
Traffic safety as the objective.	Traffic safety integrated into broader injury control efforts.
Prevention-based solutions.	Systems-based solutions (integration of prevention, acute care, rehabilitation).
Agency-based delivery system.	Community/citizen ownership.
Traditional traffic safety.	Adds new or expanded health, injury, partners business, and government partners.
Administration evaluation.	Impact evaluation/cost benefit analysis.

Objectives

Under this cooperative agreement the effectiveness of the Safe Communities approach for traffic safety initiatives shall be demonstrated and evaluated to determine the impact on reducing traffic related injuries and associated costs to the community. Specific objectives for this cooperative agreement program are as follows:

1. Work with existing community traffic safety and/or injury control coalitions and apply the defining characteristics to establish a Safe Communities approach for reducing traffic injuries.

2. Use community and/or state data, as appropriate, to define the community's traffic injury problem within the context of the community's overall injury problem. Where possible, population based data are preferred. Data sources in addition to police crash reports are required for this purpose. The costs of traffic injuries to the community (which may include emergency medical services, acute care, hospital, medical, rehabilitation, insurance, lost wages, and workmen's compensation) are to be documented.

3. Actively engage community residents in defining both the community's traffic injury problem as well as solutions to the problem. The grantee shall develop strategies for ensuring wide-spread citizen involvement throughout the project.

4. In addition to traditional traffic safety partners (e.g., law enforcement) identify and actively engage health care (both provider and payer) and business partners in the Safe Communities approach. The grantee is responsible for ensuring active and committed participation from these two sectors.

5. Implement a program to reduce traffic-related injuries in the community. The programs could address any area of traffic safety including alcohol-impaired driving, use of occupant restraints, speeding, emergency medical services, or pedestrian or bicycle safety. The intervention program should be based on data and citizen input and should actively engage all sectors of the community, including health care, business, local government, law enforcement, schools, and media. The program should also include elements of an integrated injury control system (prevention, acute care and rehabilitation) and/or plans for how the program will move towards this type of approach.

6. Evaluate the effectiveness of the Safe Communities approach in reducing traffic-related injuries and associated costs. In addition, evaluate the process of establishing a Safe Communities approach (what works, what does not work, how to engage partners, how to overcome barriers, challenges, how to run challenges into opportunities, etc.)

Availability of Funds

A total of $800K is available in FY97 to fund this program. Two (2) demonstration and evaluation projects will receive awards of $400K each to be used over a period of three years. In each project, $150K must be dedicated to evaluation activities. Given the amount of funds available for this effort, applicants are strongly encouraged to seek other funding opportunities to supplement the federal funds and include cost-sharing plans and commitments.

Period of Performance

The period of performance for this cooperative agreement will be three years from the effective date of award.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of this Cooperative Agreement and to coordinate activities between the Grantee and NHTSA.

2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the COTR.

3. Serve as a liaison between NHTSA Headquarters, Regional Offices and others (Federal, state and local) interested in the safe communities approach and the activities of the grantee.

4. Stimulate the transfer of information among grant recipients and others engaged in safe communities activities.

Eligibility and Other Applicant Requirements

Applications may be submitted by public and private, non-profit and not-for-profit organizations, and governments and their agencies or a consortium of the above. Thus, universities, colleges, research institutions, hospitals, other public and private (non- or not-for-profit) organizations, and State and local governments are eligible to apply. Private contractors working on behalf of community groups are not eligible to apply. Interested applicants are advised that no fee or profit will be allowed under this cooperative agreement program. These demonstration projects will require extensive collaboration among each of these various organizations in order to achieve the program objectives. It is envisioned during the pre-application process, these various organizations will designate one organization to prepare and submit the formal application.

Applicant Procedures

Each applicant must submit one original and five copies of the application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Amy Poling, 400 7th Street, S.W., Room 5301, Washington, DC 20590. Applications must be typed on one side of the page only, and must include a reference to NHTSA Cooperative Agreement No. DTNH22–97–H–05108. Unnecessarily elaborate applications beyond what is sufficient to present a complete and effective response to this invitation are not desired. Only complete packages received by 3:00 PM on or before May 1, 1997 will be considered.

Application Content

Applicants for this program must include the following information:

1. The application package must be submitted with OMB Standard Form 424 (Rev. 4–88, including 424A and 424B), application for Federal Assistance, with the required information filled in and certified assurances signed. While the form 424A deals with budget information, and Section B identified Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant indicates will be contributed locally in support of the demonstration project.

2. The application shall include a program narrative statement which addresses the following information in separately labeled sections:

a. A table of contents including page number references.

b. A description of the community in which the applicant proposes to work. For the purposes of this program, a ''community'' includes a city, town or county, small metropolitan area, or even a large neighborhood (i.e., it does not have to correspond with a political jurisdiction). It should be large enough so that the program can have a demonstrable effect on injuries, while not so large as to lose a sense of community. The description of the community should include, at a minimum, community demographics, the community's traffic injury problem using the most recent three years of local and/or state data available (including data from multiple sources such as police, hospital, EMS, vital records, etc.), a list of data sources available, existing traffic safety or injury control coalitions, community resources and political structure and commitment.

c. A preliminary description of the community's traffic injury problem, including injury, fatality and cost data. If chosen for award, the applicant will be required to conduct a more thorough problem analysis that includes input from citizens residing in the community. Therefore, a plan on how this more thorough problem analysis will be conducted and how citizen input will be obtained is required in the proposal.

d. A description of the goal of the program and how the grantee plans to establish a Safe Communities program in the proposed site. What will the grantee do to ''move'' the site towards the Safe Communities concept? What will be different from existing community programs? How will the grantee obtain citizen involvement in setting program priorities? What health and business partners will be engaged? How will they be engaged? What will they do?

e. An implementation plan that describes the types of interventions or activities proposed to achieve the objectives of the Safe Communities program. Given the community motor vehicle injury problem analysis, the implementation plan needs to include a description of the types of interventions that would be considered and how citizens would be engaged in identifying the interventions. The implementation plan must also include a discussion of how the applicant will develop the final implementation plan; how the plan will relate to the identified problems; how citizens, business, health/medical organizations, and others will be involved in the delivery of the program; what action the community will undertake to reach its objectives; how the intervention will be delivered; how delivery will be monitored; and the expected results from the intervention. The implementation plan should address elements from prevention, acute care and rehabilitation (integrated comprehensive injury control system) and/or how the program will move towards inclusion of these elements. The implementation plan shall also address prospects for program continuation beyond the period of Federal assistance.

f. A proposed evaluation plan (both quantitative and qualitative) based on the initial data analysis that describes the kinds of questions to be addressed by the evaluation design, what the outcome measures are expected to be, how they will be measured, the methodology for collecting the data, how often data will be collected, and how the data will be analyzed. The plan should indicate how action undertaken by the community will be linked with outcome measures. It is important that the area encompassed by the Safe Communities program coincide with the population covered by the data to be used in the evaluation, or that the data systems allow the disaggregation of the relevant population.

g. A description of the full working partnership that has been or will be established to conduct the Safe Communities program. The application shall describe all the partners (from prevention, acute care and rehabilitation) that will participate in the program (e.g. local government, law enforcement, health care, injury prevention, insurance, business, education, media, citizens) and what the role for each partner will be. A complete set of letters of commitment written by major partners, organizations, groups, and individuals proposed for involvement in this project shall detail what each partner is willing to do over the course of the project period (e.g. provide data, staff, resources, etc.) Form letters that do not specifically address these issues are not acceptable. Letters from owners of the data (injury, cost,

other) required for successful completion of this project must also be submitted. These letters must indicate that the data required for the project are accessible to the project team.

h. A description of how the project will be managed, both at the applicant level and at the community level. The application shall identify the proposed project manager and any support personnel considered critical to the successful accomplishment of this project, including a brief description of their qualifications and respective organizational responsibilities. The roles and responsibilities of the grantee, the community and any others included in the application package shall be specified. The proposed level of effort in performing the various activities shall also be identified. A staffing plan and resume for all key project personnel shall be included in the application.

i. A separately-labeled section with information demonstrating that the applicant meets all of the special competencies:

(1) Knowledge and familiarity with data sources such as police crash and crime reports, EMS files, emergency department data, hospital discharge data, and injury cost data (i.e. cost of injuries to the community); and injury surveillance systems (including analyzing and linking such data files). Availability of and accessibility to relevant data in their community from police crash reports and at least one or two injury data sources.

(2) Capable of:

i. Designing comprehensive program evaluations;

ii. Collecting and analyzing both quantitative and qualitative

iii. Synthesizing, summarizing and reporting evaluation results which are usable and decision-oriented.

(3) Experience in working in partnership with others, especially business, health care systems (providers and payers) and government organizations, media and with local citizens in implementing solutions to community problems.

(4) Experience in implementing injury control programs (prevention, acute care, rehabilitation) at the community level.

j. A dissemination plan that describes how the results of this demonstration and evaluation project will be shared with interested parties. The dissemination plan should include preparation of a final report and process manual (see reporting requirements), 1–2 briefings per year at the NHTSA headquarters, presentation at one or more national meetings per year (e.g. APHA, Lifesavers, etc.), and if appropriate, preparation and submission of at least one paper for publication in a professional journal.

Application Review Process and Evaluation Factors

Each application package will initially be reviewed to confirm that the applicant is an eligible recipient and that the application contains all of the items specified in the Application Contents section of this announcement. Each complete application from an eligible recipient will then be evaluated by an evaluation committee. The applications will be evaluated using the following criteria:

1. Understanding of the Community (10%). The extent to which the applicant has demonstrated an understanding of the community, including the community's demographics, traffic safety problem, resources (including data), and political structure. The extent to which the applicant is knowledgeable about community data sources, is able to use the data sources to define the community traffic injury problem, and has demonstrated the community's need for a safe communities approach to controlling traffic injuries and the community's willingness to commit and participate in the program. The extent to which the applicant has access to the community and potential target populations in the community.

2. Problem Identification (20%). The extent of the applicant's capability to identify through the Safe Communities process the significance of the traffic injury problem in relation to other types of injuries which occur in the community; and to identify among those residents involved in motor vehicle crashes the populations, types and locations of crashes, human factors issues (e.g., occupant restraint usage rates), types of vehicles, and the types of injuries which are most associated with increased injury severity and high care costs for this community. The problem identification will also be evaluated with respect to the potential for the Safe Communities approach to prevent or reduce the traffic injury problem.

3. Goals, Objectives and Implementation Plan (15%). The extent to which the applicant's goals are clearly articulated; the objectives are time-phased, specific, measurable, and achievable; and the goals and objectives relate to identified problems. The extent to which the implementation plan will achieve an outcome-oriented result that will reduce traffic-related injuries and costs to the community. The implementation plan should address what the applicant proposes to implement in the community and how this will be accomplished. The implementation plan will be evaluated with respect to its feasibility, realism, and ability to achieve the desired outcomes as well as prospective plans for program continuation beyond the period of Federal assistance.

4. Collaboration (15%). The extent to which the applicant has demonstrated experience in a full working partnership for data acquisition and analysis, design, implementation, and evaluation of a community program; and the extent to which such a partnership has been established among the applicant and critical components in the community representing prevention, acute care and rehabilitation. Has the applicant specified who will be involved in the program and what the role of each partner will be? The extent to which the applicant has demonstrated access to partners deemed critical to this effort, such as health care, business, and local government. Has the applicant shown that potential partners are committed to working with the program? In what way will potential partners participate? The extent to which the applicant describes how citizens will be actively engaged in the safe communities program.

5. Evaluation Plan (15%). How well the applicant describes the proposed evaluation design and the methods for measuring the processes and outcomes of the proposed interventions (countermeasures). How well will the evaluation plan be able to measure the effectiveness of the safe communities approach? Does the applicant provide sufficient evidence that the proposed community partnership is committed to evaluation? Are there sufficient data sources and is there sufficient capacity to collaborate with appropriate community program partners to ensure access to data; identify/create and test appropriate instruments; and collect and analyze quantitative and qualitative data for measuring the effectiveness of the safe communities approach? How well does the applicant ensure the availability of staff and facilities to carry out the submitted evaluation plan?

6. Special Competencies (15%). The extent to which the applicant has demonstrated knowledge and experience accessing and using relevant data sources, designing and implementing comprehensive program evaluations (using both qualitative and quantitative data), implementing injury control programs, and working in partnership with others on community programs.

7. Project Management and Staffing (10%). The extent to which the

proposed staff, including management and program staff and community partners, are clearly described, appropriately assigned, and have adequate skills and experiences. The extent to which the applicant has the capacity and facilities to design, implement, and evaluate a complex and comprehensive community program. The extent to which the applicant provides details regarding the level of effort and allocation of time for each staff position. Did the applicant submit an organizational chart and resume for each proposed staff member? Does the applicant provide a reasonable plan for accomplishing the objectives of the project within the time frame set out in this announcement?

Special Award Selection Factors

Applicants are strongly encouraged to seek funds for the purpose of cost-sharing from other federal, State, local and private sources to augment those available under this announcement. Applications which include a commitment of such funds will be given additional consideration.

For those applications that are evaluated as eligible for award, consideration for final award will be made on the basis of geographic diversity, urban/rural mix, organizational diversity and potential for program replication.

Terms and Conditions of Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).

2. Reporting Requirements and Deliverables:

a. Quarterly Progress Reports should include a summary of the previous quarter's activities and accomplishments, as well as the proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report. The grantee shall supply the progress report to the Contracting Officer's Technical Representative (COTR) every ninety (90) days, following date of award.

b. Problem Identification Report, Program Implementation and Evaluation Plan: The grantee shall submit a problem identification report, program implementation and evaluation plan no more than 9 months after award of this agreement, or as soon as the Safe Communities program has completed the problem identification activity, has determined what traffic safety problem or problems will be addressed, and determined what program or programs will be implemented to reduce the traffic-related injuries. The NHTSA COTR will review and comment on this plan.

The plan should describe the problem identification effort (data sources used, how analyzed, and the results including costs of traffic injuries to the community), how the communities traffic injury problems and proposed solutions were determined, how input was obtained from citizens, and how the program will be evaluated. This final evaluation plan should describe how the effectiveness of the Safe Communities program will be determined and how the process issues involved in establishing and implementing a Safe Communities program will be determined.

c. Dissemination Plan:

i. Draft Final Report and Draft Process Manual: The grantee shall prepare a Draft Final Report that includes a description of the community (including the traffic safety problem and data sources to support the problem), partners, intervention strategies, program implementation, evaluation methodology and findings from the program evaluation. The grantee shall also prepare a Draft Process Manual describing what happened in the community in establishing a safe communities approach to traffic injury. In terms of technology transfer, it is important to know what worked and did not work, under what circumstances, and what can be done to avoid potential problems in implementing community programs. This Process Manual shall contain the ''lessons learned'' in establishing a safe community. The grantee shall submit the Draft Final Report and Draft Process Manual to the COTR 90 days prior to the end of the performance period. The COTR will review each draft document and provide comments to the grantee within 30 days of receipt of the documents.

ii. Final Report and Process Manual: The grantee shall revise the Draft Final Report and Draft Process Manual to reflect the COTR's comments. The revised documents shall be delivered to the COTR on or before the end of the performance period. The grantee shall supply the COTR one camera-ready copy, one computer disk copy in WordPerfect format, and four additional hard copies of each revised document.

iii. Meetings and Briefings: The grantee shall plan for one to two briefings per year at NHTSA headquarters in Washington, D.C. with the COTR and other interested parties. The grantee shall also participate in one or two technology sharing/problem solving sessions with the NHTSA COTR, other interested parties and the other Safe Communities grantees per year in Washington, D.C. or some central location. In addition, the grantee shall plan for a presentation at one or more national meetings (e.g., APHA, Lifesavers . . .) per year.

iv. Professional Journal Paper: The grantee shall prepare and submit at least one paper for publication in a professional journal if deemed appropriate by the COTR.

3. During the effective performance period of cooperative agreements awarded as a result of this announcement, the agreement as applicable to the grantee, shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements.

Issued on: February 7, 1997.

James Hedlund,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 97–3510 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–59–M

Safety Performance Standards, Research and Safety Assurance Programs Meetings

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Industry Meetings.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory, safety assurance and other programs. In addition, NHTSA will hold a separate public meeting to describe and discuss specific research and development projects .

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory, safety assurance and other programs will be held on March 12, 1997, beginning at 9:45 a.m. and ending at approximately 12:30 p.m. Questions relating to the above programs must be submitted in writing by February 24, 1997, to the address shown below. If sufficient time is available, questions received after February 24 may be answered at the meeting. The individual, group or company submitting a questions(s) does not have to be present for the questions(s) to be answered. A consolidated list of the questions submitted by February 24,

1997, and the issues to be discussed will be transmitted to interested persons by March 10, 1997, and will be available at the meeting. Also, the agency will hold a second public meeting on March 11, devoted exclusively to a presentation of research and development programs. This meeting will begin at 1:30 p.m. and end at approximately 5:00 p.m. That meeting is described more fully in a separate announcement. The next NHTSA Industry Meeting will take place in June. More details on the date and its location will be announced at the March 12, Industry Meeting.

ADDRESSES: Questions for the March 12, NHTSA Technical Industry Meeting, relating to the agency's vehicle regulatory and safety assurance programs, should be submitted to Delia Gage, NRD–30, National Highway Traffic Safety Administration, Room 6125, 400 Seventh Street, SW., Washington, DC 20590, Fax Number 202–366–5374. The meeting will be held at the Hilton Suites Hotel, 8600 Wickham Road, Romulus, Michigan.

FOR FURTHER INFORMATION CONTACT: Delia Gage, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA will hold this regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory, safety assurance and other programs. Questions on aspects of the agency's research and development activities that relate to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4:00 p.m. We would appreciate the questions you send us to be organized by categories to help us to process the questions into agenda form more efficiently. Sample format as follows:

I. Rulemaking
  A. Crash avoidance
  B. Crashworthiness
  C. Other Rulemakings
II. Consumer Information
III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of ''auxiliary aids'' (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Delia Gage on (202) 366–1810, by COB February 24, 1997.

Issued: February 6, 1997.

James R. Hackney,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 97–3483 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 97–008; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1990 BMW 325iX Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1990 BMW 325iX that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 14, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne')(Registered Importer 90–009) has petitioned NHTSA to decide whether 1990 BMW 325iX passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1990 BMW 325iX that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Bayerische Motoren Werke A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1990 BMW 325iX to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1990 BMW 325iX, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1990 BMW 325iX is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201

Occupant Protection in Interior Impact, 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked ''Brake'' for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: installation of a tire information placard.

Standard No. 111 Rearview Mirror: replacement of the passenger side rearview mirror, which is convex.

Standard No. 114 Theft Protection: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 Power Window Systems: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection: (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag and knee bolster with U.S.-model components. The petitioner states that the vehicle is equipped with combination lap and shoulder belts that adjust by means of an automatic retractor and release by means of a single push button in each front designated seating position, and with combination lap and shoulder belts that release by means of a single push button in each rear designated seating position.

Standard No. 214 Side Impact Protection: installation of reinforcing beams.

Standard No. 301 Fuel System Integrity: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1990 BMW 325iX must be reinforced, or U.S.-model bumper components must be installed, to comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 6, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–3445 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 96–080; Notice 2]

Denial of Petition for Import Eligibility Decision

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under 49 U.S.C. 30141(a)(1)(B). The petition, which was submitted by LPC of New York, Inc., of Ronkonkoma, New York (LPC), a registered importer of motor vehicles, requested NHTSA to decide that a 1996 Kia Sportage multi-purpose passenger vehicle (MPV) that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States. In the petition, LPC contended that this vehicle is eligible for importation on the basis that (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards (the U.S. certified version of the 1996 Kia Sportage MPV), and (2) it is capable of being readily altered to conform to the standards.

NHTSA published a notice in the Federal Register on July 31, 1996 (61 FR 40072) that contained a thorough description of the petition, and solicited public comments upon it. One comment was received in response to the notice, from Kia Motors America, Inc. (Kia), the United States representative of the vehicle's manufacturer.

In this comment, Kia took issue with LPC's claim that the non-U.S. certified 1996 Kia Sportage MPV that is the subject of the petition complies with Standard No. 208 *Occupant Crash Protection.* Specifically, Kia asserted that the vehicle must be equipped with a driver's side air bag and knee air bag to comply with this standard. Additionally, Kia stated that certain engineering modifications must be made to the vehicle to accommodate the air bag. These include reducing the length of the front seat tracks and repositioning those components. Kia also noted that Kia Sportage MPVs that are manufactured for the U.S. market have bumpers of a different design from those found on non-U.S. market vehicles, and that this difference has an impact on the vehicle's compliance with Standard No. 208. Additionally, Kia took issue with LPC's claim that the seat belts on the non-U.S. certified 1996 Kia Sportage MPV are identical to those found on U.S.-certified vehicles. Kia asserted that these seat belts have different retractor mechanisms and webbing from those found on U.S. certified vehicles, and as such, do not comply with either Standard No. 208, or with Standard No. 209 *Seat Belt Assemblies.*

With respect to other standards, Kia stated that the steering column on the non-U.S. certified 1996 Kia Sportage MPV does not have a collapsing/energy absorbing design, and accordingly does not comply with Standard No. 204 *Steering Control Rearward Displacement.* Finally, Kia challenged LPC's claim that the seating system on the non-U.S. certified 1996 Kia Sportage MPV is identical to that found on U.S. certified vehicles. As a consequence, Kia contends that the vehicle's compliance with Standard 207 *Seating Systems* cannot be assured.

NHTSA afforded LPC an opportunity to respond to Kia's comments. In its response, LPC stated that it mistakenly identified the vehicle that is the subject of its petition as a 1996 Kia Sportage, and that the vehicle should properly have been identified as a 1994 Kia Sportage. After receiving this response, NHTSA learned from Kia that it did not manufacture a 1994 Kia Sportage for importation into and sale in the United States. As a consequence, there is no substantially similar U.S.-certified vehicle of the same model year to which the 1994 Kia Sportage MPV can be compared. Absent such a vehicle, NHTSA cannot decide that the 1994 Kia Sportage 1994 is eligible for importation under 49 U.S.C. 30141(a)(1)(A). The petition must therefore be denied under 49 CFR 593.7(e).

In accordance with 49 U.S.C. 30141(b)(1), NHTSA will not consider a new import eligibility petition covering this vehicle until at least three months from the date of this notice.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.7; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 6, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–3446 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 97–007; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1994 Mercedes-Benz C280 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1994 Mercedes-Benz C280 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 14, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1994 Mercedes-Benz C280 passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1994 Mercedes-Benz C280 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1994 Mercedes-Benz C280 to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1994 Mercedes-Benz C280, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1994 Mercedes-Benz C280 is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints, 204 Steering Control Rearward Displacement,* 205 *Glazing Materials,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion, and* 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the non-U.S. certified 1994 Mercedes-Benz C280 complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 111 Rearview Mirror: Replacement of the passenger side rearview mirror, which is convex.

Standard No. 114 Theft Protection: Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 Power Window Systems: rewiring of the power window system so that the window transport is

inoperative when the ignition is switched off.

Standard No. 206 Door Locks and Door Retention Components: replacement of the rear door locks and rear door lock buttons with U.S.-model components.

Standard No. 208 Occupant Crash Protection: (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if such components are not already installed on the vehicle. The petitioner states that the vehicle is equipped with combination lap and shoulder belts that adjust by means of an automatic retractor and release by means of a single push button in each front designated seating position, with combination lap and shoulder belts that release by means of a single push button in each rear outboard designated seating position, and with a lap belt in the rear center designated seating position.

Standard No. 214 Side Impact Protection: installation of reinforcing beams.

Standard No. 301 Fuel System Integrity: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on February 6, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–3447 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 97–011; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1972 Through 1997 Harley Davidson FX, FL, and XL Series Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT

ACTION: Notice of receipt of petition.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1972 through 1997 Harley Davidson FX, FL, and XL series motorcycles manufactured for the European and other Foreign markets that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 14, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (''Wallace'') (Registered Importer 90–005) has petitioned NHTSA to decide whether 1972 through 1997 Harley Davidson FX, FL, and XL series motorcycles manufactured for the European and other foreign markets are eligible for importation into the United States. The vehicles that Wallace believes are substantially similar are the versions of the 1972 through 1997 Harley Davidson FX, FL, and XL series motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1972 through 1997 Harley Davidson FX, FL, and XL series motorcycles to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that the non-U.S. certified 1972 through 1997 Harley Davidson FX, FL, and XL series motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1972 through 1997 Harley Davidson FX, FL, and XL series motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 120 *Tire Selection and Rims for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

Additionally, Petitioner states that the non-U.S. certified 1972 through 1997 Harley Davidson FX, FL, and XL series motorcycles comply with the vehicle identification number requirements of 49 CFR part 565, and the tire identification and recordkeeping requirements of 49 CFR 574.

Petitioner also contends that the non-U.S. certified 1972 through 1997 Harley Davidson FX, FL, and XL series motorcycles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assembly, taillight assembly, and reflectors.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

Petitioner also states that a vehicle identification number plate will be affixed to the vehicles to meet the requirements of 49 CFR part 565.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on February 6, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–3448 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 97–009; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1994 Mercedes-Benz E200 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration. DOT

ACTION: Notice of receipt of petition for decision that nonconforming 1995 Mercedes-Benz E200 passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1995 Mercedes-Benz E200 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 14, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1995 Mercedes-Benz E200 passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1995 Mercedes-Benz E320 that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the 1995 Mercedes-Benz E200 to the 1995 Mercedes-Benz E320, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1995 Mercedes-Benz E200, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1995 Mercedes-Benz E320, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1995 Mercedes-Benz E200 is identical to the 1995 Mercedes-Benz E320 with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the non-U.S. certified 1995 Mercedes-Benz E200 complies with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: Replacement of the passenger side rearview mirror, which is convex.

Standard No. 114 *Theft Protection*: Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components*: Replacement of the rear door locks and rear door lock buttons with U.S.-model components.

Standard No. 208 *Occupant Crash Protection*: (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer; (c) replacement of the driver's and passenger's side air bags and knee bolsters with U.S.-model components if such components are not already installed on the vehicle. The petitioner states that the vehicle is equipped with combination lap and shoulder belts that adjust by means of an automatic retractor and release by means of a single push button in each front designated seating position, with combination lap and shoulder belts that release by means of a single push button in each rear outboard designated seating position, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 6, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–3449 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 97–010; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1983 Suzuki GSX750 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1983 Suzuki GSX750 motorcycles are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1983 Suzuki GSX750 that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 14, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1983 Suzuki GSX750 motorcycles are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1983 Suzuki GS750, which was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the 1983 Suzuki GSX750 to the 1983 Suzuki GS750, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1983 Suzuki GSX750, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1983 Suzuki GS750, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1983 Suzuki GSX750 is identical to the 1983 Suzuki GS750 with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model headlamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

Petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR Part 565.

Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 6, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–3450 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 97–012; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1974 MGB Roadster Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1974 MGB Roadster passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1974 MGB Roadster that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 14, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the Federal Register.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1974 MGB Roadster passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1974 MGB Roadster that was manufactured for importation into, and sale in, the United States and certified by its manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1974 MGB Roadster to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1974 MGB Roadster, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1974 MGB Roadster is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration

of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model sealed beam headlamp assemblies; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Replacement of the convex passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of a U.S.-model seat belt in the driver's position, or a belt webbing actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch actuated seat belt warning lamp and buzzer. The petitioner states that the vehicle is equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, and with combination lap and shoulder restraints that release by means of a single push button at both rear designated seating positions.

Standard No. 214 *Side Impact Protection:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1974 MGB Roadster must be reinforced or replaced with U.S.-model components to comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 6, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–3451 Filed 2–11–97; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

[STB Finance Docket No. 33313]

The Kansas City Southern Railway Company—Trackage Rights Exemption—Burlington Northern Railroad Company

Burlington Northern Railroad Company (BN)[1] has agreed to grant overhead trackage rights to The Kansas City Southern Railway Company (KCS) over a total of approximately 25.9 miles of rail line over the portion of BN's Birmingham subdivision between the BN-KCS connection at New Albany, MS (line segment 1001—BN milepost 562.3), and the BN-KCS connection at Tupelo, MS (BN milepost 588.2). The transaction was expected to be consummated on February 5, 1997.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33313, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: William J. Wochner, Esq., The Kansas City Southern Railway Company, 114 West Eleventh Street, Kansas City, MO 64105.

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).

Decided: February 5, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–3385 Filed 2–11–97; 8:45 am]

BILLING CODE 4915–00–P

[1] On December 31, 1996, The Atchison, Topeka and Santa Fe Railway Company was merged with and into BN, with the surviving corporation named The Burlington Northern and Santa Fe Railway Company; any reference to BN in this order shall be understood to refer to the new entity.

[STB Finance Docket No. 33352]

Southern Pacific Transportation Company—Trackage Rights Exemption—Southern Gulf Railway Company

Southern Gulf Railway Company (SGR) will agree to grant trackage rights to Southern Pacific Transportation Company (SPT) over its line of railroad from milepost 0.0 (SPT milepost 226.57) to milepost 4.28, a distance of 4.28 miles near Sulphur, LA.

The transaction was scheduled to be consummated on February 3, 1997.

The purpose of the trackage rights is to allow SPT rail access to the Roy S. Nelson Generating Station of Entergy Gulf States, Inc.

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. 33352, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Gary A. Laakso, Esq., Southern Pacific Transportation Company, One Market Plaza, Room 846, San Francisco, CA 94105.

Decided: February 5, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–3389 Filed 2–11–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Finance Docket No. 33351]

SPCSL Corp.—Trackage Rights Exemption—Norfolk and Western Railway Company

Norfolk and Western Railway Company (NW) has agreed to grant trackage rights to SPCSL Corp. (SPCSL) over approximately 19,950 feet, more or less, of NW trackage at Springfield, IL. The trackage rights will allow the City of Springfield to consolidate the NW and SPCSL rights of way into one corridor.

The transaction was scheduled to be consummated on February 3, 1997.

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. 33351, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on Gary A. Laakso, Esq., SPCSL Corp., One Market Plaza, Room 846, San Francisco, CA 94105.

Decided: February 5, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–3390 Filed 2–11–97; 8:45 am]

BILLING CODE 4915–00–P

[STB Docket No. AB–167 (Sub-No. 1177X)]

Consolidated Rail Corporation—Discontinuance Exemption—in Montgomery and Bucks Counties, PA

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, pursuant to 49 U.S.C. 10502, exempts Consolidated Rail Corporation (Conrail) from the prior approval requirements of 49 U.S.C. 10903 to permit Conrail to discontinue service pursuant to its trackage rights over Southeastern Pennsylvania Transportation Authority's (SEPTA) 14.9-mile line of railroad, known as the Bethlehem Branch, between milepost 30.5±, near Telford, and milepost 45.4±, near Quakertown, in Montgomery and Bucks Counties, PA, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 14, 1997. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2) must be filed by February 24, 1997, petitions to stay must be filed by February 27, 1997, and petitions to reopen must be filed by March 10, 1997.

ADDRESSES: Send pleadings, referring to STB Docket No. AB–167 (Sub-No. 1177X) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) John K. Enright, 2001 Market Street—16A, Philadelphia, PA 19101–1416.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC Data & News, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: February 3, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–3386 Filed 2–11–97; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Notice of Receipt of Cultural Property Request From the Government of Peru

The Government of Peru has submitted a cultural property request to the Government of the United States under Article 9 of the 1970 UNESCO Convention. The request was received on January 28, 1997, by the United States Information Agency. The request seeks U.S. protection of certain categories of archaeological and/or ethnological material the pillage of which, it is alleged, jeopardizes the national cultural patrimony of Peru. In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*), the request will be reviewed by the Cultural Property Advisory Committee which will develop recommendations before a determination is made.

Dated: February 7, 1997.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 97–3482 Filed 2–11–97; 8:45 am]

BILLING CODE 8230–01–M

Meeting

AGENCY: United States Information Agency.

ACTION: Notice of Meeting of the Cultural Property Advisory Committee.

SUMMARY: The Cultural Property Advisory Committee will meet on Tuesday, February 25, 1997, from approximately 9:00 a.m. to 5:00 p.m. and on Wednesday, February 26, 1997, from approximately 9:00 a.m. to 12:00 noon, at the S. Dillon Ripley Center, Smithsonian Institution, Washington, D.C. The agenda will include deliberation of a cultural property request from the Government of Peru to the United States Government seeking protection of certain archaeological and/or ethnological resources. This request, submitted under Article 9 of the 1970 UNESCO Convention, will be considered in accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 et seq., P.L. 97–446). The Committee will also review and discuss internal operating procedures. Since discussion of these matters will involve information the premature disclosure of which would be likely to significantly frustrate implementation of proposed action, the meeting will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Dated: February 7, 1997.

Penn Kemble,

Deputy Director, United States Information Agency.

Determination to Close the Meeting of the Cultural Property Advisory Committee; February 25 and 26, 1997

In accordance with 5 U.S.C. 552b(c)(9)(B), and 19 U.S.C. 2605(h), I hereby determine that the Cultural Property Advisory Committee meeting on February 25 and 26, 1997, at which there will be deliberation of information the premature disclosure of which would be likely to significantly frustrate implementation of proposed actions, will be closed.

Dated: February 7, 1997.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 97–3481 Filed 2–11–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 29
Wednesday, February 12, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–45]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

Correction

In the issue of Thursday, January 2, 1997, in separate part V, beginning on page 224, in the running head, ''Vol. 61'' should read ''Vol. 62''.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 150; PR4–2, FRL–5675–1]

Approval and Promulgation of Implementation Plans; Commonwealth of Puerto Rico

Correction

In rule document 97–1420 beginning on page 3211 in the issue of Wednesday, January 22, 1997 make the following corrections:

§ 52.2723 [Corrected]

1. On page 3213, in the table, in the third column, ''[Insert date of publication and FR page citation.]'' should read ''1–22–97 and FR page citation''.

2. On page 3214, in the table, under PART V, FEES, in the third column, the first line, ''.....do.'' should read ''1–22–97 and FR page citation''.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[ND7-1-6882a; FRL-5618-8]

Clean Air Act Approval and Promulgation of State Implementation Plan for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for Colorado Standards of Performance for New Stationary Sources

Correction

In rule document 96–25469, beginning on page 52865, in the issue of Tuesday, October 8, 1996, make the following correction:

§ 60.49 [Corrected]

In § 60.49, in the table ''Delegation Status of New Source Performance Standards'', beginning on page 52869, the following subparts are corrected to read as follows:

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS
[(NSPS) for Region VIII]

Subpart	CO	MT[1]	ND[1]	SD[1]	UT[1]	WY
Dc—Industrial-Commercial—Institutional Steam Generators	(*)	(*)	(*)	(*)	(*)	
G—Nitric Acid Plants	(*)	(*)	(*)		(*)	(*)
H—Sulfuric Acid Plants	(*)	(*)	(*)		(*)	(*)
J—Petroleum Refineries	(*)	(*)	(*)		(*)	(*)
L—Secondary Lead Smelters	(*)	(*)	(*)		(*)	(*)
M—Secondary Brass & Bronze Production Plants	(*)	(*)	(*)		(*)	(*)

BILLING CODE 1505-01-D

FEDERAL TRADE COMMISSION

[Dkt. C–3659]

Benckiser Consumer Products, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

Correction

In notice document 97–2432 beginning on page 4765, in the issue of Friday, January 31, 1997 make the following correction:

On page 4766, in the first column, under DATES ''May, 1996[1]'' should read ''May 22, 1996[1]''.

BILLING CODE 1505-01-D

federal register

Wednesday
February 12, 1997

Part II

Environmental Protection Agency

40 CFR Part 260, et al.

Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, 266, and 270

[EPA 530–Z–95–013; FRL–5686–4]

RIN 2050–AD90

Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In response to section 107 of the Federal Facility Compliance Act (FFCA) of 1992, EPA is today finalizing a rule that identifies when conventional and chemical military munitions become a hazardous waste under the Resource Conservation and Recovery Act (RCRA), and that provides for the safe storage and transport of such waste. Today's final rule also amends existing regulations regarding emergency responses involving both military and non-military munitions and explosives. This rule also exempts all generators and transporters of hazardous waste, not just the military, from the RCRA manifest for the transportation of hazardous waste on public or private right-of-ways on or along the border of contiguous properties, under the control of the same person, regardless of whether the contiguous properties are divided by right-of-ways. This revision is expected to reduce the paperwork burden, for hazardous waste generators whose property is divided by right-of-ways without loss in protection of public health.

EFFECTIVE DATE: This rule is effective on August 12, 1997.

ADDRESSES: The public docket for this rulemaking is available for public inspection at EPA's RCRA Docket, located at Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, Virginia. The regulatory docket for this final rule contains a number of background materials. To obtain a list of these items, contact the RCRA Docket at 703–603–9230 and request the list of references in EPA Docket #F–97–MMF–FFFFF.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline between 9:00a.m.–6:00 p.m. EST, toll-free, at 800–424–9346; 703–412–9810 from Government phones or if in the Washington, D.C. local calling area; or 800–553–7672 for the hearing impaired. For more detailed information on specific aspects of the rulemaking, contact Ken Shuster by calling 703–308–8759 or by writing, to U.S. Environmental Protection Agency, Office of Solid Waste, Permits and State Programs Division, 401 M St., S.W. (Mailcode 5303W), Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: This rule is available on the Internet. Please follow these instructions to access the rule electronically:

From the World Wide Web (WWW), type http://www.epa.gov/epaoswer, then select option for Rules and Regulations.

This report can also be accessed from the main EPA Gopher menu in the directory: EPA Offices and Regions/ Office of Solid Waste and Emergency Response (OSWER)/Office of Solid Waste (RCRA)/Hazardous Waste

Gopher: gopher.epa.gov
Dial-up: 919–558–0335
FTP: ftp.epa.gov
Login: name
Password: Your Internet address
Files are located in /pub/gopher/ OSWRCRA/hazwaste

The official record for this action is kept in a paper format. Accordingly, EPA has transferred all comments received into paper form and placed them into the official record, with all the comments received in writing. The official record is maintained at the address in the ''ADDRESSES'' section at the beginning of this document.

EPA's responses to comments have been incorporated in a ''Response to Comments'' document, which has been placed into the official record for this rulemaking. The major comments and responses are discussed in the Response to Comment sections of this preamble.

Preamble Outline

I. Legal Authority
II. Background
III. Summary of Significant Changes From Proposed Rule
IV. Description of the Final Rule and Responses to Comments
A. Description of Major Affected Parties
B. Scope, Applicability, and Definition of Military Munitions
C. Separate CFR Part for Military Munitions
D. Uniform National Standards
E. When Military Munitions Become a Solid Waste
F. When Unused Military Munitions Become a Solid Waste
1. Section 266.202(b)(1)—Munitions That Have Been or are Abandoned by Being Disposed of, Burned, or Otherwise Treated Prior to Disposal
2. Section 266.202(b)(2)—Munitions Removed From Storage for the Purposes of Treatment or Disposal
3. Section 266.202(b)(3)—Leaking or Deteriorated Munitions
4. Section 266.202(b)(4)—Munitions Determined by an Authorized Military Official to be a Solid Waste
G. When Military Munitions Are Not a Solid Waste
1. Intended Use
a. Section 266.202(a)(1)(i)—Military training exercises.
b. Section 266.202(a)(1)(ii)—Weapons testing.
c. Section 266.202(a)(1)(iii)—Range clearance operations.
2. Section 266.202(a)(2)— Disassembly operations.
H. Military Munitions On Closed and Transferred Ranges
I. When Used or Fired Military Munitions Become Solid Waste, including Military Munitions That Land Off-Range
J. Waste Materials Derived from Munitions Manufacture
K. Chemical Munitions
L. Generator and Transporter Standards
M. Storage Standards
1. Conditional Exemption for Waste Military Munitions in Storage
a. Conditional Exemption for Waste Non-chemical Munitions
(1) Legal Basis for Conditional Exemption Approach
(2) Implementation and Enforcement Issues
(3) Amendments to DDESB Standards
b. Waste Chemical Munitions
(1) Applicability of RCRA Requirements to Waste Chemical Munitions
(2) Inapplicability of Conditional Exemption
(3) Inapplicability of RCRA Storage Prohibition
2. Subpart EE
N. Permit Modifications to Receive Off-Site Waste Munitions
O. Environmental Justice
P. Emergency Responses
Q. Manifest Exemption For Transport of Hazardous Waste In Lieu of ''On-Site'' Redefinition
V. State Authority
VI. Administrative Requirements/ Compliance with Executive Order
A. Regulatory Impact Analysis Under Executive Order 12866
1. Cost Analysis
2. Benefits Analysis
B. Regulatory Flexibility Act
C. Paperwork Reduction Act
D. Unfunded Mandates
VII. Submission to Congress and the General Accounting Office

I. Legal Authority

These regulations are being finalized under the authority of sections 2002, 3001–3007 (including 3004(y)), 3010, 7003, and 7004 of the Solid Waste Disposal Act of 1965, as amended, including amendments by RCRA and the FFCA (42 U.S.C. 6912, 6921–7, 6930, and 6973–4).

II. Background

Section 107 of the Federal Facility Compliance Act (FFCA) of 1992

amended the Resource Conservation and Recovery Act (RCRA) by adding a new section 3004(y) that requires the U.S. Environmental Protection Agency (EPA) to propose, after consulting with the Department of Defense (DOD) and appropriate State officials, and then to finalize regulations that identify when conventional and chemical military munitions become hazardous waste subject to Subtitle C of RCRA, and that provide for the safe storage and transportation of such waste. Such regulations are to assure the protection of human health and the environment. This final rule responds to this Congressional mandate. The Agency consulted with DOD and appropriate State representatives prior to the promulgation of this rule, as the statute requires. Records of these meetings and information provided to EPA have been included in the official docket of this final action.

EPA proposed the rule on November 8, 1995 (60 FR 56468). The public comment period ended on February 2, 1996. As mentioned in the proposal, the Agency focused on several key issues that have arisen in the application of RCRA to military munitions, or that have been raised by DOD, States, or citizen groups. The six major issues raised during the development of the proposed rule and addressed in today's final rule are the following: (1) At what point does an unused munition become a RCRA ''hazardous waste,'' potentially subject to RCRA permitting and technical management standards? Specifically, at what point in the process do unused munitions slated for destruction first become subject to RCRA? (2) Should RCRA hazardous waste management standards apply to the use of munitions in weapons testing or military training exercises? (3) How do RCRA hazardous waste regulations apply to emergencies involving military munitions and explosives and non-military explosives? (4) In what way (if any) do RCRA requirements apply to unexploded ordnance and environmental contamination at military ranges, especially ranges that are closed or transferred? (5) Once it has been determined that a munition is a hazardous waste for regulatory purposes, what management standards are needed to ensure safe transportation and storage, while protecting human health and the environment? (6) Should the definition of ''on-site'' be revised to simplify compliance with RCRA manifest standards at contiguous facilities cut by right-of-ways?

In developing the final rule, EPA reviewed the comments received from 124 organizations and individuals on the proposed rule, including DOD, other Federal agencies, States, universities, associations, corporations, and citizen groups. These comments can be found in the official docket for this final rule. Responses to significant comments can be found in the preamble of today's rule.

In addressing each of the above six issues, EPA proposed (in the November 8, 1995 Federal Register) an option followed in some cases by a discussion of ''alternative options'' on which the Agency requested comment. Because of the length and complexity of the issues and options proposed, the Agency is not revisiting or summarizing these in this final rule preamble to any great extent. The reader may refer to the proposed notice for a detailed account of the original proposal. Instead, this final rule preamble expands on the discussion of the selected alternative, which appeared in the proposal, in order to provide additional discussion of the finally selected option. Following that discussion is a response to comments section for each topic. Together, the purpose of these discussions is to explain and clarify the Agency's final direction.

III. Summary of Significant Changes From Proposed Rule

Following is a summary of the significant changes to the proposed rule in today's final rule. Where the Agency proposed multiple options, this summary identifies those alternatives that EPA has incorporated into today's final rule.

The final rule consolidates the requirements applicable solely to military munitions in a new subpart M under 40 CFR Part 266.

The applicability of proposed 40 CFR 264 and 265 subparts EE for storage of waste munitions and explosives is being expanded to be available to owners and operators of all units storing such wastes, not just the military. In addition, EPA has decided to finalize the second alternative discussed in the storage section of the proposed preamble. This is the conditional exemption alternative, under which non-chemical waste military munitions that otherwise meet the definition of ''hazardous waste'' are not regulated under RCRA as a hazardous waste so long as they meet all of the conditions set forth in § 266.205. Today's rule also finalizes the conditional exemption approach for transportation of waste munitions when shipped between military installations in accordance with DOD standards.

The Agency is today postponing final action on the status of military munitions left on closed or transferred ranges. This will enable the Agency to thoroughly evaluate the numerous public comments as well as the DOD Range Rule which is currently under development.

Instead of modifying the definition of ''on-site,'' as proposed, the final rule revises 40 CFR Part 262 to exempt from the RCRA manifest requirements shipments on right-of-ways on (or bordering) contiguous properties under the control of the same person, where the property is cut by right-of-ways. The title for today's rule also reflects this change.

IV. Description of the Final Rule and Responses to Comments

This rule finalizes the proposed ''Military Munitions Rule: Hazardous Waste Identification and Management; Explosive Emergencies; Redefinition of On-Site'' (60 FR 56468, November 8, 1995). This section explains the Agency's final action, based on the rationale presented in the proposal and the Agency's review of the public comments and further examination of the proposed options.

To facilitate the reader's review of this final rule and to streamline the overall structure, this section also contains the Agency's responses to the most significant comments after each of the topics discussed. If a particular section does not contain a response to comment section, then either the Agency did not receive comment on this topic or it has chosen to place its response in the background document entitled Military Munitions Rule Response to Comments Background Document. This background document contains a complete discussion of the Agency's responses to comments and can be found in the docket for this rulemaking. This document provides a complete record of the public comments followed by the Agency's responses. To obtain a copy, please refer to the ''**ADDRESSES**'' section of this preamble.

A. Description of Major Affected Parties

Since the primary focus of this final rule is military munitions, the major regulated parties are the U.S. Departments of Defense, Energy, and Transportation (U.S. Coast Guard) and the National Guard (the inclusion of these is discussed below in section B). Even so, various sections of the rule are expected to impact a number of other groups, as well. The emergency response portions of this rule apply to non-military munitions and explosives and non-military personnel as well as military. In addition, the 40 CFR 264 and 265 subpart EE standards for waste munitions and explosives are also available for use by non-military

entities. The exemption from manifest requirements for transportation along public roads on contiguous properties owned by the same person that are divided by a public right-of-way, applies to non-military as well as military wastes and properties. The rest of the proposed rule was developed primarily for the military, based, in part, on the EPA's review of RCRA and current military munitions management standards and practices.

Response to Comments

In response to commenter inquiries and suggestions regarding the applicability of the proposed provisions (primarily storage standards and range standards), EPA is clarifying and modifying certain provisions to accommodate some non-military situations. For example, one commenter suggested that munitions or explosives controlled by other government agencies, e.g., NASA, should be included within the scope of the rulemaking if those agencies have comparable storage standards. Other commenters suggested that EPA clarify that the final rule applies to military contractors to the extent that they comply with the appropriate DOD requirements. Further, for military contractors, where the distinction between military munitions and munitions produced for the private sector or other public sector organizations is unclear (e.g., the same production lines and storage units are used), the final rule should clarify that it also applies to waste materials associated with munitions produced for the private or public sector to the extent the management of these wastes also complies with the appropriate DOD requirements. Several commenters suggested that subpart EE should be made available for non-military and private concerns.

In response to these comments, EPA has retained the subpart EE standards in 40 CFR Parts 264 and 265, and has expanded their availability to all munitions and explosives, not just military, in order to make subpart EE available to facilities that store non-military munitions or explosives and facilities that are not subject to Department of Defense Explosive Safety Board (DDESB) jurisdiction. Thus, commercial/private ventures that operate in compliance with DDESB storage requirements and that also produce munitions for the private sector that are stored in the same manner, as well as all commercial and private ventures that store non-military munitions or explosives, regardless of compliance with the DDESB standards, may avail themselves of subpart EE for all such munitions/explosives wastes. Similarly, other Federal agencies (e.g., National Aeronautical and Space Administration (NASA), Federal Bureau of Investigations (FBI), and the Bureau of Alcohol, Tobacco, and Firearms (BATF)) that store waste munitions and explosives may also apply for a storage permit under subpart EE. In those cases where the owner/operator's practices are comparable or identical to the DDESB-prescribed practices, they could expect to satisfy the subpart EE standards.

B. Scope, Applicability, and Definition of Military Munitions

The definition of ''military munitions,'' finalized in 40 CFR 260.10, establishes the scope for much of today's rule. In 40 CFR part 266, subpart M, today's rule establishes special procedures and management standards for waste military munitions. The term ''military munitions'' is defined to include all types of both conventional and chemical ammunition products and their components, produced by or for the military for national defense and security (including munitions produced by other parties under contract to or acting as an agent for DOD—in the case of Government Owned/Contractor Operated [GOCO] operations). This definition clarifies, as it did in the proposal, that military munitions may be under the control of the Department of Energy (DOE), even though DOE is not usually considered to be within the ''military.'' DOE maintains the nation's nuclear arsenal for the military, and maintains munitions and personnel to protect the arsenal. The definition clarifies that military munitions may also be under the control of the U.S. Coast Guard (Department of Transportation), and the National Guard (which includes the State National Guard), as well as the Department of Defense and its various components. The U.S. Coast Guard and National Guard are generally considered to be within the military. Chemical agents and munitions are given the same definition as in 50 U.S.C. section 1521(j)(1).

For purposes of today's rule, the term ''military'' is also meant to include DOE and the other organizations listed above, as well as other parties under contract or acting as an agent for DOD, as long as they are managing ''military munitions.'' Because the term ''military'' appears in the rule without the term ''munition,'' the term ''military'' has been defined in section 266.201 to make it clear that these parties are included with the other organizations listed above in the scope of the various provisions of today's rule.

The definition of ''military munitions'' lists a number of examples of military munitions components, including propellants, explosives, pyrotechnics, bulk chemical warfare and riot control agents, smokes, incendiaries, warheads, cluster munitions and dispensers, and depth and demolition charges; and product examples, including rockets, guided and ballistic missiles, bombs, mines, grenades, mortar rounds, artillery and small arms ammunition, torpedoes, and chemical munitions. The definition excludes wholly inert items and improvised explosive devices, for example, home made bombs (which are non-military)[1]. The definition also excludes nuclear weapons, nuclear devices, and non-nuclear components thereof (including subparts of components) managed under DOE's nuclear weapons program, which still must have necessary sanitization[2] operations completed thereon under the requirements of the Atomic Energy Act (AEA) of 1954. The phrase regarding ''sanitization'' has been added to the definition of ''military munitions'' to make it clear that any non-nuclear components of nuclear weapons or devices that do not require sanitization under the AEA are ''military munitions'' under today's rule. A phrase has also been added to the end of the definition of ''military munitions'' to clarify that upon completion of the sanitization of non-nuclear components (or component subparts) of nuclear weapons or devices, the remaining materials are considered ''military munitions'' that, thereafter, are covered by subpart M of Part 266 of today's rule. Any component of a nuclear weapon or device that is source, special nuclear, or by product material as defined by the Atomic Energy Act of 1954, as amended, would not be included in this definition, nor would they otherwise be subject to RCRA requirements, since these materials are excluded from the statutory definition of solid waste under section 1004(27).

EPA considered including in this rule all of the non-nuclear components of

[1] Improvised explosive devices, or IEDs, are non-standard explosive devices made from either military or non-military materials by non-military personnel.

[2] Sanitization means the irreversible modification or destruction of a component or part of a component of a nuclear weapon, device, trainer, or test assembly as necessary to prevent revealing classified or otherwise controlled information (e.g., unclassified information that is restricted from the standpoint of export control because of its significance for nuclear explosive's research, development, fabrication, or proliferation purposes) as required by the Atomic Energy Act of 1954, as amended.

nuclear weapons which are managed by DOE under its responsibilities for the Nation's nuclear weapons program as provided in the AEA of 1954 (U.S.C. section 2011 *et seq.*). As the Agency stated in its proposal, an analysis of the legislative history associated with section 107 resulted in the conclusion that the FFCA does not contemplate the inclusion of nuclear weapons within the scope of this rule. The statutory language and legislative history of section 107 clearly demonstrate the intent of Congress that EPA develop regulations that address conventional and chemical munitions with no mention being made of nuclear weapons or their components. Furthermore, EPA recognizes that DOE's practices and procedures for the management of nuclear weapons under the AEA, as well as the potential impacts on DOE operations, are significantly different from those of DOD pertaining to conventional and chemical munitions that are addressed in this rule. As a consequence, EPA has concluded that non-nuclear components of nuclear weapons are excluded from the definition of ''military munition'' until all necessary AEA required sanitization has been completed. After sanitization, EPA believes these materials are no different from other munitions managed for national defense, and, therefore, are included within the scope of this rule. Under today's rule, however, conventional or chemical munitions that DOE produces or manages for the military, or maintains and uses (including for training purposes) to protect the nuclear arsenal, are ''military munitions'' under this final rule.

Response to Comments

The Agency received a number of comments regarding the extent to which this rule should or should not apply to other government agencies and to the private sector, as well as the military. In addition to military munitions under the control of DOD, DOE, the U.S. Coast Guard, and the National Guard, the rule also applies to other parties (e.g., a private company) producing or managing military munitions under contract to, or as an agent for, DOD or these other agencies. Since it is clear in the definition of ''military munitions'' that the definition applies to all military munitions regardless of who is managing them, no change has been made to the rule.

Comments were also received on specific terms in the definition or the need for further clarifications to the proposed definition of ''military munitions.'' Some of these comments are reflected in the final definition of ''military munitions'' at 40 CFR part 260.10. For example, the final definition reflects the comments that ''mortar rounds'' and ''artillery ammunition'' are more accurate than ''mortar'' and ''artillery,'' which are the weapons, not the ammunition. On the other hand, ''napalm'' was not added to the definition because it is covered by the term ''incendiaries.''

C. Separate CFR Part for Military Munitions

In the proposed preamble, EPA solicited comment on DOD's request that EPA create a separate part or subpart for military munitions in order to consolidate and simplify the regulations for the military, based on the argument that this would increase understanding and thereby enhance compliance. In today's rule, EPA has consolidated all the requirements solely applicable to military munitions in 40 CFR Part 266 subpart M, with appropriate cross references. Requirements applicable but not unique to military munitions (e.g., treatment and disposal standards) are retained elsewhere and referenced in § 266.200(b) of subpart M. EPA recognizes that some of the cross-references in subpart M are redundant with § 266.200(b), but has included them for clarity.

Response to Comments

The creation of a separate part for military munitions was supported by several commenters, in addition to DOD. EPA agrees with the commenters that there is a benefit to placing all requirements pertaining to military munitions in the same CFR part, given DOD's nationwide presence, and logistical and operational needs. The Agency also agrees that consolidation of the standards for waste military munitions could simplify integration by DOD of these rules with the DDESB and the Service-specific requirements for the management of all military munitions (including waste munitions). This consolidation should facilitate DOD's compliance as well as State implementation and oversight activities. In proposing this option, DOD recommended that the standards be placed in 40 CFR Part 269 (which has already been taken by another rulemaking proposal). In supporting this option, EPA has decided to place it in 40 CFR Part 266, which is being used to address special types of waste and waste management facilities.

D. Uniform National Standards

In the proposed preamble, EPA asked for comment on an alternative that would have prohibited States from enforcing broader or more stringent requirements with respect to military munitions. EPA has not adopted this approach in today's rule.

Response to Comments

The Agency received an overwhelming response to this proposed alternative. While EPA recognizes DOD's need for national consistency in managing its munitions, including waste munitions, given DOD's national defense mission, nation-wide presence, and logistical and operational needs, the Agency has decided not to depart from the standard RCRA approach in today's rulemaking. Therefore, today's rule maintains the standard Federal-State relationship embodied in other parts of the RCRA program. While EPA strongly encourages States to adopt the terms of today's rule, it acknowledges that States may adopt requirements with respect to military munitions that are more stringent or broader in scope than the Federal requirements. See RCRA section 3006 and 3009.

E. When Military Munitions Become a Solid Waste

RCRA section 3004(y) requires EPA to identify when military munitions become hazardous waste for purposes of Subtitle C of RCRA. Under the RCRA regulations, materials are considered to be ''hazardous waste,'' for regulatory purposes, if the following criteria are met: (1) the material is a ''solid waste,'' as defined in 40 CFR 261.2, and (2) the material meets the definition of ''hazardous waste'' in 40 CFR 261.3. Today's final action, in keeping with the original proposal, focuses on the first point—clarifying when munitions become a solid waste.

Under the existing provisions of 40 CFR 261.2 of the RCRA regulations, ''solid waste'' is defined as ''discarded material.'' Section 261.2 (a) through (f) provides a detailed regulatory definition of this term. In particular, § 261.2(b) defines ''discarded material'' as materials that are abandoned by being disposed of; burned or incinerated; or accumulated, stored, or treated (but not recycled) before or in lieu of being disposed of, burned or incinerated. Section 261.2(c) then describes under which circumstances recycled materials are solid wastes (e.g.,used in a manner constituting disposal or accumulated speculatively). Today's final action adds a new provision in § 261.2(a)(2) for military munitions that refers to § 266.202, which specifies how the regulatory term ''discarded material'' applies to unused and used military munitions. The following sections of the

preamble discuss the regulatory definition of solid waste in the context of three specific categories of military munitions: (l) unused munitions, (2) munitions being used for their intended purpose, and (3) used or fired munitions.

F. When Unused Military Munitions Become a Solid Waste

This rule finalizes proposed 40 CFR 261.2(g)(1)(i)–(iv) in 40 CFR Part 266, subpart M, § 266.202(b)(1)–(4). These paragraphs identify the specific circumstances under which an unused munition is considered to be solid waste for regulatory purposes. An unused military munition becomes a solid waste when: (1) the unused munition is ''abandoned by being disposed of, burned, or incinerated, or treated prior to disposal''; (2) the unused munition is removed from storage for purposes of disposal or treatment prior to disposal; (3) the unused munition is deteriorated, leaking, or damaged to the point that it can no longer be returned to serviceable condition, and cannot be reasonably recycled or used for other purposes (except, of course, recycling that is like ''discard,'' i.e., placement on the ground, unless such placement is the result of use as a munition, or burning for energy recovery); or (4) the munition has been determined by an authorized military official to be a solid waste.

1. Section 266.202(b)(1)—Munitions That Have Been or Are Abandoned by Being Disposed of, Burned, or Otherwise Treated Prior to Disposal

Section 266.202(b)(1), proposed as § 261.2(g)(1)(i), specifies that an unused munition becomes discarded, and, therefore, a solid waste for regulatory purposes when it is or has been abandoned by being disposed of (e.g., buried or landfilled), burned or incinerated, or otherwise treated prior to disposal. Thus, open burning/open detonation or incineration of unused munitions (except when done during an emergency response or during training in use of a product) is regulated under the RCRA Subtitle C standards for hazardous waste, including the 40 CFR Part 270 permit requirements (assuming the waste munitions meet the § 26l.3 definition of ''hazardous waste''). Similarly, unused munitions that were buried or landfilled in the past are considered abandoned, and, therefore, are solid waste, and, if hazardous, they would become subject to applicable Subtitle C regulation when unearthed and further managed. EPA emphasizes, as it did in the proposed rule, that this provision will not bring use of military munitions for their intended purposes—e.g., the firing of military rounds—within the regulatory scope of RCRA. The use of a product for its intended purpose (in this case a military munition), in EPA's view, is not a waste management activity and does not constitute abandonment or disposal for the purposes of § 266.202(b)(1).

2. Section 266.202(b)(2)—Munitions Removed From Storage for the Purposes of Treatment or Disposal

Section 266.202(b)(2), proposed as § 261.2(g)(1)(ii), specifies that a military munition becomes a solid waste for regulatory purposes when it is removed from storage in a military magazine or other storage area [3] for the purposes of disposal, burning, incineration, or other treatment prior to disposal. Unused military munitions, in EPA's view, are unused ''products'' comparable to unused commercial products stored by manufacturers or their customers. Under RCRA, *unused* products do not become ''waste'' until they become ''discarded material.'' EPA believes that an unused product becomes ''discarded'' when an intent to discard the material is demonstrated. However, ''intent,'' in many cases, is difficult to discern; therefore, in this rule, EPA has identified a clear test to determine the military's ''intent'' in the case of unused munitions. Indeed, this issue is at the heart of the purpose behind RCRA section 3004(y). Congress instructed EPA to develop a ''fair and coherent approach'' to identify when military munitions become a solid waste for Subtitle C purposes, in order to avoid creating a situation where the courts must constantly interpret unclear rules. [H.R. Conf. Rep. No. 886, 102d Cong., 2d Sess. 29 (1992)]. The Agency believes it has chosen a clear, simple, enforceable test that is similar to the approach the Agency has taken toward commercial chemical products and fits the unique context of military munitions.

DOD's complex system of accounting and management controls and the numerous options available to DOD for reconditioning, reuse, and sale, etc., make it difficult to determine at what point there is an ''intent to discard'' a particular unused munition. DOD's classification of a munition in one of the various DOD ''demilitarization'' accounts does not, in EPA's view, constitute a decision to discard the material because, pursuant to DOD's practices, such a classification does not necessarily evidence an intent to discard that munition. Ammunition classified as ''Condition Code H'' or as ''unserviceable,'' or in a demilitarization account (such as the Army's Resource Recovery and Disposition Account) for example, may be either returned to service after further review, or in some cases after reprocessing; sold for non-military purposes or to nations that maintain weapons that utilize these munitions; or otherwise reused, reclaimed, or recycled. Even usable munitions scheduled for disposal may be called back into service, if needed, and thus may still also serve a deterrent purpose. Therefore, in EPA's view, inclusion of a munition in a ''demilitarization'' account or a military determination that a munition is ''unusable'' for its intended purpose does not, by itself, constitute an intent to discard that munition.

For these reasons, today's rule does not define stored, unused military munitions as ''solid waste'' subject to Subtitle C, except as provided in paragraphs 266.202(b) (3) and (4). In EPA's view, the appropriate point at which to consider most unused military munitions to be a solid waste is when the material is finally removed from storage for the purpose of disposal or treatment prior to disposal. In practical terms, this provision means that storage of unused munitions is, for the most part, not subject to RCRA regulation; however, once a munition is removed from a magazine for the purpose of disposal or treatment prior to disposal, it is a solid waste and is potentially regulated under Subtitle C of RCRA.

EPA emphasizes that this provision will trigger RCRA coverage only where a decision to treat or dispose of the munition has clearly been made. In many cases, munitions classified as ''unserviceable'' are removed from storage and sent to central arsenals for evaluation to determine whether they are, in fact, unusable; whether they can be sold for use; whether they can be reconditioned for use; whether they can be recycled or processed for other uses; or whether they should be disposed of. In these cases, the munition is not being shipped for the purposes of treatment or disposal, but rather for evaluation. The munition is to be handled as a waste only if no further evaluation would take place and the decision to destroy has already been made.[4] Similarly, a

[3] The term ''military magazine or other storage area'' refers to all types of military munitions storage units allowed under the DOD Explosives Safety Board (DDESB) standards (DOD 6055.9–STD), which are mandatory for use by all DOD components, including outdoor or open storage areas, sheds, bunkers, and earth-covered and above-ground magazines.

[4] EPA has taken a similar position in the case of pharmaceuticals returned to the manufacturer. See letter from Sylvia K. Lowrance, Director, EPA Office of Solid Waste, to Mark J. Schulz, Pharmaceutical

munition may be removed from storage for the purpose of reconditioning, recycling or materials recovery without triggering RCRA.

EPA's approach, as supported by many of the public comments, is also based on the recognition that DOD has in place extensive storage and transportation standards that, in providing for explosives safety and security, are also protective of human health and the environment; and that the military Services' safety record in storing and transporting all munitions, including waste munitions, has been good. EPA further believes that there is no compelling environmental or legal reason to establish an earlier point at which unused munitions are a solid waste, except in the case of the following: munitions that are abandoned or disposed of in the past; munitions that are leaking, deteriorated or damaged to the point they cannot be put into serviceable condition, recycled, or put to other uses; or that have been declared a waste by an authorized military official. Also, it is clearer and, therefore, easier to implement an intent-based test where a component of the determinant of DOD's intent is when the munition is physically removed from storage for treatment or disposal rather than solely trying to figure out when a decision by an appropriate authority has been made. Even so, § 266.202(b)(4), discussed in section 4 below, retains the more intent-based test for situations where a decision by an authorized DOD official has clearly been made. More importantly, however, to move away from the proposed point (when a munition leaves storage) would significantly, and needlessly, increase the regulatory burden not only on DOD, but also on regulators (for enforcement and for permitting), and it could potentially disrupt DOD's program for the management of military munitions. The Agency has selected this final approach, in part, because it involves a minimum of interference with the military's established and proven system for managing unused munitions, and it will not conflict with the Services' logistical needs or constraints. Munitions in the active, demilitarization, and waste accounts are all managed under the same storage and transportation standards, and they are often stored together in the same magazines. Thus, the hazards posed by a stored munition do not change when it is classified as ''unserviceable'' or placed into a demilitarization account, or when it is scheduled for treatment or disposal.

EPA has determined that the military's storage standards and practices for munitions provide a degree of protection that is comparable to, or better than, what RCRA regulation would provide. The storage of military munitions is regulated under standards developed and overseen by the Department of Defense Explosives Safety Board (DDESB), as well as Service-specific standards, which must be at least as stringent as the DDESB standards. As mentioned in the proposal, EPA has reviewed the DDESB standards in detail and concluded that the technical design and operating standards of the DDESB meet or exceed RCRA standards in virtually all significant respects. A more detailed discussion on the differences between the RCRA and DDESB standards may be found in the preamble of the proposed rule (60 FR 56474), and in the docket for this rule (A Comparison of RCRA Storage Requirements With DOD Requirements for Storage of Military Munitions, EPA, October 31, 1995). Again, the DOD safety record for the management of all military munitions, including waste munitions, has been good.

3. Section 266.202(b)(3)—Leaking or Deteriorated Munitions

Section 266.202(b)(2), discussed above, defines the most common circumstances under which an unused military munition becomes a solid waste—that is, when a decision has been made to dispose of or treat it and it is removed from storage for transportation to a disposal site, to a treatment unit, or to a storage unit at another facility prior to treatment or disposal. EPA, however, recognizes (and States and citizen's groups have pointed out) that under certain circumstances military munitions in storage may deteriorate to a point where they are no longer ''products'' in any meaningful sense and indeed may present a potential safety hazard or environmental threat. To address these circumstances, § 266.202(b)(3), which finalizes proposed § 261.2(g)(1)(iii), defines an unused military munition as a solid waste if it is ''deteriorated or damaged (e.g., the integrity of the munition is compromised by cracks, leaks, or other damage) to the point that it cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes.'' For example, if the stabilizers in a propellant have deteriorated to the point at which there is such a significant hazard of auto-ignition that the only options available to DOD are treatment or disposal, that propellant would be a solid waste. If, however, the propellant had not deteriorated to this point and could reasonably be reclaimed, it would not be a solid waste.

Similarly, leaking chemical munitions that cannot be put into serviceable condition, and that cannot be reasonably recycled or used for other purposes would also be a solid waste. A leaking chemical munition that has been overpacked is so unlikely to ever be used, repaired, or recycled, that EPA views such a munition as a solid waste unless DOD already has in place an established repair or recycling plan. Munitions in these situations are defined in today's rule as solid waste. A leaking chemical munition or agent container (e.g., a one ton chemical container), however, may be repaired and the material still considered to be a product, not a solid waste, unless DOD determines it is a solid waste under § 266.202(b)(4).

4. Section 266.202(b)(4)—Munitions Determined by an Authorized Military Official To Be a Solid Waste

Finally, proposed § 261.2(g)(1)(iv) is finalized in § 266.202(b)(4) to make it clear that an authorized military official may identify an unused military munition as a RCRA ''solid waste.'' In this case, the designated waste munition (if ''hazardous'' or if designated by the generator as hazardous under § 262.11) would be subject to the hazardous waste regulations unless it is a non-chemical munition that meets the terms of the conditional exemptions in § 266.203 or § 266.205. For example, in 1984, the Department of the Army determined that M55 rockets are hazardous waste. DOD made this decision because the rockets' delivery system no longer existed, and because DOD decided, for operational reasons, that the rockets would not be used in military operations, and that they would not be sold or reclaimed. These rockets are now being regulated as hazardous waste under RCRA interim status or permit requirements. This final action does not affect the waste status of these materials previously declared ''solid waste,'' and provides for similar future classification of military munitions as solid or hazardous waste.

EPA emphasizes that § 266.202(b)(4) requires a specific declaration by an authorized military official that a munition is a solid or hazardous waste. EPA expects that the declaration would be in writing. As explained earlier, a decision under DOD's classification systems that a munition is ''unserviceable,'' or the transfer of a

Services, Inc., Browning-Ferris Industries, May 16, 1991.

munition into a ''demilitarization'' account would not, by itself, constitute a decision that a munition is a solid waste.

Response to Comments

DOD commented that EPA should designate unused military munitions as solid wastes when certified for treatment or disposal and received at the treatment or disposal unit. This would avoid the need for compliance with RCRA storage and transportation requirements, and permit modifications for off-site wastes (discussed below in section M). For the reasons stated in the preamble for the proposed rule, EPA continues to believe unused military munitions slated for treatment or disposal should be classified as solid waste when they leave storage.

Some commenters suggested that munitions identified as ''unserviceable'' or ''Condition Code H'' or placed in a ''demilitarization account'' should be included as solid waste, because, in the commenter's view, the designations express an intent to discard these munitions. Other commenters took the opposite view, that such designations do not express an intent to discard. Some commenters further stated that EPA should develop a scheme, including possibly a schedule, that would force DOD to evaluate and make determinations in a timely manner that materials in the various ''unserviceable,'' ''Condition Code H,'' ''demilitarization,'' or ''resource recovery and disposition'' accounts are or are not ''solid waste,'' arguing that there are tremendous volumes of materials in these accounts that DOD should be compelled to act upon to reduce the amount in storage and, thereby, reduce storage risks.

For the reasons discussed above and in the preamble to the proposed rule, EPA does not agree that such materials should be classified as solid waste (except those that are leaking, damaged, or deteriorated as addressed in § 266.202(b)(3)) nor that EPA should develop a scheme to force DOD to make such determinations, especially given the DOD storage standards, practices and record.

G. When Military Munitions Are Not a Solid Waste

Military munitions, under today's final rule, are not a solid waste for regulatory purposes: (1) when a munition is used for its intended purpose, which includes when a munition is used for the training of military personnel and of explosives and emergency response specialists; when a munition is used for research, development, testing, and evaluation; and when a munition is destroyed during certain range clearance operations; and (2) when an unused munition, including components thereof, is repaired, reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subjected to materials recovery activities.

1. Intended Use

Under RCRA, the use of products for their intended purpose, even when the use of the product results in deposit on the land, does not necessarily constitute ''discard,'' is not waste management, and is not subject to regulation. For example, RCRA does not regulate the use of pesticides by farmers, even though pesticides are discharged to the environment during use (see 40 CFR 262.10(d) and 262.70). By the same logic, RCRA does not regulate the use of dynamite or other explosives during quarrying or construction activities. Similarly, EPA has consistently held that the use of munitions (military or otherwise) for their intended purpose does not constitute ''discard,'' and therefore is not a waste management activity. Section 266.202(a)(1)(i)–(iii), in finalizing proposed § 261.2 (g)(3)(i)–(iii), clarifies this point and provides specific examples of military activities that are excluded from RCRA regulation.

a. *Section 266.202(a)(1)(i)—Military training exercises.* Section 266.202(a)(1)(i) clarifies that munitions used in the training of military personnel and explosive ordnance disposal (EOD) personnel are not regulated under RCRA. As discussed in the proposal (60 FR 56475), EPA views such training, which could include training military personnel in the destruction of unused propellant and other munitions, to constitute the normal use of a product, rather than waste disposal. For example, to ensure that military personnel can safely and efficiently destroy propellant during wartime, military training exercises involving artillery and mortar rounds typically include training in the safe burning of unused propellant. In EPA's view, the training of military personnel in the wartime use of munitions is a legitimate use that lies outside the scope of RCRA. Such training exercises typically follow detailed protocols for training military personnel in the handling and burning of unused propellants.

b. Section 266.202(a)(1)(ii)—Weapons testing. Today's final rule also clarifies that munitions used in weapons research, development, testing, and evaluation programs are not regulated under RCRA. Testing munitions, or using munitions to test a weapon system, to determine their performance capabilities, clearly falls within the definition of use of a material/product for its intended purposes. EPA also considers the removal of a used or fired munition from a testing or training firing range for further testing and evaluation to be within the definition of use of a material for its intended purpose.

c. Section 266.202(a)(1)(iii)—Range clearance operations. The military Services often conduct range clearance exercises as a result of weapons testing or training at firing ranges. During these exercises, military Explosive Ordnance Disposal (EOD) specialists clear ranges of debris and unexploded ordnance, which are generally destroyed on-site but may also be shipped off-range for treatment or disposal. The frequency of these range clearance activities differs according to the nature of the area within the range. For example, range areas known as maneuver zones, where tanks, other vehicles, and personnel are present are generally cleared more frequently than range impact areas. EPA considers range management to be a necessary part of the safe use of munitions for their intended purpose; thus, the range clearance activity is an intrinsic part of training or testing. EPA also considers this provision to be consistent with Congress' intent that EPA take DOD safety requirements into account in developing regulations under RCRA section 3004(y). [H. R. Conf. Rep. No. 886, 102d Cong., 2d Sess. 29 (1992)]. Furthermore, from an environmental perspective, it makes no difference whether ordnance explodes on impact or is subsequently detonated by an EOD specialist. Therefore, this final rule excludes range clearance exercises (i.e., the recovery, collection, and on-range treatment or destruction of unexploded ordnance) at active or inactive ranges from RCRA Subtitle C regulation.

Under today's rule, any debris or unexploded ordnance (UXO) shipped off-range for treatment or disposal is a solid waste, and if a hazardous waste, it would potentially be subject to the RCRA Subtitle C requirements. However, it would not be a solid waste if shipped off-range for further evaluation, unless the evaluation is related to treatment and disposal.

Finally, today's rule clarifies that on-range disposal (e.g., the recovery, collection, and subsequent burial or placement in a landfill) of UXO is a RCRA-regulated activity under Subtitle C.

2. Section 266.202(a)(2)—Disassembly Operations

Proposed § 261.2(g)(5) is being finalized in § 266.202(a)(2). Unused military munitions that are being repaired, reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subjected to materials recovery activities are not solid waste. Therefore these activities are not subject to RCRA, ''unless such activities involve use constituting disposal, as defined in § 261.2(c)(1) or burning for energy recovery as defined in § 261.2(c)(2)'' [these exceptions have been added to today's rule for consistency with the proposed preamble at 60 FR 56472 and 56477 and existing section 261.2(c)]. Of course, the subtitle C regulations do apply if the munition is already classified as a waste and the disassembly is carried out to prepare for waste disposal. Materials recovery operations constitute a large part of DOD's Resource Recovery and Recycling Program, which EPA strongly supports and encourages. As discussed in the proposal preamble (60 FR 56472), this section is analogous to §§ 261.2 (c) and (e) and 261.33 for ''commercial chemical products.'' Thus, the position EPA is taking in today's rule on military munitions recycling or materials recovery operations is similar to the position the Agency has taken with regard to the management of commercial chemical products. Examples of munitions recycling activities performed by DOD that would not be regulated under RCRA can be found in the proposed notice to this final action.

In the proposed rule, the Agency requested comment on one particular type of munitions recycling activity: the processing of an unused propellant or explosive for use as fertilizer. In the preamble to the proposed rule, the Agency noted that this form of recycling involves application of propellant or explosives to the land in lieu of its originally intended use. This use as a fertilizer is regulated as a waste management activity unless it meets the terms of an exemption. In reviewing this issue, the Agency has determined the recycling of propellants or explosives into fertilizer may be a permissible activity under RCRA.

Specifically, the Agency notes that in this scenario, the unused propellant or explosive would become a solid waste because it is being recycled by being used in a manner constituting disposal. See 40 CFR 261.2(c)(1). Use constituting disposal is defined as application or placement on the land in a manner that constitutes disposal, or use in production of products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land. In the specific case in point, the propellant or explosive is recycled by being used to produce a product (i.e., fertilizer) that is applied to the land.

Since explosives or propellants exhibit the hazardous waste characteristic of reactivity (see 40 CFR 261.23), those that become solid wastes when recycled would also be a reactive hazardous waste (hazardous waste code D003). In some limited cases, a propellant might also exhibit the characteristic of toxicity (see 40 CFR 261.24), primarily due to the presence of metals such as lead. In either case, since the propellant or explosive is a ''recyclable material,'' the recycling would be subject to 40 CFR 261.6—Requirements for recyclable materials. See 40 CFR 261.6(a)(1). Under 40 CFR 261.6(a)(2)(i), recyclable materials used in a manner constituting disposal are subject to the requirements of 40 CFR Part 266, subpart C—Recyclable Materials Used in a Manner Constituting Disposal.

Under 40 CFR 266.20(b) commercial fertilizers that are produced for the general public's use that contain recyclable materials are not presently subject to regulation provided they meet the treatment standard under 40 CFR Part 268, subpart D, for each recyclable material that they contain. In the case of propellants or explosives that exhibit the characteristic of reactivity (i.e., D003 wastes), the treatment standard under 40 CFR 268.40(e), as set forth in the table, ''Treatment Standards for Hazardous Wastes,'' is deactivation (i.e., rendering the propellant no longer reactive as defined under 40 CFR 261.23), plus treatment of all underlying hazardous constituents (as defined in 40 CFR 268.2(i)) to meet the universal treatment standards (UTS), found in 40 CFR 268.48. In the case of a propellant or explosive that also exhibits the toxicity characteristic (TC), in addition to meeting the requirements for the D003 waste code, the waste would also have to meet the appropriate treatment standard for the TC waste code as set out in 40 CFR Part 268, subpart D.

Thus, the use of an unused explosive or propellant as an ingredient to produce commercial fertilizer would be exempt from regulation under RCRA, provided that the fertilizer: no longer exhibits the characteristic of reactivity; has had all underlying hazardous constituents treated to meet the UTS; and has met the treatment standards for other applicable hazardous waste codes.

EPA notes that § 266.202(a)(2) codifies EPA's interpretation of how its current recycling requirements apply to disassembly and recycling of unused military munitions. The same principles apply to the recycling of commercial ammunition.

It is important to note, however, that once the materials recovery activities are completed, any remaining residuals requiring disposal or treatment prior to disposal are solid wastes which, if hazardous, would be subject to the subtitle C regulations.

Response to Comments

The Agency received numerous comments regarding the proposed rule provisions identifying when unused munitions are not a solid waste. The major comments focused on the following topics: munitions used for their intended purpose, in particular, munitions that remain on the ground at firing ranges and munitions used for training in the destruction of munitions; the scope of military personnel training regarding minimization of the quantity of unused propellant resulting from military training; potential health effects of open burning; minimum open burning standards; the potential for ''sham'' training exercises for purposes of disposal; regulation of residue/ash from open burning/open detonation (OB/OD) activities; regulation of the destruction and cleanup of munitions during range clearance activities; disassembly of rockets, missiles, or torpedoes (which carry the munitions as propellant or warhead) as it pertains to treatment; applicability of scrap metal exemptions to munitions; and reuse of explosives as fertilizers (discussed above).

Intended Use. With respect to the use of munitions ''for their intended purpose,'' the Agency received comments that disagreed with various aspects of the Agency's interpretation; in particular, that the use of munitions at firing ranges and training in the destruction of unused propellants are ''intended use'' activities. Commenters stated that munitions that impact the ground have ceased to be used for their intended purpose, and that their use cannot be compared to the use of pesticides since these products continue their intended purpose after they are applied to the ground.

Commenters also suggested that, because of the potential impact of munitions on the environment, EPA should consider designating munitions on the ground as solid waste. But even the proponents of this view felt the full current RCRA regulatory scheme (i.e., normal RCRA permitting) is

inappropriate for military ranges, suggesting that EPA could use a streamlined permit-by-rule approach with limited provisions, especially at active ranges. Commenters suggested the following limited standards for ranges (at least for active ranges) so as not to interrupt range activities related to the military mission: location standards (i.e., for wetlands, surface waters, and proximity to populations); off-range monitoring (at least surface and ground waters), remedial responses to off-range migration, and range closure plans.

Several commenters stated that field sampling had indicated contamination on ranges. The bulk of the reports that EPA has reviewed, including those cited by commenters, do not provide enough information to conclude that ground or surface water contamination does or does not result from fired munitions on ranges. This is partly because the studies or reports do not adequately document, for example, increases in contaminant concentrations over ambient concentrations (i.e., background); or that the source was, indeed, fired munitions; or whether it might be some other source on or off range, such as spills or landfills. There are two exceptions: lead and white phosphorous from fired munitions on ranges have been adequately documented to conclude that these materials may contaminate surface water and affect fish and fowl. Although the lead contamination cases involved non-military ranges, the potential for contamination at military ranges where lead munitions are fired clearly exists. The white phosphorous case was a military range.

In response to these comments, EPA continues to interpret the RCRA Subtitle C regulations as not extending to products whose use involves application to the land, or where use necessarily entails land application, when those products are used in their normal manner. In EPA's opinion, the use of munitions does not constitute a waste management activity because the munitions are not ''discarded.'' Rather, the firing of munitions is within the normal and expected use of the product. This is the same position EPA took regarding the discharge of ammunition and expended cartridges in an interpretive letter by Sylvia Lowrance, Director of EPA's Office of Solid Waste, to Jane Magee, Assistant Commissioner for Solid and Hazardous Waste Management, Indiana Department of Environmental Management, Sept. 6, 1988, addressing the issue of the ''applicability of * * * RCRA * * * regulations to shooting ranges.'' This position was also repeated in the proposed rule for Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities, 55 Fed. Reg. 30798, 30809 (1990). At the request of the United States Court of Appeals for the Second Circuit, EPA filed a brief as *Amicus Curiae* in *Connecticut Coastal Fishermen's Assoc.* v. *Remington Arms Co., et al*, (August 28, 1992) discussing the Agency's views on whether lead shot and clay target debris deposited on land and in water in the normal course of skeet and trap shooting is ''solid waste'' under RCRA. In that brief, EPA repeated its position that regulatory jurisdiction does not apply to products that are deposited onto the land in their ordinary manner of use.

EPA sees no compelling reason to alter this longstanding interpretation of its regulatory definition of the term ''solid waste.'' Nothing in the language or legislative history of RCRA section 3004(y) suggests that Congress intended or desired that EPA adopt a different interpretation of ''solid waste'' with respect to military munitions.

Moreover, EPA disagrees with one commenter's proposition that munitions are a ''solid waste'' when they hit the ground because they have no further function, unlike pesticides, which continue to have a function on the ground. EPA's interpretation focuses on whether a product was used as it was intended to be used, not on whether the purpose of the product is to perform some function once on the ground. For example, the use of explosives (e.g., dynamite) for road clearing, construction, or mining does not trigger RCRA regulation, even though any residuals on the ground serve no further function.

Therefore, the Agency is maintaining its position that munitions that are fired are products used for their intended purpose, even when they hit the ground since hitting the ground is a normal expectation for their use. However, today's rule specifies that fired military munitions that land off-range become a statutory solid waste at a certain point, potentially subject to RCRA remedial authorities. This point is discussed further in section H which addresses military munitions at ranges.

Training. The Agency received a number of comments regarding EPA's view that military munitions used in the training of military personnel are not a solid waste. A number of commenters raised concerns regarding the training of military personnel in the burning of unused propellant increments resulting from artillery and mortar training. Commenters pointed out that the amount of unused propellant destroyed may equal or exceed the propellant actually used in firing the weapons, and that this is contrary to the Agency's and RCRA's waste minimization goals. EPA agrees that the quantities of unused propellant that is burned may equal or be more than that used in firing weapons since such propellants are generally packaged in either five or seven bags per canister, and often the size of a training ranges prohibits the use of all the bags. EPA has concluded, however, that there is merit to DOD's argument that to minimize the chances for confusion and error, military training should duplicate to the maximum extent possible the conditions encountered by military personnel in combat. Using the actual canisters and bags (which are of different sizes) that would be used in time of war, and training the personnel in the safe management and expedient destruction of unused propellant is a legitimate part of training in the use of munitions.

Commenters also raised concerns regarding the RCRA status of sites used for training in the burning of unused propellant bags. Specifically, the commenters cited elevated incidences of lung and other cancers that they argued were possibly due, in part, to military burning practices. The Agency has included in the docket for this rule a number of studies and reports on the potential impacts from open burning emissions. A number of commenters expressed concern that open burning of unused propellant, as it pertains to military personnel training, contaminates the environment. Concerns of the public particularly focused on air emissions, although they also mentioned the burning of propellant directly on the ground could lead to soil (and possibly groundwater) contamination. On the other hand, studies and reports provided to the Agency offer contradictory conclusions. These reports are included in the Docket.

In any case, as a precaution, and in response to these concerns, the Services often conduct the burning in lined trenches. Also, in some cases, this precaution has been required by State regulators. In other cases, local opposition to burning of unused propellant has led individual installations to abandon the practice (and in at least one case to abandon training altogether), or to reduce the number of increments taken into the field. Commenters suggested that EPA require such lined units and perhaps monitoring and closure plans for these training units to ensure environmental

protection, perhaps through a permit-by-rule. Because EPA has determined that these are product use activities, EPA does not believe that RCRA should be used to restrict unit locations or compel unit designs.

Some States and citizens groups argued that such burning could lead to ''sham'' training, when the primary purpose is really waste disposal. Commenters suggested that EPA establish criteria for training in the destruction of unused propellant bags to assure against ''sham'' training exercises, including documentation of the training exercises and a minimum three year record retention time for all such training documentation. The Agency has retained the proposed approach regarding the training of military personnel in the safe burning of unused propellants because, as mentioned above, EPA has determined that (given the unique military activities and the need for training) this is an aspect of product usage and, therefore, should not be regulated under RCRA. On the other hand, the Agency reaffirms here what was said in the preamble of the proposed rule and earlier in today's rule, that, to assure against sham training, regulators may look for the existence and use of training manuals, the presence of military trainees, and documentation of training activities as evidence of legitimate training. Records showing evidence of training could include, for example, the number of personnel trained, the date and time of training, military personnel attendance lists, and the amount of propellant used in training. EPA believes that, should activities in a specific training exercise be suspect, such procedures and documentation would provide evidence that the activity is for training purposes rather than waste disposal.

One commenter requested that the Agency provide a definition of ''troop'' to include DOE security personnel, and DOE and DOD contractors. The Agency has decided not to add a definition of ''troop,'' but to clarify that the terms ''troop'' and ''personnel'' as used in today's rule refer not only to DOD personnel, but also to DOE, Coast Guard, National Guard, and contractor personnel who are being trained in the use of munitions or explosives. In response, the Agency has deleted reference to ''troops'' in preference to the term ''military personnel,'' and has added a definition for ''military'' to the § 266.201 definitions.

Other comments received regarding unused propellant bag training expressed concern over the lack of a regulatory regime over the ash or residue left behind after the training, and that this ash could present an environmental hazard. These commenters asserted that this ash would not be listed as hazardous waste, but might exhibit a characteristic or contain hazardous constituents, although no data were submitted. As mentioned previously, the military often conducts these propellant burning exercises within a structure that would contain residual ash, which is then disposed of according to RCRA requirements, if hazardous. The Agency emphasizes that RCRA 7003 authority could be applied to this ash when the OB/OD training site or area is closed or at any time that it might present an imminent and substantial endangerment.

A commenter suggested that these OB/OD training areas be regulated under the same guidelines as fire fighting training pits that require permits to operate. The Agency wants to make clear that the use of fuel in fire training does *not* require a RCRA permit, unless the fire training were to use waste fuel. Then the burning would be considered RCRA disposal rather than the use of a product for its intended purpose. The training of military personnel in the use of military munitions, such as training in the proper techniques to burn propellant, uses standard, unused propellant. The Agency believes it is a reasonable interpretation in the context of military training to view training in how to burn unused propellant safely as not training in waste disposal, but rather as part of necessary training in product usage.

Range Clearance. With respect to on-range clearance exercises, the Agency received a broad range of comments. Some commenters requested a clarification of certain range management activities. In response, the Agency has reviewed a host of activities. In particular, the collection of fired bullets, including those that contain lead, at indoor firing ranges, is considered by EPA to be range maintenance and not hazardous waste management activities within the scope of today's rule. EPA cautions, however, that although on-range collection may not be a waste management activity, the removal of such materials from the range may result in the generation of a solid waste, and the off-range storage and subsequent treatment or disposal of such waste may be subject to RCRA regulation. EPA notes, however, that lead may be recycled under the scrap metal exemption of 40 CFR 261.6(a)(3)(ii).

Commenters asked if range clearance activities at transferring, closed, or transferred ranges were also considered within the scope of proposed § 261.2(g)(3)(iii) since only active, inactive, and closing ranges were listed. EPA did not generally intend to include these range clearance activities within the scope of this proposed section. Under the proposal, such range clearance activities would not be considered within the scope of ''intended use.'' EPA has modified the proposal slightly in the final rule, at the request of one State, by dropping the term ''closing.'' EPA made this change because, in its view, ranges fall into one of three categories: active, inactive, and closed. A closing range is merely an ''inactive'' range in the process of becoming a ''closed'' range. Similarly, the rule does not include references to ''transferring'' or ''transferred'' range since these are all either ''active,'' ''inactive,'' or ''closed.'' To help clarify this provision, EPA has defined, in § 266.201, the terms ''military range,'' ''active range,'' and ''inactive range.'

A commenter raised the concern that the inclusion of the word ''contaminants'' with UXO in the context of ''intended use'' in range clearance operations in the proposed rule could lead to a broadening of scope to cover many remediation activities not directly associated with unexploded ordnance and munitions debris. The commenter requested that the Agency clarify whether range clearance activities may encompass a variety of range remediation activities related to munitions contamination and media cleanup (not limited to UXO and debris). It was not, and is not, the Agency's intention to broaden the interpretation of the term ''intended use'' as it applies to range clearance or management activities by the inclusion of the term ''contaminants'' in the regulatory language. In fact, the proposed preamble clarified the original intent by using the terms ''UXO'' and ''debris'' when discussing the range clearance activity. However, in today's rule, the Agency has used the term ''munitions fragments'' instead of either ''contaminants'' or ''debris'' to more closely reflect the Agency's intent to limit this provision to the recovery of munitions fragments (in addition to the recovery and treatment of UXO). This provision does not apply to the remediation of other contaminants (besides munitions fragments or debris), including non-munitions related contaminants, or media (e.g., soil, surface water, or ground water). Also, the rule clarifies that this range clearance provision does not apply to the management of UXO or munitions that were buried on a range when the

burial was not a result of product use, nor to the burial (i.e., landfill) of recovered UXO or debris/fragments on a range.

Disassembly. A few commenters requested the Agency clarify the distinction between the terms ''destruction'' and ''disassembly,'' especially in the context of RCRA permitting and ''rendering a munition safe.'' The term destruction in the military munitions context generally means thermal treatment processes such as incineration, open burning, and open detonation, but could also include chemical treatment processes. Such destructive processes usually require a RCRA permit, unless exempted under the emergency response, range clearance, or intended use provisions in today's rule. The term ''disassembly,'' in the context of military munitions, generally refers to a mechanical or physical process associated with dismantling unused munitions (i.e., products). The Agency generally does not consider disassembly to be a waste treatment process requiring a RCRA permit, especially when the disassembly is used in materials recovery activities, which is often the case. EPA views both ''destruction'' and ''disassembly'' as ways to ''render a munition safe,'' making both eligible for exemption from RCRA permitting in the emergency response context.

A commenter questioned whether the Department of Energy disassembly procedures are covered by § 266.202(b)(5). Since this section applies to military munitions, it also applies to DOE when DOE manages military munitions.

H. Military Munitions on Closed and Transferred Ranges

EPA has decided to postpone final action on proposed 40 CFR 261.2(g)(4)(i). This proposed provision would have identified a military munition left on a closed range or a range transferred from military control as meeting the statutory definition of solid waste in RCRA section 1004(27), potentially subject to RCRA corrective action or section 7003 authorities, until DOD regulations were promulgated governing the cleanup of munitions on closed or transferred ranges.

EPA's decision to postpone action on this section of the proposal is based in part on comments the Agency received on this issue and in part on the fact that DOD has not yet issued the range cleanup rule currently under development (the ''DOD Range Rule''). Many commenters questioned EPA's legal authority to defer RCRA coverage in favor of DOD regulations governing the cleanup of closed and transferred ranges. EPA will conduct further analyses of the comments and of the final DOD regulation governing the cleanup of munitions on closed and transferred ranges (including an assessment of whether the DOD Range Rule is adequately protective); based on these analyses, the Agency will reach a final decision on this issue. If either DOD fails to proceed with the range rule or EPA finds that the range rule does not adequately protect human health and the environment, EPA will be prepared to address this issue under Federal environmental laws.

EPA believes that this interpretative provision identifying when a discharged munition on a range becomes a solid waste under RCRA section 1004(27) is not a required part of the rulemaking mandated in RCRA section 3004(y) and, therefore, is not subject to that section's statutory deadlines. EPA interprets RCRA 3004(y) as only requiring the Agency to identify the circumstances under which military munitions become subject to the regulatory scheme for identified or listed hazardous waste promulgated under Subtitle C. The language of RCRA section 3004(y) fully supports EPA's interpretation. Section 3004(y) specifically requires EPA to identify ''when military munitions become hazardous waste for purposes of this Subtitle.'' Proposed § 261.2(g)(4)(i) would have identified when a discharged munition becomes a statutory solid waste, but would not identify when that discharged munition becomes subject to Subtitle C regulation.

Response to Comments

EPA received numerous comments on the proposed regulations for closed and transferred ranges. Since this part of the rule is not being finalized in today's rule, these comments will be addressed at the time EPA takes final action.

I. When Used or Fired Military Munitions Become Solid Waste, Including Military Munitions That Land Off-Range

Proposed § 261.2(g)(2) has been revised and finalized in § 266.202(c). This section clarifies that used or fired munitions are solid wastes when they are removed from their landing spot and then either (1) managed off-range—i.e., when transported off-range and stored, reclaimed, treated, or disposed of, or (2) disposed of (i.e., buried or landfilled) on-range. In both cases, once the used or fired munition is a solid waste, it is potentially subject to regulation as a hazardous waste. For example, former defense installations no longer under military control (i.e., Formerly Used Defense Sites or FUDS) sometimes contain unexploded ordnance or munitions fragments. Used or fired munitions removed from their landing spot and transported off-range would have to be handled under RCRA Subtitle C (if they are ''hazardous''), except in emergency situations. Similarly, used or fired munitions resulting from military research or training exercises at locations other than ranges (e.g., in testing laboratories) would be considered solid waste when removed from the site of use and sent to treatment or disposal. Section 266.202(c) does not finalize one aspect contained in proposed § 261.2(g)(2): that used or fired munitions that are recovered and then treated on range at a closed or transferred range (unless the transferred range is still in active use as a range) would be a solid waste potentially subject to RCRA subtitle C regulations. This aspect of the rule is being postponed along with the closed and transferred range aspect discussed in section H of this preamble, because these aspects are so inter-related and they are both being addressed under DOD's range rule.

Today's rule finalizes proposed § 261.2(g)(4)(ii) in § 266.202(d), which provides that munitions that land off range that are not promptly rendered safe (if necessary) and/or retrieved, are statutory solid wastes under RCRA section 1004(27), potentially subject to RCRA corrective action or section 7003 authorities. Today's final action is based on the view that a failure to render safe and retrieve a munition that lands off range would be evidence of an intent to discard the munition, just as the failure to respond to a spill of a hazardous material could be evidence of an intent to discard. ''Rendering safe'' might include disarming action to prevent an explosion as well as destruction of the ordnance. If remedial action were infeasible—for example, the off-range munition wastes could not be removed because the munition was deeply buried, located in inaccessible terrain or could not be located—the operator of the range would be required to maintain a record of the event, including the type of munition that was fired off range and its location (if known), for as long as any threat remains.

Response to Comments

Munitions Landing Off-Range. Several commenters expressed concern over the relative merits of not addressing munitions on an active range while addressing munitions that land off a range. The Agency views these as distinctly different situations. As discussed previously, the Agency views

the firing of munitions that land on active ranges as product use. On the other hand, munitions that land off range that are not promptly rendered safe and/or retrieved, are more like a spill that is not promptly remediated. EPA would consider these munitions to be discarded or abandoned, or disposed of (i.e., statutory solid waste potentially subject to RCRA corrective action or section 7003 authorities, and if removed for subsequent management, potentially subject to the Subtitle C regulatory requirements). A munition on an active range is where it is intended and expected to be, and it is in a controlled environment. As such, it is more effectively controlled or managed than a munition that has landed off-range where it normally wouldn't be expected to be.

J. Waste Materials Derived From Munitions Manufacture

As stated in the proposed preamble, EPA does not believe that military munitions manufacture raises any new special regulatory issues that need to be addressed by this final rule. One issue was raised in the public comments pertaining to recycling of secondary materials, but this issue is not unique to the military. As a result, the Agency has decided that any rule changes to facilitate recycling of secondary materials will be considered in the context of a broader, separate rulemaking. Therefore, this final rule makes no changes to the existing rules regarding waste materials derived from munitions manufacture.

K. Chemical Munitions

In the proposal, EPA solicited comment on whether munitions scheduled for destruction by international treaty or Congressional action should be classified as solid waste. The Agency continues to believe, for reasons discussed in the proposal (60 CFR 56485), that these actions should not, as a general matter, be interpreted as a decision to discard a munition. Among other considerations, the proposed disarmament conventions and Congressional directives do not declare these items to be waste, nor do they totally prohibit their use or require their total destruction.

Response to Comments

Regarding chemical agents and munitions, some commenters supported the proposal stating that any action that would delay the destruction of chemical agents and munitions is contrary to the protection of human health and the environment, and that in their view the proposal would not cause such a delay. These commenters stated they would oppose alternatives that would cause delays. Other commenters, however, suggested that EPA should complete a thorough review of alternative treatment/destruction technologies before allowing DOD to proceed with the current incineration approach. EPA notes that Congress has addressed the issue of developing alternative treatment or destruction technologies through legislation. For a more detailed discussion of this issue, see section M.2.b below. A few commenters supported the proposed position that chemical agents and munitions do not become solid waste solely by being slated for destruction by an Act of Congress or treaty. Some commenters took the opposite view.

In developing today's rule, EPA continues to believe the position discussed in the proposed rule. Disarmament conventions and Congressional directives to demilitarize a weapons system should not be interpreted as a decision to discard a munition. In many cases, the provisions in the treaties or conventions do not equate to a decision to discard a specific munition in that they allow, for example, for implementation schedules, retaliatory use, and very specific verification procedures that do not equate to the process established under RCRA.

In the context of chemical agents and munitions, some commenters objected to any alternative that would prohibit States from being more stringent. As discussed elsewhere in this preamble, EPA agrees and has not adopted this State pre-emption approach.

A few commenters identified the need for listing chemical agents as hazardous waste, stating that these are some of the most lethal materials in existence, yet they are not listed nor (in the commenter's view) are they characteristic hazardous wastes under EPA's RCRA regulations. One commenter stated that the Army has taken the position that the explosives (e.g., the explosive component of the M55 rockets) are a hazardous waste, but the agent itself is not. This becomes a potential regulatory problem (1) when in the demilitarization process the agent is separated from the explosives, or (2) for any bulk agents.

In response, EPA notes that five of the eight chemical stockpile States have listed the various chemical agents as hazardous, and a sixth has done so through a consent order with DOD regarding the stockpile facility in that State. Moreover, based on EPA's technical review associated with this rule, the Agency believes that the chemical agents and munitions in the military stockpile subject to the requirement for destruction contained in 50 U.S.C. 1521 exhibit at least one of the characteristics identified in 40 CFR Part 261, subpart C. In addition, DOD has publicly committed to the destruction of these chemical munitions and their agents at RCRA permitted facilities, and is seeking RCRA permits for all their chemical demilitarization facilities. Based on these facts, it is not the Agency's current intent to list, as hazardous waste, these chemical agents when they become a solid waste.

A few commenters felt that emergency responses involving chemical munitions, especially those involving non-stockpiled chemical munitions, should not be exempted from the RCRA emergency permit requirements. The Agency agrees that chemical munitions should receive close oversight. EPA has evaluated DOD's statutory requirements and standard operating procedures (SOPs) and has determined that the emergency response procedures spelled out in today's final rule, in conjunction with the DOD statutory requirements and SOPs, are sufficiently protective for chemical munitions responses. For example, the transport and destruction of a lethal chemical agent are regulated by 50 U.S.C. 1512 and 1512a, requiring special approvals by the Secretary of Defense and the Secretary of Health and Human Services prior to either transport or destruction. Further, Congress and affected State governors must be notified prior to any such destruction or transportation. Thus, the standards for emergency responses in today's rule—including the exemption for immediate responses and the requirements for emergency permits—would apply in the same way to conventional and chemical munitions. (See discussion in section P, emergency responses.)

Regarding comments received on the storage of chemical munitions, see the Response to Comments portion of section M of this preamble.

L. Generator and Transporter Standards

This final action makes two changes to the RCRA generator and transportation requirements as they pertain to emergency responses to munitions or explosives emergencies and to waste military munitions.

First, §§ 262.10(i) and 263.10(e) clarify that persons responding to emergencies (immediate threats from explosives and munitions) are not subject to RCRA generator and transportation requirements. This provision codifies a long standing EPA policy that applies to all explosives and munitions emergency responses

(military and non-military) as well as to all conventional and chemical military munitions emergency responses. This is discussed further in section P entitled ''Emergency Responses.''

Second, proposed §§ 262.10(i) and 263.10(d) are being finalized in § 266.203 to conditionally exempt from RCRA hazardous waste generator and transporter requirements (including RCRA manifest requirements and the container marking requirements of § 262.32(b)) waste non-chemical military munitions that are shipped from a military-owned or -operated facility to a military-owned or operated TSDF in accordance with the DOD shipping controls for military munitions (i.e., tracking procedures). This provision applies to waste munitions that are not chemical munitions or chemical agents and that are transported by commercial carriers who are under contract with the military and have signed a contractual compliance agreement with the Military Traffic Management Command, and who operate under the DOD system of shipping controls for military munitions. EPA is not extending the conditional exemption in § 266.203 to persons transporting ''military munitions'' who are not required to comply with the DOD military munitions shipping controls (*e.g.*, DOE or other non-DOD Federal agencies or their contractors). This provision also does not apply to the transport of waste military munitions to a commercial treatment, storage, or disposal facility. Finally, this provision would not apply to waste munitions shipped by the military but not under DOD's shipping controls designed for its munitions inventory.

This aspect of the conditional exemption does not apply to treatment, storage or disposal regulation, and is available only so long as all conditions in § 266.203(a)(1) are met. EPA's decision to adopt the conditional exemption approach for identifying when waste military munitions that are transported become subject to RCRA's transportation requirements for hazardous waste is based on EPA's conclusion that it is not necessary to regulate a waste as hazardous where the wastes are already adequately regulated, and reasonable mismanagement scenarios have thereby been controlled.

The conditional exemption approach and the legal basis supporting it is explained in greater detail below in section M.1, entitled Conditional Exemption For Waste Military Munitions In Storage.

In deciding to finalize the conditional exemption approach for the transportation of waste military munitions, EPA primarily considered the existing DOD shipping controls as well as DOD's munitions transportation safety record. The DOD shipping standards and controls provide a ''closed-loop'' system similar to the RCRA manifest. These controls include the following forms: Government Bill of Lading (GBL) (GSA Standard Form 1109); requisition tracking form DD Form 1348; the Signature and Talley Record (DD Form 1907); Special Instructions for Motor Vehicle Drivers (DD Form 836); and the Motor Vehicle Inspection Report (DD Form 626). The DOD Standards, giving instructions on the use of these forms are DOD Regulation 4500.9–R—Defense Transportation Regulation, Part II, Cargo Movement and DOD Directive 6055.13—Transportation Accident Prevention and Emergency Response Involving Conventional DOD Munitions and Explosives. ''A Report to Congress On the Adequacy of Department of Defense Safety Standards for Transportation of Hazardous Materials'' (1989) provides a summary of these controls. These documents are available in the public docket for today's rule.

Features of the DOD transportation system include pre-trip routing plans, safe havens and secure holding areas for vehicles experiencing difficulties or for overnight storage, safe haven hotline, satellite motor surveillance and tracking, shipper seals, dual driver protective and escort services, firefighting instructions, and electronic notifications/communications between shipper, carrier, and receiver.

DOD munitions shipments also comply with the DOT hazardous materials transportation standards, which address packaging, labeling, marking, placarding, emergency response, training, and shipping documentation [49 CFR 100–179, 350–399]. DOD has made the DOT standards mandatory for the transportation of military munitions (*e.g.*, DOD 4500.9-R Defense Transportation Regulation Part II, Cargo Movement, April 1996). EPA has reviewed these DOD documents and concludes that the resulting procedures, in conjunction with the applicable DOT standards, provide an equivalent level of protection of human health and the environment as the requirements of the RCRA manifest system.

As a result of these and other controls, DOD's munitions transportation safety record is good. DOD makes approximately 45,000 shipments of military munitions and explosives annually, including shipments for demilitarization (of these shipments, only a very small percentage would involve waste munitions, as defined in today's rule). According to the U.S. Army Technical Center for Explosives Safety's Explosives Safety Information Database and the DDESB's Historical Accident Database, in the past 20 years, there have been 18 mishaps involving commercial carriers of military munitions in the continental U.S. Of these, only six accidents resulted in fires or detonations that affected all or part of the munitions cargo itself. In each case, the accident was attributed to a vehicular malfunction or accident, and not to the munitions cargo.

The DOD shipping controls that make up the § 266.203 conditions are those adopted by DOD as of November 8, 1995. EPA understands that DOD may change its shipping controls from time to time based on new information. However, in light of the fact that DOD has a statutory obligation to ensure proper transportation of munitions, and to prevent hazardous conditions from arising that would endanger life and property (see 10 U.S.C. § 172), EPA does not believe that DOD would pursue any amendments that would lessen protection of human health and the environment. In fact, DOD continues to develop stricter shipping controls to assure their weapons and components thereof do not come under the control of unauthorized individuals. For example, DOD is developing a new satellite tracking system due to be fully operational, worldwide, in the next several years. Moreover, DOD also has long had experience regulating explosive safety hazards, which directly affect DOD's own personnel. Further, today's rule provides that DOD will publish notice of any amendments to the DOD shipping controls in the Federal Register. DOD will also provide EPA with DOD's determination of whether the amended shipping controls are less protective than the current standards. If EPA in its discretion determines that revisions to the conditional exemption in today's rule are necessary to protect human health and the environment, the Agency will propose such revisions. Citizens may also petition for rulemaking under RCRA section 7004, 42 U.S.C. section 6974, using the procedures set forth in 40 CFR Part 260, subpart C, to request EPA to revise the RCRA conditional exemption in light of any amendments to the DOD shipping controls. Under today's final rule, DOD amendments to its shipping controls rules become effective for purposes of the conditional exemption only when DOD publishes a notice in the Federal Register that its shipping controls have been amended.

In summary, given the protective nature of the DOD shipping controls, and the Services' record in providing for the safe transportation of military munitions, the Agency concludes that RCRA hazardous waste regulation is unnecessary when waste military munitions are transported in compliance with DOD shipping controls. The regulatory oversight created by today's rule provides further assurance that the DOD shipping controls are followed and protectiveness is maintained.

In enacting RCRA section 3004(y), Congress instructed EPA to identify when military munitions become hazardous waste subject to Subtitle C regulation. Congress also instructed EPA, after consultation with the Department of Defense and the States, to develop storage and transportation requirements for such waste military munitions that are both protective of human health and the environment and ensure that they are safely managed. Following EPA's consultation with DOD and the States, EPA concludes that the most reasonable manner of accomplishing Congress' goal is to allow DOD to continue to transport waste military munitions under DOD shipping controls, which—when followed—provide adequate protection, rather than impose a second regulatory scheme that adds little in the way of protectiveness. Thus, RCRA section 3004(y) further supports the approach taken in this rulemaking.

EPA also concludes that specifically identifying the conditions under which waste military munitions become subject to RCRA Subtitle C and providing for independent regulatory oversight of those conditions adds significantly to the reliability and protectiveness of the system of DOD shipping controls.

EPA emphasizes, however, that if a transporter of waste military munitions claims the exemption, but fails to transport waste military munitions in compliance with the provisions of the conditional exemption, the non-compliant waste would no longer be exempt, so the transporter would be subject to additional regulatory requirements and could be subject to enforcement action (or citizen suit) for violations of hazardous waste requirements. For example, where waste military munitions lose their conditional exemption due to a violation of a condition, the transporter of the waste could face penalties for transportation of hazardous waste without a manifest. As a mechanism to assist in the determination of whether the transportation of waste military munitions is compliant with the terms of the exemption, the Agency is imposing (in § 266.203(a)(iv)) a self-reporting requirement. Under this self-reporting requirement, the transporter must provide oral notice to EPA within 24 hours, when becoming aware of: (a) any theft or loss of the waste military munitions, or (b) any failure to meet a condition of § 266.203(a)(1) that may endanger human health or the environment. The transporter must also provide a written report describing the conditions of the violation or theft within 5 days of learning of it. In addition, if any waste military munitions shipped under subsection (a)(1) are not received by the receiving facility within 45 days of the day the waste was shipped, the owner or operator of the receiving facility must report this non-receipt to the EPA within 5 days.

Under § 266.203(c), where the conditional exemption has been lost, the transporter may apply to EPA to reestablish the conditional exemption. Once the waste returns to compliance with all conditions of the exemption, an application for reinstatement of the conditional exemption with respect to such waste may be filed with EPA. If EPA finds that reinstating the conditional exemption for that waste is appropriate, based on factors like those described in § 266.203(c), EPA may reinstate the exemption. Reinstatement is not automatic, but if EPA does not respond to an application within 60 days, the conditional exemption would be deemed reinstated. However EPA may terminate the reinstatement at any time—even after the 60 period—if it finds that the reinstatement is inappropriate based on factors like those described in § 266.203(c).

EPA emphasizes, however, that the generator of waste military munitions or explosives must still make the determinations identified in 40 CFR 262.11 in order to comply with the provisions of §§ 266.203 and 266.205 (discussed below), notably in order to know which materials are subject to exception reporting and notification requirements.

Response to Comments

The Agency received numerous comments on the proposed exemptions from transporter standards for shipments between military facilities under the DOD materials transportation standards. Some commenters objected to the Agency's reliance on the current DOD standards for the transport of unused military munitions as environmentally protective. The Agency is convinced that exempting DOD from the manifesting requirements is protective based primarily on the existing and comprehensive internal controls that exist and are used within the Services to track shipments of waste munitions. In addition, DOD's safety record provides evidence of the effectiveness of the DOD shipping requirements and DOD's commitment to safe transportation and management. Thus, the Agency feels confident that reliance on these DOD safeguards and practices is protective. Given this, the Agency feels the additional burden of RCRA manifesting is duplicative and unnecessary. Some commenters expressed concern that the usual RCRA protections implied in the ''cradle to grave'' tracking of hazardous waste would not be applicable under this approach since manifests (which provide this link from cradle to grave) are not required. Again, EPA is confident that the DOD tracking and security system is at least as effective as the RCRA manifest in assuring that waste munitions are tracked from ''cradle to grave.''

Some commenters requested clarification as to the applicability of these exemptions to DOE, Coast Guard, and to commercial transportation of military munitions. As discussed above, the Agency has decided to provide the manifest exemption, as proposed, to DOD, DOE, the Coast Guard, the National Guard, commercial transporters and other parties under contract to or acting as an agent for DOD, who are obligated to operate under the DOD shipping requirements. The Agency has not provided a similar exemption to commercial or other Federal transporters who are not subject to the DOD transportation standards, even if they voluntarily follow the DOD standards.

M. Storage Standards

1. Conditional Exemption for Waste Military Munitions in Storage

a. Conditional Exemption for Waste Non-chemical Munitions. In addition to promulgating RCRA storage standards for munitions that become regulated hazardous waste, EPA is also finalizing a ''conditional exemption'' approach to identify when waste non-chemical military munitions become subject to RCRA subtitle C storage regulation. Through today's rulemaking, EPA is endeavoring to ensure the safe storage of waste munitions while at the same time, not unnecessarily duplicating or impeding existing regulation and handling of such wastes. While the Agency believes that the subpart EE controls, discussed below, are necessary

for the storage of waste munitions that are not already regulated and for waste military munitions that are not managed in compliance with existing controls, EPA does not believe that subpart EE regulations are needed where waste military munitions are being properly handled in compliance with the extensive DDESB standards (and other conditions set out in today's rule).

Accordingly, today's rule provides that waste non-chemical military munitions that exhibit a hazardous characteristic or are listed as a hazardous waste are subject to hazardous waste storage regulation at the point they become solid waste under 266.202, except when they meet all of the conditions set forth in 40 C.F.R. 266.205(a)(1).

The conditional exemption in § 266.205 applies only to waste military non-chemical munitions that are subject to the jurisdiction of DDESB (which could include military-owned munitions at contractor-operated facilities), including products that DoD determines are solid wastes under today's § 266.202(b)(4) and unexploded ordnance recovered from ranges and moved into storage prior to treatment or disposal. EPA is not extending the conditional exemption option in today's rule to owners or operators of storage facilities storing non-military waste munitions and explosives, nor to persons storing ''military munitions'' who are not subject to the jurisdiction of the DDESB (*e.g.*, DOE or other non-DOD Federal agencies or contractor facilities not directly or by contract subject to DDESB controls). EPA has provided an exemption for ''military'' waste munitions based largely upon the fact that DDESB standards apply to and are binding on the military, and there is an institutional oversight process within the military. A similar structure of management controls is not present for non-military munitions.

The conditional exemption from RCRA storage requirements does not apply to transportation, treatment, and disposal regulation, and is available only so long as all conditions in § 266.205(a)(1) are met.

1. Legal Basis for Conditional Exemption Approach. EPA's approach is based on its view that RCRA § 3001(a) provides the Agency with flexibility, in deciding whether to list or identify a waste as hazardous, to consider the need for regulation. Specifically, RCRA § 3001 requires that EPA, in determining whether to list a waste as hazardous waste, or to otherwise identify a waste as hazardous waste, decide whether a waste ''should be subject to the requirements of Subtitle C.'' Hence, RCRA § 3001 authorizes EPA to determine when Subtitle C regulation is appropriate. The statute directs EPA to regulate hazardous waste generators (section 3002(a)), hazardous waste transporters (section 3003(a)), and hazardous waste treatment, storage and disposal facilities (section 3004(a)) ''as necessary to protect human health and the environment.'' By extension, the decision of when a waste should be subject to the regulatory requirements of Subtitle C is essentially a question of whether regulatory controls promulgated under sections 3002–3004 are necessary to protect human health and the environment.

EPA has consistently interpreted section 3001 to give it broad flexibility in fashioning criteria for hazardous wastes to enter or exit the Subtitle C regulatory system. EPA's longstanding regulatory criteria for determining whether wastes pose hazards that require regulatory control incorporate the idea that a waste that is otherwise hazardous may not present a hazard if already subject to adequate regulation. (*See, e.g.,* 40 CFR 261.11(a)(3)(x), which requires EPA to consider action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste.) Thus, where a waste might pose a hazard only under limited management scenarios, and other regulatory programs already address such scenarios, EPA is not required to classify a waste as hazardous waste subject to regulation under Subtitle C.

At least two decisions by the U.S. Court of Appeals for the D.C. Circuit provide support for this approach to regulating wastes as hazardous waste only where necessary to protect human health and the environment. In Edison Electric Institute v. EPA, 2 F.3d 438 (D.C. Cir. 1993), the court upheld a temporary exemption from Subtitle C for petroleum-contaminated media based on the fact that the potential hazards of such materials are already controlled under the underground storage tank regulations under RCRA Subtitle I. In reaching its decision, the court considered the fact that the Subtitle I standards could prevent threats to human health and the environment to be an important factor supporting the exemption. Id. at 466. Similarly, in NRDC v. EPA, 25 F.3d 1063 (D.C. Cir. 1994), the court upheld EPA's finding that alternative management standards for used oil promulgated under RCRA section 3014 reduced the risks of mismanagement and eliminated the need to list as a hazardous waste used oil destined for recycling.

This approach is fully consistent with RCRA section 3004(y), which directs EPA to identify when military munitions become hazardous waste subject to Subtitle C regulation. The section specifically calls upon EPA—in consultation with the Department of Defense and the States—to develop storage and transportation requirements for waste military munitions that are both protective of human health and the environment and ensure that they are safely managed. Following EPA's consultation with DOD and the States, EPA concludes today that the most reasonable manner of accomplishing Congress'' goal is to allow DOD to continue to store waste military munitions under DDESB standards, which—when followed—provide adequate protection, rather than impose a second regulatory scheme.

Thus, RCRA section 3004(y) further supports the approach taken in this rulemaking.

EPA's belief that RCRA section 3001(a) provides the Agency with the flexibility to consider good management practice in determining the need to regulate waste as hazardous, is also informed by the statutory definition of hazardous waste (section 1004(5)(B), *see also* 40 CFR 261.10(a)). EPA has interpreted the statutory definition as incorporating the idea that a waste that is otherwise hazardous does not require regulation (if properly managed). For example, EPA's regulatory standards for listing hazardous wastes allow consideration of a waste's potential for mismanagement (*see* 40 CFR 261.11(a)(3), which incorporates the language of RCRA section 1004(5)(B), and 40 CFR 261.11(c)(3)(vii), which requires EPA to consider plausible types of mismanagement).

The legislative history of RCRA Subtitle C supports this interpretation, stating that ''the basic thrust of this hazardous waste title is to identify what wastes are hazardous in what quantities, qualities, and concentrations, *and the methods of disposal which may make such wastes hazardous*.'' H. Rep. No. 94–1491, 94th Cong., 2d Sess.6 (1976), reprinted in A Legislative History of the Solid Waste Disposal Act, as Amended, Congressional Research Service, Vol.1, 567 (1991)(emphasis added). This approach also finds support in the D.C. Circuit's decision in Edison Electric Institute v. EPA, 2 F.3d 438 (D.C. Cir. 1993). In that case, the court remanded EPA's RCRA Toxicity Characteristic (''TC'') as applied to certain mineral processing wastes because the TC was based on modeling the mismanagement scenario of disposal in a municipal solid waste landfill, yet EPA provided

inadequate evidence that such wastes were ever placed in municipal landfills or similar units. Accordingly, if EPA were to find that the mismanagement scenarios of concern for a particular waste were implausible, the Agency may find that it is not necessary to subject that waste to Subtitle C regulation.

EPA recognizes that in the early 1980's its interpretation of RCRA's definition of hazardous waste focused on the inherent chemical composition of the waste, and assumed that mismanagement of such waste would occur and would result in threats to human health or the environment (see 45 FR 33113, May 19, 1980). However, after more than 15 years of experience with the management of hazardous wastes, EPA believes that it is no longer required—nor is it accurate and fair—to assume that all inherently hazardous wastes will be mismanaged, thus creating the necessity to regulate them under subtitle C.

Indeed, in several recent hazardous waste listing decisions, EPA identified potential ''mismanagement'' scenarios for both wastewater and non-wastewater sources, and then looked at available data to determine if these mismanagement scenarios were plausible given available information about current waste management practices.

In deciding to finalize the conditional exemption from RCRA regulation for the storage of waste military munitions, EPA considered several factors. First, and primarily, EPA relies on the fact that the storage of all military munitions (including waste munitions) by the military services is subject to the specific requirements of existing DDESB standards for the management of military munitions. While these standards have safety as the primary concern, EPA and one interested party, representing certain members of the waste treatment industry, have reviewed the DDESB standards in detail. Both concluded that the technical design and operating standards of the DDESB meet or exceed RCRA standards in virtually all respects, though there were gaps in certain procedural requirements and in areas unrelated to risks from explosive materials (e.g., in requirements to coordinate with local authorities or in unit closure requirements). Based on its review (which has been placed in the docket), EPA does not believe these gaps undermine protection of human health and the environment in any significant way, or that the superimposition of RCRA specific standards would significantly increase protection. The DDESB standards (''DOD Ammunition and Explosives Safety Standards,'' DOD 6055.9-STD) are in the docket for today's rulemaking, and may also be obtained by contacting the DOD Explosives Safety Board, 2461 Eisenhower Ave, Room 856-C, Alexandria, VA 22331–0600. These DDESB standards provide design and operating standards that, in part, minimize the potential for explosions and minimize the impact should an explosion occur, based on four factors that relate to the physical and chemical characteristics of these materials: (1) compatibility groupings, (2) hazardous class, (3) net explosive weight (NEW), and (4) quantity distance formulae. The EPA analysis ''A Comparison of RCRA Storage Requirements with DOD Requirements for Storage of Military Munitions,'' EPA, October 31, 1995, is in the docket for this rulemaking (and was available for public comment during the comment period for this rule).

The applicability of these standards to waste military munitions in storage is the major reason for EPA's belief that—in specified circumstances—it is not necessary to subject these wastes to RCRA storage regulation.

Second, EPA believes that specifically identifying the conditions under which waste military munitions become subject to RCRA Subtitle C, and providing for independent regulatory oversight of those conditions, adds significantly to the reliability and protectiveness of the system of DDESB standards.

Third, EPA believes that the fact that the DDESB standards generally apply to military munitions and, if violated, can have significant consequences, provides further assurance that the conditions for exemption will be met. For instance, if a member of the military is found to have violated the DDESB standards, that person is subject to military disciplinary actions. Safety Standards for Storage of Explosives and Ammunition, 41 Op. Att'y Gen. 38 (1949).

Finally, EPA has reviewed documentation concerning incidents involving the handling of DOD munitions, and continues to believe that DOD has a good safety record in storing all military munitions (including ''waste'' munitions, which constitute a tiny fraction of the overall quantity of munitions managed by DOD). Certainly, there have been incidents over the years that involved munitions detonation, in some cases leading to injury or property damage. However, few if any of these incidents involved waste munitions. Moreover, given the vast quantity of munitions managed by DOD and the dangerous nature of the material, EPA concludes that the safety record has been good, and furthermore, that regulation under RCRA subtitle C is unlikely to significantly improve that record.

In summary, given the protective nature of the DDESB standards, and the Services' record in providing for the safe storage of military munitions, the Agency believes that RCRA subtitle C regulation is not necessary for waste military munitions managed in compliance with these standards. The regulatory oversight created by today's rule provides further assurance that the standards are followed and protectiveness is maintained.

2. Implementation and Enforcement Issues. It is important to emphasize that if a military facility claims the conditional exemption in § 266.205(a)(1), but fails to store waste military munitions in compliance with the provisions of that exemption, that facility's mismanaged waste, and any unit in which that waste was mismanaged, would no longer be exempt. Accordingly, the facility would be subject to additional regulatory requirements (*e.g.*, a RCRA storage permit) and could be subject to enforcement action (or citizen suit) for violations of hazardous waste requirements.

As a mechanism to determine if the units used to store waste munitions are in compliance with the terms of the exemption, the Agency is imposing (in § 266.205(c)) as a condition for the exemption a self-reporting requirement. Under this self-reporting requirement, the owner or operator must provide oral notice to EPA within 24 hours, when the owner or operator becomes aware of: (a) any loss or theft of the waste military munitions, or (b) any failure to meet a condition of § 266.205(a)(1) that may endanger human health or the environment. The owner/operator must also provide a written report describing any failure to comply with any condition for the exemption, or a loss or theft, within 5 days of learning of it.

When a violation of 266.205(a) occurs, the waste in question automatically loses its exemption. Under 266.205(c), the owner or operator may apply to EPA to reestablish the conditional exemption once the waste returns to compliance with all conditions of the exemption. Depending on the circumstances, EPA may, in its discretion and considering factors such as those described in § 266.205(c), reinstate the exemption. Reinstatement is not automatic, but if EPA does not act on an application within 60 days, the conditional exemption would be deemed to be granted. However, EPA may, after

considering appropriate factors such as those provided in § 266.205(c), revoke an exemption reinstated by default at any time, even after the 60 period. Reinstatement decisions will be made by the Director (as defined in 40 CFR 270.2). Any owner or operator who claims that EPA reinstated the owner/operator's conditional exemption must be able to demonstrate that the reinstatement has been approved by the Director.

Further, as a mechanism to enable the regulatory agency to know which wastes and which storage units are subject to oversight under this approach, EPA has established a requirement for a notification within 90 days of when a storage unit is first used to store waste military munitions for which the conditional exemption is claimed.

In order for the regulatory agency to know when a storage unit will no longer be used to store waste military munitions subject to § 266.205(a), § 266.205(b) requires DoD to notify the appropriate regulatory authority of that fact.

3. Amendments to DDESB Standards. The DDESB storage standards that make up the § 266.205(a)(1) conditions are those adopted by the DDESB as of November 8, 1995. EPA understands that the DDESB may change its storage standards from time to time. However, in light of the fact that DDESB has a statutory obligation to ensure proper storage of munitions, and to prevent hazardous conditions arising from storage of munitions that would endanger life and property (see 10 U.S.C. § 172), EPA does not consider it likely that DDESB would pursue any amendments that would lessen protection of human health and the environment. DDESB also has a long experience regulating explosive safety hazards, which directly affect DOD's own personnel. Further, today's rule provides that DOD will publish notice of any amendments to the DDESB storage standards in the Federal Register. DOD will also provide EPA a preliminary determination of whether the amended standards are less protective than the current standards. If EPA in its discretion determines that revisions to the conditional exemption in today's rule are necessary to protect human health and the environment, the Agency will propose such revisions. Citizens may also petition for rulemaking to request EPA to revise the RCRA conditional exemption in light of any amendments to the DDESB standards (see RCRA section 7004(a), and 40 CFR 260.20).

EPA understands that DOD officials have authority, in some circumstances, to grant waivers or exemptions from DDESB standards for military munitions, where necessitated by strategic or other compelling reasons. However, EPA believes that a waiver for waste military munitions could be inconsistent with the basis for the conditional exemption established by today's rule. Therefore, a waiver from otherwise applicable DDESB storage standards will terminate the eligibility of affected waste munitions for the conditional exemption, subject to reinstatement by EPA pursuant to § 266.205(c). The existence of a waiver will not preclude the owner or operator from storing waste military munitions in compliance with the requirements of 40 CFR Parts 264 or 265, subpart EE.

b. *Waste Chemical Munitions* 1. Applicability of RCRA Requirements to Waste Chemical Munitions. ''Chemical agents and munitions'' are defined as in the Department of Defense Authorization Act of 1986, 50 U.S.C. 1521(j)(1); this statute is the comprehensive congressional scheme for the management and ultimate destruction of chemical agents and munitions.

Under the original 1980 RCRA regulations, and under today's federal RCRA regulations, a waste is hazardous if it is specifically listed as a hazardous waste, or if it exhibits a hazardous characteristic such as reactivity. *See* 40 CFR Part 261, subparts B and C. Chemical agents and munitions become hazardous wastes if (a) they become a solid waste under 40 CFR 266.202, and (b) they are listed as a hazardous waste or exhibit a hazardous waste characteristic; chemical agents and munitions that are hazardous wastes must be managed in accordance with all applicable requirements of RCRA.

Based on EPA's technical review associated with this rule, the Agency believes that the waste chemical agents and munitions in the military stockpile exhibit at least one of the characteristics identified in 40 CFR 261 subpart C. These chemical waste agents and munitions would be hazardous wastes, required to comply with RCRA requirements. (Note that even though the characteristic nature of waste chemical agents and munitions may not have been well understood in the past, the Department of Defense has, as a matter of policy and/or State law, been managing these waste chemical agents and munitions in compliance with RCRA requirements, and subject to RCRA permits.)

2. Inapplicability of Conditional Exemption. EPA is not extending the conditional exemption in § 266.205(a)(1) to waste chemical agents and munitions. This decision should not be construed as a negative assessment of DOD's standards or management of chemical agents and munitions. Indeed, DOD has a sound record for the safe storage of chemical munitions and agents. This decision is based on the Agency's belief that chemical agents and munitions are more akin to other types of chemical waste that RCRA typically regulates than are waste conventional weapons. In addition, as noted above, waste chemical agents and munitions are, either because of State law or DOD policy, already stored in RCRA regulated units and the public has come to expect that. EPA sees no reason to disrupt the current situation.

3. Inapplicability of RCRA Storage Prohibition. EPA is today codifying its interpretation that RCRA section 3004(j) does not apply to waste chemical agents and munitions. (*See* § 266.205(d)(2) of today's rule.)

By way of background, RCRA section 3004(j) prohibits the storage of hazardous waste for which one or more methods of land disposal are prohibited, unless such storage is for the sole purpose of accumulating quantities needed for proper recovery, treatment, or disposal. *Edison Electric Institute* v. *EPA*, 996 F.2d 326 (D.C. Cir. 1993). Land disposal restrictions have been set for waste exhibiting any of the hazardous waste characteristics, and thus the storage prohibition would, on its face, appear to apply to waste chemical agents and munitions that exhibit a characteristic. Congress enacted section 3004(j) in 1984 because it ''believed that permitting storage of large quantities of waste as a means of forestalling required treatment would involve health threats equally serious to those posed by land disposal, and therefore, opted in large part for a 'treat as you go' regulatory regime.'' *Id.* at 329 (quoting *Hazardous Waste Treatment Council* v. *EPA*, 886 F.2d. 355, 357 (D.C. Cir. 1989). The fact that treatment or disposal capacity for a waste does not exist or is inadequate is not enough, by itself, to overcome the storage prohibition. *Id.* at 336.

However, in the case of chemical agents and munitions, Congress has—subsequent to enactment of section 3004(j)—statutorily limited DOD's ability to move waste chemical agents and munitions from storage to treatment and disposal; EPA believes that this demonstrates Congress' intention that the storage prohibition should not apply to waste chemical agents and munitions.

Specifically, in 1985, one year after enacting RCRA section 3004(j), Congress established a comprehensive scheme for the management and ultimate

destruction of waste chemical agents and munitions. *See* 50 U.S.C. section 1521. That scheme, which Congress has updated and amended repeatedly in intervening years, requires detailed study of destruction options for the chemical agents and munitions, and provides for destruction of the chemical agents and munitions to be completed by a set date. *See, e.g.*, 50 U.S.C. section 1521 (a), (b), and (d). As originally enacted, Congress required destruction of the chemical agents and munitions by September 30, 1994, but Congress has extended that deadline recently to December 31, 2004. 50 U.S.C. section 1521(b)(5). Congress has further required that certain studies be completed prior to destruction (*see, e.g.*, 50 U.S.C. section 1521(d)); Pub. L. No. 180, 100th Cong., 1st Sess., section 125(b), (c), (d) (Dec. 4, 1987), 101 Stat. 1019, 1043, 1044). During this mandated study phase, during construction of the destruction facilities (*see* 50 U.S.C. section 1521(c)(1)(B),(2)), and while destruction is ongoing, Congress necessarily envisioned that these waste chemical agents and munitions would be stored. Indeed, Congress specifically required DOD annually to assess and report ''how much longer the stockpile can continue to be stored safely.'' 50 U.S.C. section 1521(g)(3)(C)(1).

Highlighting that Congress did not intend these agents and munitions to be destroyed until completion of a process to ensure environmentally safe destruction, Congress last year specifically prohibited construction of chemical weapons incinerators at two of eight storage sites, pending study of other destruction alternatives. *See* Omnibus Consolidated Appropriations for 1997, Pub. L. 208, 104th Cong., 2d Sess., section 8065, *reprinted in* 9A *U.S.C.C.A.N.* 396, 397 (Nov. 1996). Congress also has restricted transportation of chemical agents and munitions, so that chemical agents and munitions cannot be transported from a storage facility that lacks disposal capacity to a storage facility that might have such capacity. *See id.* at 397–98; *see also* 50 U.S.C. section 1512, 1521a.

In light of the detailed Congressional plan for destruction of the chemical agents and munitions, and their necessary storage pending destruction, EPA believes that Congress could not intend the prohibition on storage in RCRA section 3004(j) to apply to chemical agents and munitions. EPA believes that the issuance of this interpretation is necessary to reconcile the otherwise conflicting provisions of two federal statutes, and is within EPA's mandate under RCRA section 3004(y) to issue regulations that provide for safe storage of waste chemical agents and munitions.

This interpretation is an interpretative rule that reconciles specific, existing statutory provisions; under 5 U.S.C. section 553(b)(3)(A), it is not subject to formal public notice and comment rulemaking procedures.

2. Subpart EE. As noted above, EPA believes that RCRA regulatory controls are necessary for waste munitions not already regulated, and for waste military munitions that are not being managed in compliance with the comprehensive DDESB standards. At the same time, however (and as discussed in the proposed rule on waste munitions), EPA's view is that the specific RCRA regulations currently applicable to hazardous waste storage units (e.g., the container and tank standards) are not the best fit for waste munitions and explosives. Rather, the Agency has developed a tailored version of the RCRA storage standards to better reflect the nature of waste munitions and explosives, and to ensure that the regulatory requirements do not interfere with the safe handling of these materials. *See* 60 FR 56479 (November 8, 1995).

The Agency has clear authority under section 3004(a) to establish storage standards ''as necessary to protect human health and the environment''; the storage standards presently in 40 CFR Part 264 were designed to cover conventional waste management units such as tanks and containers; today's subpart EE standards are focused on the storage of hazardous waste munitions and explosives in magazines designed for explosive materials. Accordingly, EPA is finalizing proposed subpart EE in 40 CFR Parts 264 and 265 for waste military munitions and commercial munitions and explosives that have become hazardous waste subject to subtitle C.

EPA has modified proposed subpart EE in one substantive respect. In response to suggestions by some commenters, the Agency is extending subpart EE applicability to hazardous waste non-military munitions and explosives, as well as to hazardous waste military munitions and explosives. EPA believes this change is reasonable because the subpart EE performance standards are equally appropriate for non-military munitions and explosives, which closely resemble certain military munitions (e.g., small arms ammunition). As noted in the proposed rule, this subpart combines the environmental features of the existing RCRA storage unit standards with performance standards based on the DOD Explosives Safety Board (DDESB) munitions storage standards (which are contained in DOD 6055.9–STD—DOD Ammunition and Explosives Safety Standards) to minimize potential inconsistencies or conflicts between RCRA regulatory requirements and DOD's explosives safety standards. (This is consistent with the mandate in RCRA section 3004(y) to address both protectiveness and safety.) It is equally important to ensure that owners and operators of storage facilities for non-military waste munitions and explosives have a unit standard that considers both the traditional RCRA concerns and the need to assure explosives safety.

Subpart EE is not the exclusive manner for storing hazardous waste munitions or explosives, but rather, provides an alternative for the storage of hazardous waste munitions and explosives under RCRA. Depending on the explosive hazards, a facility owner or operator may still seek a storage permit for waste munitions and explosives under the already existing 40 CFR parts 264 and 265 standards for other types of storage units, including containers (subpart I), tanks (subpart J), and containment buildings (subpart DD). An owner or operator would apply for a permit under the most appropriate of these standards.

In developing the subpart EE standards, the Agency carefully examined the DDESB standards, which have been developed to protect against explosions and to minimize the impact if one should occur, and in doing so EPA concluded that the DDESB standards are generally protective of human health and the environment. The subpart EE standards include the three basic designs of magazines that are found in the DDESB storage standards: (1) earth-covered magazines (ECMs) (which are frequently used for shock sensitive and other munitions), (2) above ground magazines (AGMs) (which might be used for munitions that do not pose a mass detonation or fragment producing hazards), and (3) outdoor or open storage areas (typically for munitions that do not pose a significant potential for explosion).

Today's rule also establishes design, operation, monitoring, inspection, closure, and post-closure care standards consistent with the standards for other RCRA storage units. These standards set containment and control performance standards to prevent contamination of soil, ground-water, surface waters, and the air. The standards require a primary barrier or containment system, which may be a bomb shell, a protective casing, a storage container, or a tank. For non-liquid wastes stored outdoors or in open storage areas, the unit design

and operation must provide that the waste will not be in standing precipitation. This may be accomplished by a number of design and operating features, including a sloped impervious base, a pervious base, and/or waste elevation.

For those few waste munitions that are liquids, in addition to the primary barrier or container, the subpart EE rules require units to be equipped with a secondary containment or vapor detection system. The secondary containment or vapor detection system design, operation, controls, and monitoring features may include a combination of sumps, pumps, drains, slope, double-walled containers or tanks, overpacks, and/or elevated waste or other features that provide that any released liquids are contained or promptly detected so that an appropriate response may be taken (e.g., additional containment, such as a container overpack, or removal from the waste area). For liquid and liquid-filled waste munitions (e.g., the stored waste chemical munitions), the Agency considers the storage of the munition inside a sealed storage casing as a means of achieving secondary containment.

Monitoring and inspections are required to assure that the containment systems and controls are working as designed, that the wastes are stable, and that no contaminants that might adversely affect human health or the environment are being released from the magazine. In addition, all hazardous waste munitions under subpart EE would have to be inventoried at least annually, which is consistent with current DOD requirements.

The closure standards mirror the other RCRA storage unit closure standards, requiring waste and contaminant removal and containment system decontamination (where practicable). When ''clean closure'' cannot be accomplished, the landfill closure and post-closure standards apply.

Response to Comments

EPA received numerous comments on proposed subpart EE and the three alternatives that EPA proposed in the preamble to the proposed rule. Regarding subpart EE, some commenters said it is too general to be effective, whereas others supported it, some saying it should be expanded to be available for all munitions and explosives storage, not just military and not just munitions since the other existing storage standards under RCRA are not as tailored or specific to explosives. Regarding the former comments, EPA believes the advantage of general performance standards is that they allow flexibility in establishing site specific design and operating standards. 40 CFR part 264, subpart X, is an example of a RCRA Subtitle C performance standard. The disadvantage of performance standards as pointed out by the commenters is the lack of specificity. In the case of subpart EE, however, EPA has included some specificity (e.g., secondary containment). Also, the DDESB standards or other applicable standards (e.g., DOE, Coast Guard, NASA, BATF) and Standard Operating Procedures (SOPs) may be incorporated as appropriate to add specificity in the development of permit standards. Since there are so many standards and SOPs for munitions and explosives, both in the private and public sectors, this approach provides the flexibility to incorporate these without having restrictive or conflicting RCRA standards. Commenters asked if military or other SOPs would be subject to regulator review. To the extent that they are used in the subpart EE permit, they would be subject to regulator and public review during the permitting process, and when incorporated into a RCRA permit, they become regulatory requirements. Regarding the comments supporting expanding the coverage of the proposed subpart EE, EPA concurs and has expanded the applicability of subpart EE in the final rule to make it an available option for the storage of all waste munitions and explosives. For this reason, subpart EE has been retained in parts 264 and 265 rather than in the new part 266, subpart M.

Several commenters felt that EPA should require storage permits for all chemical munitions, not only because they felt these should be classified as wastes (this comment was discussed in section K of this preamble), but because extra precautions are needed for these particularly hazardous chemicals. In response, EPA has decided not to allow the storage of waste chemical agents and munitions to be eligible for the conditional exemption from storage permits under today's rule. Instead, a subpart EE or other waste management permit is required for these wastes. EPA notes, however, that DOD has in place strict procedures for the storage of all chemical munitions, including waste chemical munitions. For example, all chemical munitions and bulk agent storage is currently maintained within a special high security area at each installation. Extensive precautions are used to control entry to these storage areas. Munitions containing explosives are stored in earth-covered magazines (ECMs) designed to protect their contents from blast and shrapnel effects of the potential detonation of a neighboring magazine. Most munitions without explosive components, and bulk containers containing isopropyl methylphosphonoflouridate (referred to as GB) and phosphonothioic acid, methyl-S-(2-(bis(1-methylethyl))-amino)ethyl-O-ethyl ester (referred to as VX), are also stored in ECMs. The exceptions include VX ton containers and spray tanks, both of which are stored in above ground magazines (AGMs). One ton containers of mustard agent are stored in either ECMs, AGMs, or outdoor storage areas. Chemical munitions other than 1-ton containers are stored in configurations generally suitable for transport during wartime. These configurations include boxes, protective tubes, or metal overpacks, and all are on pallets. The stacking arrangements and aisles inside the storage facilities are generally designed and maintained so that units in each stack can be inspected, inventoried, and removed for shipment or maintenance, as necessary. Periodic surveillance monitoring, safety inspections, indoor air monitoring, maintenance of munitions for safety-in-storage, and inventory activities are routinely carried out on these stored munitions.

Also, there have been no catastrophic accidents associated with the storage of chemical munitions, and the risk of release to the public has been reduced due to the 1969 cessation of live firing and the implementation of close restrictions on the disposal and movement of chemical munitions. There are, however, cases where deterioration of the containers has resulted in leaking of agent from a munition. When this occurs, the munitions are over packed in hermetically sealed containers and placed in specially designated and monitored magazines. Even with such incidents, in the past 40 years there have been no known cases of exposure to personnel not directly engaged in agent operations.

Some commenters suggested that subpart EE be expanded for waste gaseous chemical warfare agents to require secondary containment and to prohibit outdoor storage. EPA notes that chemical warfare agents are stored as liquids, not gases, and therefore the secondary containment or vapor detection system requirements in today's rule apply.

EPA does not see the need to prohibit outdoor storage of any waste munitions in subpart EE so long as those waste munitions will not be left in standing precipitation, and, if liquid, have secondary containment or vapor

detection system, as is required by subpart EE.

DOD commented that EPA should allow a vapor detection and response system as an alternative to secondary containment for liquid waste chemical munitions and agents since these materials leak as vapors before they leak as liquids and such early detection and response provides for protection that is comparable to secondary containment. EPA agrees, and as discussed in the section on subpart EE above, EPA has provided for the use of a vapor detection and response system in finalizing subpart EE. In addition to the subpart EE standards, chemical waste military munitions are also subject to additional procedures and requirements regarding monitoring or secondary containment. At facilities that manage chemical weapons, DOD has both a monitoring and a visual inspection protocol that is designed to allow early detection of any leakage from a chemical munition. The monitoring includes both regularly scheduled sampling of the air in all units storing chemical munitions, as well as monitoring of the air within the storage unit whenever personnel are to enter the unit. Should there be a release of agent, these monitoring protocols will detect minute amounts of vapor release (which typically occurs before any liquids are released). Should a release be detected, the munitions within the storage units are inspected to locate the leak and the release is contained. If the source cannot be located immediately, the ammunition storage unit is sealed and the air filtered and monitored until the source is located. Once a leaking chemical munition is isolated, it is overpacked in a specially designed container that re-establishes an intact barrier between the agent and the environment. If a container with liquids (e.g., an M55 rocket) leaks inside its sealed shipping tube, and if the primary barrier (e.g., the rocket casing) has been permanently compromised, but the shipping tube is intact, DOD typically overpacks the rocket in order to place two intact barriers between the liquid and the environment, an action consistent with the secondary containment requirements found in other unit standards under RCRA. Upon completion of the overpacking activities and associated decontamination procedures, the storage area is monitored to assure complete decontamination.

Commenters sought further clarification of the status of shipping containers and overpacks as secondary containment for liquid-filled waste munitions. It is EPA's view that the secondary containment requirement for waste munitions may be met by a shipping or storage container or overpack around a non-leaking munition or container since it places a second barrier between the liquid and the environment. Multiple overpacks (a current DOD practice) are permissible to meet this requirement.

Some commenters (mostly the regulated community) favored the first proposed alternative or the ''deferral'' option under which munitions would not under any circumstances be considered a RCRA hazardous waste based on the current storage practices of DOD, which are protective of human health and the environment. Other commenters questioned this alternative's legal basis and opposed this approach because it would remove all non-DOD oversight. EPA agrees with the latter commenters on both counts and has not adopted this approach.

The Agency received comments raising concerns about a contingent management approach. The Agency's thinking on this issue is set out in today's preamble and a detailed response can be found in the docket.

N. Permit Modifications to Receive Off-Site Waste Munitions

Some RCRA permits at military installations have conditions prohibiting the receipt of ''off-site'' waste. Under these permit restrictions, if the point of generation of a waste munition is any place other than the permitted installation, then the waste munition could not be accepted at the facility for treatment, storage, or disposal without the installation first having received a RCRA permit modification.

Under today's rule, a number of formerly unregulated munitions might now be deemed to be wastes, and thus potentially subject to these off-site permit restrictions (see discussion in the preamble to proposed rule). Under the existing regulations (40 CFR 270.42(d)(1)), this modification would arguably have to follow the procedures for a Class 3 modification, requiring approval before implementation. Alternatively, the permittee might request that the modification be reviewed by the regulatory agency as a Class 1 or Class 2 modification. DOD maintains that this situation would cause a serious disruption of its munitions management program.

To address this concern, this final rule allows permitted facilities with off-site prohibitions to continue to receive from off-site sources munitions that have been newly defined as solid waste, provided there is timely notification to the permitting authority (in the form of a Class 1 permit modification request), followed by a Class 2 permit modification request. Under this procedure, the facility may continue to accept waste munitions from off-site sources until the permitting authority makes a final decision on the Class 2 permit modification request. This approach is consistent with the permit modification rules for newly regulated wastes(40 CFR 270.42(g)).

There are three specific requirements that are attached to this provision and are codified today at 40 CFR 270.42(h). First, to be covered under this provision, the facility must be in existence on the date today's rule goes into effect and must already have a permit to handle the waste munitions. Second, the facility must submit a request for a Class 1 permit modification that seeks an amendment or removal of the permit restriction on off-site waste. The Class 1 permit modification request must be submitted on or before the date when the waste munitions become subject to hazardous waste regulatory requirements. (Today's rule becomes effective in unauthorized States six months from the date of publication; in authorized States, State law would determine the effective date.) This timely Class 1 submittal would allow the facility to continue to receive off-site waste munitions after the effective date without the need for prior approval by the permitting authority. Third, following submission of a Class 1 permit modification request, the facility would have an additional six months following the effective date of this rule to submit a Class 2 permit modification request for the removal of the off-site waste prohibition. Following submission of the Class 2 modification, the facility would be allowed to continue to accept waste munitions from off-site sources until such time as a final decision to grant or deny the modification is made.

EPA's two-step approach recognizes that military munitions that were previously handled at certain stages as non-waste might, under today's rule, be considered waste. This two-step process allows DOD to continue managing its munitions with a minimum of disruption, while recognizing the need for the modification of those permits that restrict the acceptance of waste munitions from off-site sources.

The proposed rule provided an opportunity for DOD, before the 180-day deadline to submit a Class 2 permit modification application, to request the permitting agency to allow an extension for a specified period. In today's final rule, EPA has decided not to provide for such an opportunity for two reasons. First, this is inconsistent with

§ 270.42(g) which addresses permit modifications for all newly regulated wastes and units to which this situation is analogous. Second, this Class 2 permit modification request is, perhaps, the simplest and most straightforward of all types of requests likely to be submitted under this section, so to provide an opportunity for extension is unnecessary.

Today's final action does not affect activities at interim status facilities. In some cases, however, the facility's part B permit application might include an off-site waste prohibition. In this case, the facility owner should amend the permit application.

Response To Comments

A number of commenters said it would be inappropriate for EPA to adopt DOD's alternative approach as described in the proposed notice (whereby a material is not deemed to be a waste until received at the treatment/destruction unit) because this approach would undo by national rule provisions that currently exist in a number of permits that prohibit the receipt of off-site waste, and because this would ignore or circumvent the right and duty of State regulatory agencies to issue site-specific permits based on public participation. Furthermore, a number of commenters maintained that the modification of a permit restriction regarding off-site wastes should be processed as a Class 3 modification requiring full public participation rather than as a Class 1 or 2 permit modification. These commenters argued that permit modifications to remove off-site waste restrictions could create the need for additional modifications regarding changes in waste streams or quantity limitations. Commenters specifically expressed concern that no waste should be allowed to be received from off-site unless the receiving facility is ''prepared and equipped'' to comply with the standards for off-site facilities.

In adopting the approach in today's rule, the Agency's main concern is that any modification of existing permit conditions restricting off-site waste be done in a way that provides for public participation. Thus, the Agency concurs with the comments opposing the ''alternative proposal'' of declaring the transported material as a waste when it reaches the ''front door'' of the treatment or disposal unit.

In response to commenters recommending the Class 3 permit modification procedures, expressing concern that other permit conditions might change, or that facilities might not be prepared to receive the ''new'' waste munitions, EPA is clarifying the applicability of the off-site permit modification provisions in today's rule. The procedures of new § 270.42(h), allowing a Class 1 modification submittal followed by a Class 2 modification request, apply only to changing a permit condition that prohibits receipt of off-site wastes. Section 270.42(h) of today's rule does not allow facilities to receive munitions that they were not already receiving at the time of the rule's effective date. It only allows facilities to continue to receive munitions newly classified as hazardous waste. Today's rule also does not affect the classification of, or process for, other types of permit modifications (such as acceptance of different wastes or changes in permitted quantity limits) that might occur at a facility. Those other types of modifications will continue to be evaluated in accordance with 40 CFR § 270.42 and Appendix I to 40 CFR § 270.42.—i.e., the facility must follow the appropriate procedures for whichever class of modification—Class 1, 2, or 3—applies.

In conclusion, given the very narrow scope of the changes allowed under § 270.42(h), EPA believes that it is not necessary to require Class 3 permit modifications in this rule. In situations of high public concern, Class 2 procedures already allow the regulating agency to elevate the process to a Class 3.

O. Environmental Justice

Today's rule addresses environmental justice concerns by providing standards, while not specific to environmental justice, that are protective of human health and the environment regardless of the population potentially impacted. In addition, DOD as well as all Federal agencies, is subject to the President's Executive Order No. 12898 on Environmental Justice.

Response To Comments

Several commenters raised environmental justice concerns. The comments focused primarily on military contamination caused by ordnance landing on ranges formerly owned by Native Americans or Hawaiians, or landing off-range on Native American or Hawaiian lands. The commenters stated that these lands should be cleaned up and, as appropriate, returned, citing cultural, economic, safety, justice, and social reasons, observing that indigenous peoples have a special relationship to their land and that relocation is not an option. Seven environmental justice examples were mentioned in the public comments. These examples are located in Alaska, California (2), Hawaii, Nevada, Oregon, and South Dakota. A brief description of each of these was provided in the comments.

In response, EPA has prepared a report summarizing these comments and cases, and referred it to DOD. A copy of this report is available in the Docket for this rule-making. DOD has created an environmental justice program to evaluate and respond to these concerns and has appropriated $8 million in each of the past three fiscal years to support this effort.

In addition, in developing this final rule and in helping DOD develop its range cleanup rule, EPA feels the environmental justice concerns raised by the commenters for munitions and contaminants landing or migrating off-range, and on closed and transferred ranges, will now be addressed, resulting in an increased protection of human health and the environment. For example, some commenters referred specifically to munitions that land off range. Today's rule retains, in § 266.202(c)(3), the ''off-range'' response provision of the proposed rule. This is expected to help communities, including Native American communities, which are located adjacent to ranges. In addition, EPA is working with DOD in the development of DOD's Range Rule, which will establish a process for taking inventory, accessing, and cleaning up closed, transferring, and transferred ranges.

P. Emergency Responses

Today's final rule also clarifies that RCRA generator, transporter, and permit requirements do not apply to immediate responses to threats involving munitions or other explosives. EPA is now codifying a long standing Agency policy to address concerns of DOD and other emergency response officials that RCRA requirements may impede emergency responses, especially by causing delays or confusion. As stated in the preamble to the proposed rule, the current RCRA rules exempt emergency responses from full permit requirements in two ways. First, permits (including emergency permits) are not required for immediate responses to a discharge of hazardous waste or to an imminent and substantial threat of a discharge (§§ 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3)). After the emergency is determined to be over, however, any additional waste management may be subject to RCRA regulation. Second, in cases of imminent and substantial endangerment to human health or the environment, a temporary emergency permit may be issued to a facility to treat, store, or dispose of hazardous

waste. This permit may be issued orally, if followed by a written emergency permit within five days, and may not exceed 90 days in duration. See 40 CFR 270.61.

Today's rule clarifies that EPA considers immediate or time-critical responses to explosives or munitions emergency responses to be an immediate response to a discharge or imminent and substantial threat of a discharge of a hazardous waste under 40 CFR 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3). Such responses are, therefore, exempt from RCRA permitting, and other substantive requirements, including emergency permits, conducting risk assessments for OB/OD permits under 40 CFR part 264, subpart X, and interim status requirements under 40 CFR part 265, subpart P. If an immediate response, however, is clearly not necessary to address the situation, and a response can be delayed without compromising safety or increasing the risks posed to life, property, health, or the environment, the responding personnel, if time permits, should consult with the regulatory agency regarding the appropriate course of action (e.g., whether or not to seek a RCRA emergency permit under § 270.6l, or regular facility permit under 40 CFR Part 270). Situations where an immediate response is needed would include instances where the public or property is potentially threatened by an explosion. Situations where an immediate response is clearly not necessary would include instances where the public or property are not threatened by a potential explosion (e.g., in remote areas such as some former ranges or where immediate action is not necessary to prevent explosion or exposure). In these cases, there is time to consult with the EPA or State regulatory agency on how to proceed.

Sections 264.1(g)(8)(i)(D), 265.1(c)(11)(i)(D), 266.204, and 270.1(c)(3)(i)(D) make it clear that explosives or munitions emergencies, including those involving military munitions, are exempt from RCRA permitting (including emergency permitting). This final action also clarifies, in §§ 262.10(i) and 263.l0(e), that, if an emergency response specialist at the site determines it to be appropriate, the explosive material may be removed and transported to a safer location to be defused, detonated, or otherwise rendered safe without a RCRA manifest, and the transporter is not required to have a RCRA identification number. Such transport could be to an open space or an EOD range at a military installation. Transportation onto a military base is, however, subject to the requirements of 10 USC section 2692. Transporters shall consult with appropriate military authorities regarding 10 USC section 2692 requirements. This final action, which EPA believes is necessary to allow prompt response to explosives emergencies, is consistent with current EPA policy.[5]

Today's rule also finalizes three new definitions in § 260.10 to help clarify the scope of this exemption. The definition of ''explosives or munitions emergency'' describes in detail what constitutes an emergency, and clarifies that an emergency situation includes suspect situations with significant uncertainties, including improvised explosive devices (IEDs, e.g., home made bombs). The definition of explosives or munitions emergency also states that the ''explosives or munitions emergency response specialist'' is responsible for determining whether an emergency exists.

An ''explosives or munitions emergency response specialist'' is defined to include all military and non-military personnel trained in the identification, handling, treatment, transport, and destruction of explosives or conventional and chemical military munitions. Explosives and munitions emergency response specialists include DOD Explosives Ordnance Disposal (EOD) personnel, who are trained to respond to emergency situations involving military munitions and explosives, DOD Technical Escort Unit (TEU) personnel, who are trained to respond to chemical munitions emergencies, and DOE, National Guard, and Coast Guard specialists who are trained to respond to emergency situations involving chemical munitions. EOD and TEU personnel respond to on-installation and off-installation incidents involving military munitions. They also respond to requests by other Federal agencies or local civil authorities for assistance with incidents involving non-military explosives. Non-military explosives or munitions emergency response specialists include trained personnel in the Bureau of Alcohol, Tobacco, and Firearms (BATF), Federal Bureau of Investigation (FBI), Central Intelligence Agency (CIA), Drug Enforcement Administration (DEA), U.S. Postal Service (USPS), Federal Aviation Administration (FAA), other parts of the Department of Transportation (DOT), and the Department of Interior (DOI). State and local enforcement and emergency response personnel and private sector explosive specialists also qualify.

Finally, an ''explosives or munitions emergency response'' is defined as all immediate response activities identified and carried out by the emergency response specialist to eliminate the threat, including all handling, render-safe (e.g., methods to defuse or separate the initiator from the explosive), transportation, treatment (e.g., by placing the explosive in water), and destruction activities. These emergency actions might involve defusing, detonation, or other treatment of ordnance ''in-place,'' or transportation to a safer location, including to an EOD range, to defuse, detonate, or otherwise to abate the immediate threat.

Response to Comments

DOD requested that EPA exempt the object of an explosive or munitions emergency response from the regulatory definition of solid waste. EPA disagrees since such material is often clearly a RCRA solid waste (e.g., a buried munition). DOD questioned whether temporary storage for extenuating circumstances (e.g., adverse weather, nightfall, or safety considerations) would be allowed under the emergency response. EPA concurs that temporary storage for such extenuating circumstances are within the emergency response exemption from a RCRA permit.

A number of commenters questioned the status of any residuals in the soil from emergency responses. EPA believes the responsibility for any hazardous residuals is a factual determination dependent upon the circumstances surrounding the emergency event. Responsibility could rest with the person who left or abandoned the munition or explosive, the landowner, or, possibly, the local authorities. For purposes of this regulation, EPA does not consider emergency response personnel to be generators of residuals resulting from immediate responses, and, therefore, emergency response personnel are not subject to the regulations governing such generators, unless they are also the owner of the object. In the case of an EOD unit responding to an incident involving a military munition, the EOD units are not typically the ''owner'' of the munition nor are they typically the responsible organization for a military installation. Thus, in those cases that involve military munitions, the EOD unit would not be responsible for addressing any residual contamination; however, DOD, the military Service, or

[5] Interpretive letter from EPA (Director, Office of Solid Waste) to the Bureau of Alcohol, Tobacco, and Firearms, August 11, 1988, p.4.

other organization (e.g., DOE) would be potentially liable for any remediation of residual contamination. In EPA's view, it would be counterproductive to the public safety and the compelling need for immediate action to require that emergency response personnel contemplate the environmental liability that might result from their response to an explosives or munitions emergency. However, after the emergency response is concluded, any residuals are subject to 40 CFR 262.11 (hazardous waste determination), and if hazardous, to the rest of 40 CFR parts 260 through 270. The owner of the object of an emergency response; the owner of the property on which the object of an emergency response rests or where the emergency response initiates; or the requestor for an emergency response is responsible for addressing any residual contamination that results from an emergency response. For example, if the residuals are hazardous and resulted from an emergency response involving a military munition, then the military would be responsible for such residuals. Also, it is not the intent of today's regulation to impose liability on response personnel to clean up residuals associated with donor explosives used to destroy the object in an emergency response.

On a broader scale, DOD raised three concerns regarding the regulation of emergency responses involving munitions or explosives under RCRA: (1) the effect of the RCRA land disposal restrictions on response actions; (2) possible RCRA corrective action liabilities; and (3) the possibility that treatment permits would be required for areas ''routinely'' used to handle emergencies. To the extent that any of these issues would delay or complicate responses to emergencies involving explosive material, EPA shares DOD's concerns. EPA's objective in issuing today's rule, and in clarifying the applicability of RCRA to emergency responses, is to remove regulatory impediments to emergency responses and to promote the safe and prompt management of explosives and munitions emergencies. EPA agrees with DOD that any regulatory impediments to prompt responses should be removed. DOD's three concerns are specifically discussed below.

Concerning the first issue—the application of the RCRA land disposal restrictions (LDRs) to explosives emergencies—EPA has limited the applicability of LDR treatment standards for reactive wastes with respect to unexploded ordnance and other explosive devices that are the object of an emergency response. While the reactive waste must be deactivated, treatment of underlying constituents is not required. (See the table, Treatment Standards for Hazardous Wastes, 40 CFR part 268, subpart D, which identifies deactivation as the sole treatment requirement for ''unexploded ordnance and other explosive devices which have been the subject of an emergency response.'') Thus, an emergency response specialist does not need to be concerned with the LDR requirements requiring treatment of underlying hazardous constituents when determining the course of action in an emergency response. EPA notes, however, that emergency responses present issues that are different from routine management of reactive wastes, where there is no competing consideration of need for immediate action to prevent an imminent threat. Thus, in non-emergency response situations, the LDRs do apply. See 61 *FR* 15568–15569, April 8, 1996. EPA also notes, however, that DOD is still responsible for any residues that remain after an emergency response that involves military munitions.

EPA continues to regard open burning/open detonation as treatment, not constituting land disposal. See 51 *FR* 40580 (November 7, 1986) and 52 *FR* 21011 (June 4, 1987). With regard to emergency responses to explosives involving deactivation or destruction methods other than open burn/open detonation, EPA notes that the treatment standard for reactive wastes is deactivation (i.e., removal of the hazardous waste characteristic of reactivity). See 40 CFR 268.42, Table 1. These standards are consistent with typical responses of an EOD team to an explosives emergency, and therefore the RCRA treatment requirements would not present a problem.

The responding agencies' primary concern on the second issue—the applicability of RCRA corrective action requirements—is the possibility that they might incur an obligation to clean up unrelated contamination elsewhere within the facility boundaries when they conduct an emergency response. In response to this concern, EPA emphasizes that emergency response actions are exempt from RCRA permitting regulations, and, therefore, do not trigger RCRA corrective action requirements. The RCRA corrective action authorities in sections 3004(u), 3004(v), and 3008(h) apply only to RCRA permitted or interim status facilities. Thus, these requirements would apply only if the emergency response took place at a RCRA permitted or interim status treatment, storage, or disposal facility, and in this case, any responsibilities for corrective action would fall on the facility owner, rather than on the responding authority. Furthermore, RCRA corrective action requirements do not apply to actions taken under the immediate response provisions of 40 CFR 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3). Finally, in the case of a response conducted under a RCRA emergency permit (40 CFR 270.61), RCRA corrective action requirements would be excluded under 40 CFR 270.61(b)(6). This provision requires that emergency permits exclude conditions that would be inconsistent with the emergency situation that the permit was addressing. EPA discussed this point in its RCRA corrective action proposal of July 27, 1990, 55 *FR* 30806. Finally, if a response action is taken under CERCLA authority, CERCLA section 107(d)(1) provides that no person ''shall be liable under this title for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance, or advice in accordance with the National Contingency Plan ('NCP') or at the direction of an onscene coordinator appointed under such plan, with respect to an incident creating a danger to public health or welfare or the environment as a result of any releases of a hazardous substance or the threat thereof.''

DOD's concern on the third issue is that, if the responding agency repetitively transported explosive devices to a particular off-site treatment area, a regulator might decide that such a routinely used area should be subject to RCRA permitting requirements. In emergency situations, DOD EOD teams and other responding agencies often find it safer to move explosive material away from the site where it was found—where it may threaten people or property—and transport it to an EOD range. In such cases, the fact that the material can be transported to another location does not necessarily mean that the dangerous situation is under control or that the emergency is over. Rather, it indicates a need to find an area where site access is controlled and the site conditions are known (e.g., the distance to nearby structures is adequate and there are no subsurface utilities), so that the material can be disarmed, defused, deactivated, or destroyed with confidence that an explosion will not cause injury or collateral damage. In previous guidance, EPA has stated that off-site treatment of explosives during emergency responses is not subject to permit requirements, as long as the

treatment is legitimately part of the emergency response.

Because of this need for safe treatment sites, some EOD ranges may be regularly used to destroy explosives during emergency responses. The issue has been raised (and previous EPA guidance suggests) that some level of ''routine'' use of a particular range should trigger RCRA permit requirements. In EPA's view, however, the question of whether a permit is necessary hinges on the nature of each individual response (i.e., whether or not it involves an emergency), rather than on the number of times a given area is used for emergency responses. As long as the response to each individual incident was an emergency response, a RCRA permit would not be required.

Q. Manifest Exemption for Transport of Hazardous Waste in Lieu of ''On-Site'' Redefinition

In the November 8, 1995 proposal, EPA proposed to reduce the burden on generators and TSDFs situated on contiguous properties that are split by public or private right-of-ways (e.g., roads) by proposing that the definition of ''on-site'' found at 40 CFR 260.10 be modified.[6] Based on the comments received and the complex issues raised related to the definition of ''on-site,'' the Agency has determined that an alternative approach is warranted to reduce the burden associated with shipments of hazardous waste to contiguous properties under the same ownership.

Under the current RCRA Subtitle C regulations, if a waste movement remains ''on-site,'' the waste is not required to be accompanied by a manifest during transportation, and the 40 CFR part 263 transporter requirements do not apply to the waste. See 40 CFR 262.20(a), and 263.10 (a) and (b). However, under the current regulations, waste generated at one location and transported along a publicly accessible road for temporary consolidated storage or treatment on a contiguous property also owned by the same person is not considered ''on-site'' transport and would require a Uniform Hazardous Waste Manifest (form 8700–22A) and must be transported by a transporter with an EPA Identification number. These requirements for manifesting and transporting hazardous waste do not apply if the wastes are transported directly across, rather than along, the public road. The proposed modifications would have expanded the definition of ''on-site'' to include contiguous properties divided by public or private right-of-ways even if access to the properties is by traveling along (as opposed to across) the right-of-way to gain entry.

The proposed change to the definition of ''on-site'' arose in the context of military munitions because many military installations are on properties that are, under the DOD ''open'' base policy, split by ''public'' roads. Because many other facilities (e.g., universities or industrial complexes) are also located on large parcels of land divided by public or private right-of-ways, the proposed change was extended to hazardous waste generators and TSDFs in general.

EPA received extensive comment on the proposed modification to the definition of ''on-site.'' These comments are discussed in more detail in the response to comments section below. While almost all commenters were supportive of the concept of allowing transportation without a manifest between contiguous properties controlled by the same person, a number of commenters raised questions related to the effect changing the definition of ''on-site'' would have on other issues such as the assigning of EPA Identification Numbers to generators, generator status, and other RCRA regulations and definitions. As stated in the proposal, the Agency did not intend to affect requirements other than those directly related to the manifest and transportation. See 60 FR 56483–56484 (November 8, 1995). In considering the original purpose of the proposed change to the definition of ''on-site'' and the complexity of the questions that were raised by commenters, the Agency has identified an alternative method of finalizing the requirements for transportation without a manifest between contiguous properties controlled by the same person, that avoids the concerns raised by commenters.

Therefore, the Agency is not finalizing the proposed modification of the definition of ''on-site.'' Instead, the Agency is adding new § 262.20(f) to 40 CFR Part 262, subpart B to exempt from the manifest requirements shipments of hazardous waste on right-of-ways on or between contiguous properties and along the perimeter of contiguous properties controlled by the same person. This manifest exemption is applicable to all generators, both military and non-military. Section 262.20(f) also restates the exemption found in the current definition of ''on-site,'' i.e., manifests are also not required for transport between non-contiguous property when the properties are owned and controlled by the same person, and connected by a right-of-way to which the public does not have access. The Agency is not changing regulations regarding transport on public roads between non-contiguous properties.

40 CFR Part 262, subpart B lays out the general manifesting requirements that apply to generators who transport, or offer for transportation, hazardous waste for off-site treatment, storage, or disposal. (Subpart B also contains an exemption for generators of 100–1000 kilograms of hazardous waste per month from all of the requirements of subpart B of Part 262 with respect to the Uniform Hazardous Waste Manifest, provided the waste is reclaimed under certain conditions. See 40 CFR 262.20(e).

New 40 CFR § 262.20(f) adds another exemption from the manifesting requirements, for the movement of hazardous waste on public roads within or along the border of contiguous property that is divided by a public or private right-of-way. Additionally, under 40 CFR 263.10(a), use of a transporter with a Hazardous Waste Identification number is not required for the movement of hazardous waste because of this manifest exemption. At the same time, the Agency recognizes that generators and TSDFs taking advantage of this exemption must be able to respond to an emergency should one occur during the movement of hazardous waste on public roads within, between, or bordering contiguous properties. As a result, under § 262.20(f), the Agency is specifying that the transporter requirements found at § 263.30 and § 263.31 concerning responding to discharges of hazardous waste on a public right-of-way will continue to apply to any discharge of hazardous waste on a public right-of-way.

Further, the Agency has established contingency and emergency response protocols that require facilities to be prepared for emergencies that occur on-site. 40 CFR 262.34(a)(4) requires large quantity generators to comply with the requirements for owners or operators found at 40 CFR part 265 subparts C (Preparedness and Prevention) and D (Contingency Plan and Emergency Procedures), with the requirements at § 265.16 for personnel training, and with the waste analysis plan requirements at 40 CFR 268.7(a)(4).

[6] The current definition is: ''On-site'' means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.''

Similarly, small quantity generators are subject to reduced emergency preparedness, response, and reporting requirements that are laid out in § 262.34(d)(5) and are also subject to the preparedness and prevention requirements found at 40 CFR part 265, subpart C.

These contingency and emergency response protocols include measures that are designed to ensure that emergencies that take place are handled efficiently and effectively. They include the designation of an emergency coordinator who is accessible and who is knowledgeable about the operations and activities at the location and who can coordinate emergency response measures. These provisions also require that all employees at a site are familiar with the proper waste handling and emergency response procedures relevant to their responsibilities during normal facility operations and emergencies. Large quantity generators are responsible for developing a contingency plan that, among other things, must contain a description of emergency arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services. This plan must be reviewed and immediately amended under certain circumstances as specified in 40 CFR 265.54, including when the applicable regulations are revised and when the facility changes in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or changes the response necessary in an emergency. Additionally, should an emergency occur, the emergency coordinator must be able to assess any hazards from the release, and help appropriate officials decide whether local areas should be evacuated.

Generators taking advantage of the manifest exemption being finalized today must, therefore, consider how the emergency coordinator is to be kept informed of waste movement activities under the new circumstances involving shipments on public roads without a manifest, and how an emergency on a public road within, between, or on the perimeter of contiguous properties is to be managed so that it minimizes exposure to local areas surrounding the property.

Whether waste no longer subject to the manifest and transportation requirements described above is subject to Department of Transportation (DOT) hazardous material shipping requirements will depend on whether that material is regulated under any DOT hazard class other than materials classified by DOT as ''hazardous waste.'' As mentioned in the proposed rule, the Hazardous Materials Regulations (HMR, 49 CFR parts 171–180) define a hazardous waste as any material that is subject to the Uniform Hazardous Waste Manifest Requirements of the EPA specified in 40 CFR part 262 [49 CFR 171.8]. If a material is not subject to EPA's RCRA manifest requirements, it is not considered a ''hazardous waste'' by DOT. However, such material is still regulated as a ''hazardous material'' and is subject to the HMR if it meets the defining criteria for one or more of the DOT hazard classes. Therefore, for these shipments on public right-of-ways, generators and/or TSDFs must decide if the waste falls under any of the other DOT hazard classes in order to determine if compliance with the DOT requirements under CFR parts 171–180 is required.

EPA believes that this exemption from the Uniform Hazardous Waste Manifest will result, on balance, in an increase in protection of human health and the environment. EPA believes that the current requirement that a manifest be completed and that a hazardous waste transporter be used to transport shipments between contiguous properties may be discouraging consolidation within a generator's or TSDF's site, resulting in more locations where potential exposure to hazardous waste exists and more expense by the generator or TSDF. Removing barriers to consolidation of waste in one central area should reduce the possibility that the public and the environment could come into contact with hazardous waste because one area is easier to control and can be better located than numerous smaller areas.

EPA also believes that facilitating central consolidation will allow generators and TSDFs to locate such consolidation sites in more remotely located areas or in areas allowing faster emergency response than they would if confined to the boundaries within right-of-ways, thereby increasing public safety should an accident occur. The new exemption at 40 CFR 262.20(f) gives generators and TSDFs such as military bases and universities more flexibility to determine where consolidation areas are situated. In addition, EPA believes, along with numerous commenters, that this exemption will have the added benefit of facilitating the building of safer accumulation areas because generators and TSDFs may be more likely with limited resources to exceed regulatory requirements for consolidation areas if they are responsible for fewer consolidation sites overall.

Since 40 CFR part 263, under § 263.10(a), only applies to transporters subject to a manifest under part 262, the persons transporting wastes under today's § 262.20(f) are exempt from part 263 (most notably from the § 263.11 requirement for a transporter identification number), except as discussed above, § 262.20(f) requires compliance with §§ 263.30 and 263.31 for immediate action in response to a discharge.

Today's rule also exempts the generator from § 262.32(b) for certain container marking requirements, but not from the DOT packaging, labeling, marking, or placarding requirements of §§ 262.30, 262.31, 262.32, and 262.33 because these public roads are still considered by EPA to be ''off-site''; nor from the § 262.34(a)(2) and (3), (c)(1)(ii) and (2), (d)(4), and (e) container and tank labeling requirements. Section 262.34 regarding accumulation time is not affected by today's rule because the definition of ''on-site'' is not being changed. Section 262.40 regarding requirements to keep copies of manifests is not included in the rule because it is not applicable since the manifest is not required. The biennial report requirements in § 262.41 are likewise unchanged by today's rule.

EPA believes the totality of these changes regarding the applicability of the ''manifest system'' (when considered with the existing emergency prevention and response, etc. requirements, the continued applicability of §§ 263.30 and 263.31, the facilitated storage consolidations, the marking requirements in § 262.34, the continued applicability of the DOT hazardous materials standards, in most cases, and the fact that this transportation is on or along contiguous property controlled by the same person, as discussed above), are consistent with the directives in RCRA sections 3002(a) and 3003(a) that EPA establish regulations ''as may be necessary'' to protect human health and the environment.

Response to Comments

The Agency received numerous comments on the proposed redefinition of ''on-site'' in two main areas: (1) The proposed change to the basic definition of ''on-site'' and its impact on current hazardous waste management practices and (2) issues associated with Department of Transportation (DOT) and CERCLA protectiveness on public access roads separating a larger facility. EPA also requested comments on whether other requirements of the RCRA program would be affected by a redefinition of ''on-site.''

With respect to the proposed changes to the definition of ''on-site,'' almost all the commenters supported the concept behind the proposed redefinition—the manifest exemption. (Many of these, however, suggested simplified language for redefining ''on-site.'') Only one commenter (associated with the transporters) opposed the proposal, although three commenters suggested postponing the final rule until a more thorough analysis could be done. Even so, the Agency received many comments raising issues about other requirements unrelated to the manifest that might be affected by changing the definition of ''on-site.'' For example, many of the commenters who supported the idea of changing the definition of ''on-site'' raised questions about how the change would affect EPA Identification Numbers, Land Disposal Restrictions paper work requirements, corrective action, and generator status. One of the most common questions was whether the proposed change to the definition of ''on-site'' would cause a change in generator status due to the merging of several individual locations into one larger location under the new definition.

One commenter who questioned the proposed change to the definition of ''on-site'' expressed concerns about the redesignation of sites based on the new definition and specifically asked whether adjacent military facilities (e.g., Army and Air Force) would be considered ''on-site'' under the new definition. The commenter also expressed concern over the effect such a redefinition would have on sites currently on the National Priorities List (NPL) that are contiguous to properties not on the NPL. Another commenter who questioned the proposed change argued that some universities wanting a permit to store hazardous waste for more than 90 days may find that the entire campus is subject to corrective action because of a change in the definition of ''on-site.'' Several commenters argued for a more thorough evaluation of the impacts on the related terms ''site'' and ''off-site,'' the effects of the proposed definitional change on definitions such as ''facility,'' the relationship to the term ''designated facility'' found at § 260.10, the impact on accumulation provisions found at § 262.34 and the impact on the current definition of ''transfer facility'' found at § 260.10.

The Agency agrees with these commenters that a change to the definition of ''on-site'' could cause a great deal of confusion in many areas of RCRA and CERCLA that are based on the concept of ''site'' and ''facility.'' In addition to causing confusion, such a change might also inadvertently make substantive changes to a number of parts of the RCRA program other than manifesting and transportation. As stated in the proposal, EPA did not intend to affect requirements other than the requirement that a manifest accompany hazardous waste shipments and whether part 263 transportation requirements apply. Therefore, after reviewing the comments received on this issue, EPA has decided to avoid the potential for unforeseen, adverse consequences and is not changing the definition of ''on-site.''

The Agency does, however, continue to believe that it is appropriate to revise the regulations to allow transport along public and private right-of-ways that divide contiguous properties without manifests and the need to use hazardous waste transporters. Thus, the Agency has identified an alternative way to make this change to the regulations without causing potentially unintended consequences of changing the definition of ''on-site.'' This alternative modifies 40 CFR Part 262, subpart B, to exempt shipments of hazardous waste on and along the perimeter of contiguous properties controlled by the same person from the manifest requirements. This change avoids any revision to the definition of ''on-site.'' The Agency reiterates that this revision is a change only to the applicability of manifesting and 40 CFR 263 requirements and does not make any changes to the existing concepts of ''on-site,'' ''site,'' ''facility'' or related terms for any other purpose in the RCRA or CERCLA programs. Also, it does not affect the definition of ''contiguous'' or EPA's interpretations as to whether ''contiguous properties'' are owned or under the control of the same person. For example, EPA considers different agencies within the Federal government and different services to be different ''persons.'' Therefore, in the example cited by one commenter, wastes could not be transported between adjacent Army and Air Force bases without a manifest.

EPA received numerous comments requesting clarification on how generator identification numbers would be affected and the related effect on generator status a change in the definition of on-site would create. The Agency understands that the policy regarding issuing generator identification numbers is not explicit in Federal regulations, and thus flexibility exercised by authorized States may result in differing interpretations of this policy by State implementers. However, the Agency only intended to address the applicability of the manifest and related transportation requirements and did not intend to address the issue of generator identification numbers as part of this rulemaking. Eliminating State flexibility could have significant impacts on particular facilities, and those impacts could be viewed as either positive or negative. Examples of all kinds were cited by commenters. Though EPA acknowledges the potential for confusion and different application of identification number assignments, the Agency has not analyzed the potential impacts fully and is not changing either Federal regulation or policy on this issue.

The definition of ''on-site'' historically has been used in many States to determine when a manifest should accompany a shipment of hazardous waste and when part 263 transporter requirements apply. While the Agency establishes this relationship in several preamble discussions (see 45 FR 12723, February, 26, 1980 and 45 FR 33069, May 19, 1980), no similar preamble discussion exists on the nature of the relationship of the term ''on-site'' to generator identification numbers.

EPA's past policy interpretations have tended to associate generator identification numbers with sites for which an effective connecting right-of-way exists. In many cases the Agency has used the definition of ''on-site'' as the delimiting tool for determining when an identification number is needed. However, exceptions exist where there may be, for example, more than one independent business operating on a contiguous property and where a cogenerator relationship exists.

EPA has relied on each State implementing agency to establish its own method of issuing generator identification numbers and to make site specific determinations where appropriate. The Agency understands that variations may exist in the method used to issue generator identification numbers and therefore recommends that a generator contact the state in which the site is located when obtaining an identification number and with any questions regarding an individual location.

Some commenters requested more detailed information on travel distances. For example, a commenter questioned what was meant by a ''short'' stretch of road (public right-of-way) in the proposed preamble discussion, contrasting the benefits of consolidation to the transportation without a manifest along a short stretch of road to which the public has access. Another argued that a limit should be placed on how far a shipment could travel along a road,

and suggested that waste be allowed to be moved only two miles. The Agency sees no reason to limit the length of movement along roads on (or on the boundary of) property owned by the same person since many generators taking advantage of the new exemptions are located on very large properties that routinely require them to travel for more than two miles. One purpose of the manifest requirement is to assure receipt of the waste, an object that is independent of shipping distance, but enhanced in this case because the shipper and the receiver are the same, and the material remains within, or on the border of, the properties owned or operated by the shipper/receiver.

Commenters asked for clarification about the transportation routes allowed under the proposed rule. Five commenters suggested that EPA clarify that waste can be transported along the perimeter of the property. The Agency is finalizing this exemption for movement on roads along the perimeter as well as within the contiguous properties because, as discussed above, it is persuaded that there are adequate safeguards related to emergency response and cleanup provided by today's final rule. Further, if a discharge of hazardous waste should occur on a perimeter public road, the generator and/or TSDF property still borders the right-of-way, which would lead to better control of the remediation process. Also, the purpose of the manifest is to assure that waste gets to the receiving unit, an object that is independent of whether the road is on the perimeter or within the property, and that is enhanced when the contiguous property is controlled by the same person.

Three commenters suggested EPA specifically include contiguous properties ''touching corners'' or ''diagonally across'' from each other. EPA considers such examples to be contiguous properties separated by a right-of-way and, therefore, included in today's rule. Also, access would generally be gained by travel along the perimeter of the properties so the inclusion of the ''along the border'' language enables the diagonal corners situation to benefit by today's rule.

Four commenters expressed a desire for the Agency to expand the scope of ''on-site'' to include nearby non-contiguous areas owned or under the control of the same person, suggesting that EPA limit the distance to two miles, several miles, or some other distance. The Agency did not intend to change the regulations regarding the transportation of hazardous waste along public roads to non-contiguous properties. The current definition of ''on-site'' already allows for the movement of waste to non-contiguous areas without a manifest as long as the public does not have access to the right-of-way that joins the two properties. Beyond this, the Agency does not agree that movement of wastes between non-contiguous properties along right-of-ways to which the public has access is warranted given the increased possibility that the public could come in contact with the waste should a discharge occur under this scenario and the generator would no longer have control over bordering property.

The proposal also requested comment on whether or not the authorities under CERCLA and/or DOT are sufficient to protect human health and the environment as they relate to the management of potential spills of waste that, as a result of this new exemption, would not be manifested under RCRA as previously required and would not be subject to the requirements of Part 263. The Agency requested comments on whether or not the RCRA requirements in 40 CFR 263.30 and 263.31 should continue to apply to any discharge of hazardous waste during transportation of hazardous waste on a public right-of-way when the waste is transported within a contiguous property without a manifest. Sections 263.30 and 263.31 require that immediate action be taken in the event of a discharge including notifying local authorities and the National Response Center and cleaning up the discharge. Most of the commenters believed that the alternate authorities of CERCLA and DOT are protective enough and that the pressure of public awareness and corporate liability concerning spills would help ensure that spills are prevented, and if they occur are contained and cleaned up quickly. However, the Agency also received comments supporting the suggested alternative approach of requiring the ''on-site'' hauler using a public right-of-way to follow 40 CFR 263.30 and 263.31. One commenter cited that response times for cleanup actions under CERCLA do not promote an expeditious cleanup and that DOT regulations are inadequate. DOT and CERCLA reporting requirements would apply to such releases, but those authorities do not necessarily require an actual cleanup of the release.

In reviewing the options and the comments received, the Agency has decided that the requirements found at §§ 263.30 and 263.31 will continue to apply to any discharge of hazardous waste on a public right-of-way even if it is not accompanied by a manifest and is not subject to the other transport requirements found at 40 CFR part 262, subparts B and C and 40 CFR part 263. The Agency is concerned here not with overall RCRA requirements to clean up a spill, since RCRA does apply when hazardous waste is disposed of or discharged onto the ground, but with the timeliness of response action needed to contain and remediate a spill which will be enhanced by the clarity of responsibility such references afford.

V. State Authority

Under RCRA section 3006, EPA may authorize a State to administer and enforce the RCRA hazardous waste program. See 40 CFR part 271. After receiving authorization, the State administers the program in lieu of the Federal government, although EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003. Because the new Federal requirements in today's final rule are non-HSWA, they are not Federally enforceable in an authorized State until the necessary changes to a States' authorization have been approved by EPA.[7] See RCRA section 3006, 42 U.S.C. 6926.

Under RCRA, authorized States are required to review and, if necessary, to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. This is because under RCRA section 3009, States are barred from implementing requirements that are less stringent than the Federal program. See also 40 CFR 271.21.

In two respects, EPA considers today's final rule to be more stringent than current Federal requirements: (1) the requirement that military installations retrieve munitions fired off-range or keep a record of the event (§ 266.202(d)), and (2) the requirement that military personnel responding to immediate threats involving military munitions maintain records of the response (§§ 264.1(g)(8)(iv), 265.1(c)(11)(iv), and 270.1(c)(3)(iii)). Authorized States must adopt these requirements as part of their State programs and apply to EPA for approval of their program revisions. Section 271.21 sets forth the procedures and deadlines for State program revisions.

RCRA section 3009, however, allows States to impose standards that are more

[7] Under section 3006(g) of RCRA, enacted as part of the Hazardous and Solid Waste Amendments (HSWA) of 1984, new requirements imposed by HSWA take effect in authorized States at the same time as they do in unauthorized States—as long as the new requirements are more stringent than the previous requirements. EPA implements these new requirements until the State is authorized for them. Since today's proposal is not issued under HSWA authority, however, section 3006(g) does not come into play.

stringent or more extensive (i.e., broader) in scope than those in the Federal program (see also 40 CFR 271.1(i)(1)). Thus, for those Federal changes that are less stringent, or reduce the scope of the Federal program, States are not required to modify their programs. The less stringent portions of today's rule are the following: (1) the manifest exemption for transport on right-of-ways on contiguous properties (§ 262.20(f)), (2) the RCRA manifest exemption for the off-site shipment of unused waste munitions from one military installation to another (§ 266.203), and (3) the conditional exemption for waste munitions storage (§ 266.205).

The rest of the requirements in today's rule, in EPA's view, are neither more nor less stringent than current regulatory requirements; they are either reiterations or clarifications of the existing EPA regulations or policies.

Although States are only required to adopt requirements that are more stringent, in recognition of Congress' intent in passing RCRA section 3004(y), DOD's mission to provide for National defense, and the Department's nation-wide presence, EPA strongly urges States to adopt all aspects of today's final rule (including the clarifying as well as less stringent sections) so as to ensure clear, consistent guidelines for handlers of waste military munitions, State regulators, and the public. EPA believes that the standards promulgated today properly implement the goals of RCRA section 3004(y) to ensure the safe and proper management of military munitions, and add clarity regarding the identification and management of military munitions as hazardous wastes. Therefore, EPA encourages States to adopt these regulations as quickly as their legislative and regulatory processes will allow.

VI. Administrative Requirements/ Compliance With Executive Order

A. Regulatory Impact Analysis Under Executive Order 12866

Under Executive Order No. 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. 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 serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that today's final rule is a significant rule under Executive Order 12866 due to the nature of the policy issues raised. EPA estimates that today's rule results in national annual costs of $100,000 per year, and national annual savings of approximately $1,200,000 to $2,200,000 per year, for a net savings of $1,100,000 to 2,100,000 per year. For more information on the cost impacts of today's final rule, see the Economic Impact Analysis of the Final Munitions Rule which is part of the docket for this rule.

1. Cost Analysis

Today's rule focuses on several significant issues: (1) identification of munitions as waste; (2) transportation of munitions identified as wastes; (3) emergency response actions; and (4) storage standards for waste munitions. In many instances, EPA has concluded that current Department of Defense standards meet RCRA standards and imposition of RCRA standards would result in regulations that are redundant.

Over the next ten years, EPA estimates that the proposed regulation will result in annual costs of approximately $100,000 per year to the Department of Defense. The most significant costs are related to the need for permit modifications for treatment and disposal facilities receiving off-site wastes. However, today's final notice results in avoided costs on the order of $1,200,000 to $2,200,000 per year over baseline. Baseline is based on an analysis of current RCRA/CERCLA and DOD's current operations.

The principal sources of annual savings include avoided costs for new permits, contingency plans, manifests, and retrofitted storage units.

EPA did not develop specific costs for range closure and clean up (e.g., prior to property transfer) under RCRA sections 7003, 3004(u) or (v), 3008(h), CERCLA, the Defense Environmental Restoration Program, or Base Realignment and Closure. Such costs are site-specific, and in general, the Agency assumed that these costs would be similar under each authority or program. Furthermore, these costs would not be relevant to today's rule, since EPA is postponing action on defining how RCRA applies to closed ranges.

EPA also did not develop specific costs for other Federal agencies that may be affected by this rulemaking: Coast Guard, National Guard, DOE, NASA, FBI, and BTAF. This rule would apply in the same manner as it does for the Department of Defense and the relative savings that would be realized by the Military is similar to the savings that would be realized by these other affected agencies.

2. Benefits Analysis

EPA is finalizing the concept that unused munitions generally do not become hazardous waste subject to regulation until they are removed from storage for transportation to a disposal unit. This approach recognizes that current DOD storage regulations have been successful in protecting human health and the environment, and that additional requirements would be redundant and disruptive. (See section IV.B.1.f of the proposed rule preamble). EPA is also exempting waste military munitions from RCRA manifest and other requirements when transported because DOD standards provide comparable protection. The benefit of today's rule is an annual cost savings of approximately $1,200,000 to $2,200,000, due to avoided retrofits, permits, contingency plans, and manifest costs.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider ''small entities'' throughout the regulatory process. Section 603 of the RFA requires an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. If affected small entities are identified, regulatory alternatives must be considered to mitigate the potential impacts. Small entities as described in the Act are only those ''businesses, organizations and governmental jurisdictions subject to regulation.''

EPA has determined that today's rule will primarily affect Federal agencies, such as the Department of Defense, and therefore few, if any, small entities will be adversely affected. Furthermore, since today's final notice generally provides savings over current requirements, EPA believes that any small entities engaged in activity covered by the rule will not be adversely affected. Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as

amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 USC 3501 *et seq.*, authorizes the Director of OMB to review certain information collection requests by Federal agencies. EPA has determined that the record keeping and reporting requirements of this proposed rule do not constitute a ''collection of information'' as defined in 44 USC 3502(4) because they apply to Federal entities (i.e., DOD, DOE, Coast Guard, and National Guard), or for those sections that apply to non-Federal entities (e.g., emergency responses) they do not impose new record keeping or reporting requirements.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMBRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated that the total potential cost to State, local, and Tribal governments would not exceed approximately $200,000 per year over ten years. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

VII. 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), therefore, the effective date of the rule is not affected.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Emergency responses, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

Emergency responses, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Air pollution control, Emergency responses, Hazardous waste, Insurance, Storage containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Treatment and disposal.

40 CFR Part 265

Environmental Protection, Air pollution control, Emergency responses, Hazardous waste, Insurance, Storage containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Treatment and disposal.

40 CFR Part 266

Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Emergency responses, Hazardous materials transportation, Hazardous waste, Permit application requirements, Permit modifications, Reporting and recordkeeping requirements.

Dated: February 3, 1997.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, 40 CFR Parts 260, 261, 262, 263, 264, 265, 266, and 270 are amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937–6939, and 6974.

2. Section 260.10 is amended by adding the following definitions, in alphabetical order, to read as follows:

§ 260.10 Definitions.

* * * * *

Explosives or munitions emergency means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

Explosives or munitions emergency response means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or

eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

Explosives or munitions emergency response specialist means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other Federal, State, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

* * * * *

Military munitions means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.2 is amended by removing the period at the end of paragraph (a)(2)(iii) and adding a semicolon followed by ''or''; and by adding new paragraph (a)(2)(iv) to read as follows:

§ 261.2 Definition of solid waste.

(a) * * *

(2) * * *

(iii) * * *; or

(iv) *A military munition* identified as a solid waste in 40 CFR 266.202.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 is revised to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. Section 262.10 is amended by adding, before the notes, new paragraph (i) to read as follows:

§ 262.10 Purpose, scope, and applicability.

* * * * *

(i) Persons responding to an explosives or munitions emergency in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) are not required to comply with the standards of this part.

* * * * *

3. Section 262.20 is amended by adding new paragraph (f) to read as follows:

§ 262.20 General requirements.

* * * * *

(f) The requirements of this subpart and § 262.32(b) do not apply to the transport of hazardous wastes on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding 40 CFR 263.10(a), the generator or transporter must comply with the requirements for transporters set forth in 40 CFR 263.30 and 263.31 in the event of a discharge of hazardous waste on a public or private right-of-way.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

1. The authority citation for part 263 is revised to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937 and 6938.

2. Section 263.10 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 263.10 Scope.

* * * * *

(e) The regulations in this part do not apply to transportation during an explosives or munitions emergency response, conducted in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii).

(f) Section 266.203 of this chapter identifies how the requirements of this part apply to military munitions classified as solid waste under 40 CFR 266.202.

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.1 is amended by adding new paragraphs (g)(8)(i)(D), (g)(8)(iv), and (i) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(g) * * *

(8) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10.

* * * * *

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or

the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

* * * * *

(i) Section 266.205 of this chapter identifies when the requirements of this part apply to the storage of military munitions classified as solid waste under § 266.202 of this chapter. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 40 CFR parts 260 through 270.

3. Section 264.70 is revised to read as follows:

§ 264.70 Applicability.

The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 264.1 provides otherwise. Sections 264.71, 264.72, and 264.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, and to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 40 CFR 266.203(a). Section 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

4. Part 264 is amended by adding new subpart EE, consisting of §§ 264.1200 through 264.1202, to read as follows:

Subpart EE—Hazardous Waste Munitions and Explosives Storage

Sec.
264.1200 Applicability.
264.1201 Design and operating standards.
264.1202 Closure and post-closure care.

§ 264.1200 Applicability.

The requirements of this subpart apply to owners or operators who store munitions and explosive hazardous wastes, except as § 264.1 provides otherwise. (NOTE: Depending on explosive hazards, hazardous waste munitions and explosives may also be managed in other types of storage units, including containment buildings (40 CFR part 264, subpart DD), tanks (40 CFR part 264, subpart J), or containers (40 CFR part 264, subpart I); See 40 CFR 266.205 for storage of waste military munitions).

§ 264.1201 Design and operating standards.

(a) Hazardous waste munitions and explosives storage units must be designed and operated with containment systems, controls, and monitoring, that:

(1) Minimize the potential for detonation or other means of release of hazardous waste, hazardous constituents, hazardous decomposition products, or contaminated run-off, to the soil, ground water, surface water, and atmosphere;

(2) Provide a primary barrier, which may be a container (including a shell) or tank, designed to contain the hazardous waste;

(3) For wastes stored outdoors, provide that the waste and containers will not be in standing precipitation;

(4) For liquid wastes, provide a secondary containment system that assures that any released liquids are contained and promptly detected and removed from the waste area, or vapor detection system that assures that any released liquids or vapors are promptly detected and an appropriate response taken (e.g., additional containment, such as overpacking, or removal from the waste area); and

(5) Provide monitoring and inspection procedures that assure the controls and containment systems are working as designed and that releases that may adversely impact human health or the environment are not escaping from the unit.

(b) Hazardous waste munitions and explosives stored under this subpart may be stored in one of the following:

(1) *Earth-covered magazines*. Earth-covered magazines must be:

(i) Constructed of waterproofed, reinforced concrete or structural steel arches, with steel doors that are kept closed when not being accessed;

(ii) Designed and constructed:

(A) To be of sufficient strength and thickness to support the weight of any explosives or munitions stored and any equipment used in the unit;

(B) To provide working space for personnel and equipment in the unit; and

(C) To withstand movement activities that occur in the unit; and

(iii) Located and designed, with walls and earthen covers that direct an explosion in the unit in a safe direction, so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(2) *Above-ground magazines*. Above-ground magazines must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(3) *Outdoor or open storage areas*. Outdoor or open storage areas must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(c) Hazardous waste munitions and explosives must be stored in accordance with a Standard Operating Procedure specifying procedures to ensure safety, security, and environmental protection. If these procedures serve the same purpose as the security and inspection requirements of 40 CFR 264.14, the preparedness and prevention procedures of 40 CFR part 264, subpart C, and the contingency plan and emergency procedures requirements of 40 CFR part 264, subpart D, then these procedures will be used to fulfill those requirements.

(d) Hazardous waste munitions and explosives must be packaged to ensure safety in handling and storage.

(e) Hazardous waste munitions and explosives must be inventoried at least annually.

(f) Hazardous waste munitions and explosives and their storage units must be inspected and monitored as necessary to ensure explosives safety and to ensure that there is no migration of contaminants out of the unit.

§ 264.1202 Closure and post-closure care.

(a) At closure of a magazine or unit which stored hazardous waste under this subpart, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless § 261.3(d) of this chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for magazines or units must meet all of the requirements specified in subparts G and H of this part, except that the owner or operator may defer closure of the unit as long as it remains in service as a munitions or explosives magazine or storage unit.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he or she must close the facility and

perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 264.310).

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937, unless otherwise noted.

2. Section 265.1 is amended by adding new paragraphs (c)(11)(i)(D), (c)(11)(iv), and (f) to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(11) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10.

* * * * *

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

* * * * *

(f) Section 266.205 of this chapter identifies when the requirements of this part apply to the storage of military munitions classified as solid waste under § 266.202 of this chapter. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 40 CFR parts 260 through 270.

3. Section 265.70 is revised to read as follows:

§ 265.70 Applicability.

The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 265.1 provides otherwise. Sections 265.71, 265.72, and 265.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, and to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under § 266.203(a) of this chapter.

4. Part 265 is amended by adding new subpart EE, consisting of §§ 265.1200 through 265.1202, to read as follows:

Subpart EE—Hazardous Waste Munitions and Explosives Storage

Sec.
265.1200 Applicability.
265.1201 Design and operating standards.
265.1202 Closure and post-closure care.

§ 265.1200 Applicability.

The requirements of this subpart apply to owners or operators who store munitions and explosive hazardous wastes, except as § 265.1 provides otherwise. (NOTE: Depending on explosive hazards, hazardous waste munitions and explosives may also be managed in other types of storage units, including containment buildings (40 CFR part 265, subpart DD), tanks (40 CFR part 265, subpart J), or containers (40 CFR part 265, subpart I); See 40 CFR 266.205 for storage of waste military munitions).

§ 265.1201 Design and operating standards.

(a) Hazardous waste munitions and explosives storage units must be designed and operated with containment systems, controls, and monitoring, that:

(1) Minimize the potential for detonation or other means of release of hazardous waste, hazardous constituents, hazardous decomposition products, or contaminated run-off, to the soil, ground water, surface water, and atmosphere;

(2) Provide a primary barrier, which may be a container (including a shell) or tank, designed to contain the hazardous waste;

(3) For wastes stored outdoors, provide that the waste and containers will not be in standing precipitation;

(4) For liquid wastes, provide a secondary containment system that assures that any released liquids are contained and promptly detected and removed from the waste area, or vapor detection system that assures that any released liquids or vapors are promptly detected and an appropriate response taken (e.g., additional containment, such as overpacking, or removal from the waste area); and

(5) Provide monitoring and inspection procedures that assure the controls and containment systems are working as designed and that releases that may adversely impact human health or the environment are not escaping from the unit.

(b) Hazardous waste munitions and explosives stored under this subpart may be stored in one of the following:

(1) *Earth-covered magazines*. Earth-covered magazines must be:

(i) Constructed of waterproofed, reinforced concrete or structural steel arches, with steel doors that are kept closed when not being accessed;

(ii) Designed and constructed:

(A) To be of sufficient strength and thickness to support the weight of any explosives or munitions stored and any equipment used in the unit;

(B) To provide working space for personnel and equipment in the unit; and

(C) To withstand movement activities that occur in the unit; and

(iii) Located and designed, with walls and earthen covers that direct an explosion in the unit in a safe direction, so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(2) *Above-ground magazines*. Above-ground magazines must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(3) *Outdoor or open storage areas*. Outdoor or open storage areas must be located and designed so as to minimize the propagation of an explosion to adjacent units and to minimize other effects of any explosion.

(c) Hazardous waste munitions and explosives must be stored in accordance with a Standard Operating Procedure specifying procedures to ensure safety, security, and environmental protection. If these procedures serve the same purpose as the security and inspection requirements of 40 CFR 265.14, the preparedness and prevention procedures of 40 CFR part 265, subpart C, and the contingency plan and emergency procedures requirements of 40 CFR part 265, subpart D, then these procedures will be used to fulfill those requirements.

(d) Hazardous waste munitions and explosives must be packaged to ensure safety in handling and storage.

(e) Hazardous waste munitions and explosives must be inventoried at least annually.

(f) Hazardous waste munitions and explosives and their storage units must be inspected and monitored as necessary to ensure explosives safety and to ensure that there is no migration of contaminants out of the unit.

§ 265.1202 Closure and post-closure care.

(a) At closure of a magazine or unit which stored hazardous waste under this subpart, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste, and manage them as hazardous waste unless § 261.3(d) of this chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for magazines or units must meet all of the requirements specified in subparts G and H of this part, except that the owner or operator may defer closure of the unit as long as it remains in service as a munitions or explosives magazine or storage unit.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he or she must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (40 CFR 264.310).

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

1. The authority citation for Part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6934.

2. Part 266 is amended by reserving subparts I through L and adding new subpart M to read as follows:

Subparts I–L (Reserved)

Subpart M—Military Munitions

Sec.
266.200 Applicability.
266.201 Definitions.
266.202 Definition of solid waste.
266.203 Standards applicable to the transportation of solid waste military munitions.
266.204 Standards applicable to emergency responses.
266.205 Standards applicable to the storage of solid waste military munitions.
266.206 Standards applicable to the treatment and disposal of waste military munitions.

Subpart M—Military Munitions

§ 266.200 Applicability.

(a) The regulations in this subpart identify when military munitions become a solid waste, and, if these wastes are also hazardous under this subpart or 40 CFR part 261, the management standards that apply to these wastes.

(b) Unless otherwise specified in this subpart, all applicable requirements in 40 CFR parts 260 through 270 apply to waste military munitions.

§ 266.201 Definitions.

In addition to the definitions in 40 CFR 260.10, the following definitions apply to this subpart:

Active range means a military range that is currently in service and is being regularly used for range activities.

Chemical agents and munitions are defined as in 50 U.S.C. section 1521(j)(1).

Director is as defined in 40 CFR 270.2.

Explosives or munitions emergency response specialist is as defined in 40 CFR 260.10.

Explosives or munitions emergency is as defined in 40 CFR 260.10.

Explosives or munitions emergency response is as defined in 40 CFR 260.10.

Inactive range means a military range that is not currently being used, but that is still under military control and considered by the military to be a potential range area, and that has not been put to a new use that is incompatible with range activities.

Military means the Department of Defense (DOD), the Armed Services, Coast Guard, National Guard, Department of Energy (DOE), or other parties under contract or acting as an agent for the foregoing, who handle military munitions.

Military munitions is as defined in 40 CFR 260.10.

Military range means designated land and water areas set aside, managed, and used to conduct research on, develop, test, and evaluate military munitions and explosives, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas.

Unexploded ordnance (UXO) means military munitions that have been primed, fused, armed, or otherwise prepared for action, and have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installation, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

§ 266.202 Definition of solid waste.

(a) A military munition is not a solid waste when:

(1) Used for its intended purpose, including:

(i) Use in training military personnel or explosives and munitions emergency response specialists (including training in proper destruction of unused propellant or other munitions); or

(ii) Use in research, development, testing, and evaluation of military munitions, weapons, or weapon systems; or

(iii) Recovery, collection, and on-range destruction of unexploded ordnance and munitions fragments during range clearance activities at active or inactive ranges. However, ''use for intended purpose'' does not include the on-range disposal or burial of unexploded ordnance and contaminants when the burial is not a result of product use.

(2) An unused munition, or component thereof, is being repaired, reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subjected to materials recovery activities, unless such activities involve use constituting disposal as defined in 40 CFR 261.2(c)(1), or burning for energy recovery as defined in 40 CFR 261.2(c)(2).

(b) An unused military munition is a solid waste when any of the following occurs:

(1) The munition is abandoned by being disposed of, burned, detonated (except during intended use as specified in paragraph (a) of this section), incinerated, or treated prior to disposal; or

(2) The munition is removed from storage in a military magazine or other storage area for the purpose of being disposed of, burned, or incinerated, or treated prior to disposal, or

(3) The munition is deteriorated or damaged (e.g., the integrity of the munition is compromised by cracks, leaks, or other damage) to the point that it cannot be put into serviceable condition, and cannot reasonably be recycled or used for other purposes; or

(4) The munition has been declared a solid waste by an authorized military official.

(c) A used or fired military munition is a solid waste:

(1) When transported off range or from the site of use, where the site of use is not a range, for the purposes of storage, reclamation, treatment, disposal, or treatment prior to disposal; or

(2) If recovered, collected, and then disposed of by burial, or landfilling either on or off a range.

(d) For purposes of RCRA section 1004(27), a used or fired military munition is a solid waste, and, therefore, is potentially subject to RCRA corrective action authorities under sections 3004(u) and (v), and 3008(h), or imminent and substantial endangerment authorities under section 7003, if the munition lands off-range and is not promptly rendered safe and/or retrieved. Any imminent and substantial threats associated with any remaining material must be addressed. If remedial action is infeasible, the operator of the range must maintain a record of the event for as long as any threat remains. The record must include the type of munition and its location (to the extent the location is known).

§ 266.203 Standards applicable to the transportation of solid waste military munitions.

(a) *Criteria for hazardous waste regulation of waste non-chemical military munitions in transportation.* (1) Waste military munitions that are being transported and that exhibit a hazardous waste characteristic or are listed as hazardous waste under 40 CFR part 261, are listed or identified as a hazardous waste (and thus are subject to regulation under 40 CFR parts 260 through 270), unless all the following conditions are met:

(i) The waste military munitions are not chemical agents or chemical munitions;

(ii) The waste military munitions must be transported in accordance with the Department of Defense shipping controls applicable to the transport of military munitions;

(iii) The waste military munitions must be transported from a military owned or operated installation to a military owned or operated treatment, storage, or disposal facility; and

(iv) The transporter of the waste must provide oral notice to the Director within 24 hours from the time the transporter becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of paragraph (a)(1) of this section that may endanger health or the environment. In addition, a written submission describing the circumstances shall be provided within 5 days from the time the transporter becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of paragraph (a)(1) of this section.

(2) If any waste military munitions shipped under paragraph (a)(1) of this section are not received by the receiving facility within 45 days of the day the waste was shipped, the owner or operator of the receiving facility must report this non-receipt to the Director within 5 days.

(3) The exemption in paragraph (a)(1) of this section from regulation as hazardous waste shall apply only to the transportation of non-chemical waste military munitions. It does not affect the regulatory status of waste military munitions as hazardous wastes with regard to storage, treatment or disposal.

(4) The conditional exemption in paragraph (a)(1) of this section applies only so long as all of the conditions in paragraph (a)(1) of this section are met.

(b) *Reinstatement of exemption.* If any waste military munition loses its exemption under paragraph (a)(1) of this section, an application may be filed with the Director for reinstatement of the exemption from hazardous waste transportation regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of paragraph (a)(1) of this section. If the Director finds that reinstatement of the exemption is appropriate based on factors such as the transporter's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the Director may reinstate the exemption under paragraph (a)(1) of this section. If the Director does not take action on the reinstatement application within 60 days after receipt of the application, then reinstatement shall be deemed granted, retroactive to the date of the application. However, the Director may terminate a conditional exemption reinstated by default in the preceding sentence if the Director finds that reinstatement is inappropriate based on factors such as the transporter's failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur. In reinstating the exemption under paragraph (a)(1) of this section, the Director may specify additional conditions as are necessary to ensure and document proper transportation to protect human health and the environment.

(c) *Amendments to DOD shipping controls.* The Department of Defense shipping controls applicable to the transport of military munitions referenced in paragraph (a)(1)(ii) of this section are Government Bill of Lading (GBL) (GSA Standard Form 1109), requisition tracking form DD Form 1348, the Signature and Talley Record (DD Form 1907), Special Instructions for Motor Vehicle Drivers (DD Form 836), and the Motor Vehicle Inspection Report (DD Form 626) in effect on November 8, 1995, except as provided in the following sentence. Any amendments to the Department of Defense shipping controls shall become effective for purposes of paragraph (a)(1) of this section on the date the Department of Defense publishes notice in the Federal Register that the shipping controls referenced in paragraph (a)(1)(ii) of this section have been amended.

§ 266.204 Standards applicable to emergency responses.

Explosives and munitions emergencies involving military munitions or explosives are subject to 40 CFR 262.10(i), 263.10(e), 264.1(g)(8), 265.1(c)(11), and 270.1(c)(3), or alternatively to 40 CFR 270.61.

§ 266.205 Standards applicable to the storage of solid waste military munitions.

(a) *Criteria for hazardous waste regulation of waste non-chemical military munitions in storage.* (1) Waste military munitions in storage that exhibit a hazardous waste characteristic or are listed as hazardous waste under 40 CFR Part 261, are listed or identified as a hazardous waste (and thus are subject to regulation under 40 CFR Parts 260 through 279), unless all the following conditions are met:

(i) The waste military munitions are not chemical agents or chemical munitions.

(ii) The waste military munitions must be subject to the jurisdiction of the Department of Defense Explosives Safety Board (DDESB).

(iii) The waste military munitions must be stored in accordance with the DDESB storage standards applicable to waste military munitions.

(iv) Within 90 days of August 12, 1997 or within 90 days of when a storage unit is first used to store waste military munitions, whichever is later, the owner or operator must notify the Director of the location of any waste storage unit used to store waste military munitions for which the conditional

exemption in paragraph (a)(1) is claimed.

(v) The owner or operator must provide oral notice to the Director within 24 hours from the time the owner or operator becomes aware of any loss or theft of the waste military munitions, or any failure to meet a condition of paragraph (a)(1) that may endanger health or the environment. In addition, a written submission describing the circumstances shall be provided within 5 days from the time the owner or operator becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of paragraph (a)(1) of this section.

(vi) The owner or operator must inventory the waste military munitions at least annually, must inspect the waste military munitions at least quarterly for compliance with the conditions of paragraph (a)(1) of this section, and must maintain records of the findings of these inventories and inspections for at least three years.

(vii) Access to the stored waste military munitions must be limited to appropriately trained and authorized personnel.

(2) The conditional exemption in paragraph (a)(1) of this section from regulation as hazardous waste shall apply only to the storage of non-chemical waste military munitions. It does not affect the regulatory status of waste military munitions as hazardous wastes with regard to transportation, treatment or disposal.

(3) The conditional exemption in paragraph (a)(1) of this section applies only so long as all of the conditions in paragraph (a)(1) of this section are met.

(b) Notice of termination of waste storage. The owner or operator must notify the Director when a storage unit identified in paragraph (a)(1)(iv) of this section will no longer be used to store waste military munitions.

(c) Reinstatement of conditional exemption. If any waste military munition loses its conditional exemption under paragraph (a)(1) of this section, an application may be filed with the Director for reinstatement of the conditional exemption from hazardous waste storage regulation with respect to such munition as soon as the munition is returned to compliance with the conditions of paragraph (a)(1) of this section. If the Director finds that reinstatement of the conditional exemption is appropriate based on factors such as the owner's or operator's provision of a satisfactory explanation of the circumstances of the violation, or a demonstration that the violations are not likely to recur, the Director may reinstate the conditional exemption under paragraph (a)(1) of this section. If the Director does not take action on the reinstatement application within 60 days after receipt of the application, then reinstatement shall be deemed granted, retroactive to the date of the application. However, the Director may terminate a conditional exemption reinstated by default in the preceding sentence if he/she finds that reinstatement is inappropriate based on factors such as the owner's or operator's failure to provide a satisfactory explanation of the circumstances of the violation, or failure to demonstrate that the violations are not likely to recur. In reinstating the conditional exemption under paragraph (a)(1) of this section, the Director may specify additional conditions as are necessary to ensure and document proper storage to protect human health and the environment.

(d) Waste chemical munitions. (1) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste under 40 CFR Part 261, are listed or identified as a hazardous waste and shall be subject to the applicable regulatory requirements of RCRA subtitle C.

(2) Waste military munitions that are chemical agents or chemical munitions and that exhibit a hazardous waste characteristic or are listed as hazardous waste under 40 CFR Part 261, are not subject to the storage prohibition in RCRA section 3004(j), codified at 40 CFR 268.50.

(e) Amendments to DDESB storage standards. The DDESB storage standards applicable to waste military munitions, referenced in paragraph (a)(1)(iii) of this section, are DOD 6055.9–STD (''DOD Ammunition and Explosive Safety Standards''), in effect on November 8, 1995, except as provided in the following sentence. Any amendments to the DDESB storage standards shall become effective for purposes of paragraph (a)(1) of this section on the date the Department of Defense publishes notice in the Federal Register that the DDESB standards referenced in paragraph (a)(1) of this section have been amended.

§ 266.206 Standards applicable to the treatment and disposal of waste military munitions.

The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in 40 CFR Parts 260 through 270.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for Part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by adding new paragraphs (c)(3)(i)(D) and (c)(3)(iii) to read as follows:

§ 270.1 Purpose and scope of these regulations.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(D) An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR 260.10.

* * * * *

(iii) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

* * * * *

3. Section 270.42 is amended by redesignating paragraph (h) as (i) and adding a new paragraph (h) to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(h) *Military hazardous waste munitions treatment and disposal.* The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(1) The facility was in existence as a hazardous waste facility, and the facility was already permitted to handle the waste military munitions, on the date when the waste military munitions became subject to hazardous waste regulatory requirements;

(2) On or before the date when the waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a Class 1 modification request to remove or amend the permit provision restricting the receipt of off-site waste munitions; and

(3) The permittee submits a complete Class 2 modification request within 180 days of the date when the waste military munitions became subject to hazardous waste regulatory requirements.

* * * * *

[FR Doc. 97–3218 Filed 2–11–97; 8:45 am]

BILLING CODE 6560–50–P

federal register

Wednesday
February 12, 1997

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 512
Research; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 512

[BOP–1008–F]

RIN 1120–AA14

Research

AGENCY: Bureau of Prisons, Justice.

ACTION: Finalization of Interim Rule.

SUMMARY: In this document, the Bureau of Prisons is finalizing its interim regulations on Research. In response to public comment the Bureau is modifying its provisions for expedited review. For the sake of administrative efficiency, the Bureau is also streamlining review procedures for certain types of research requests.

EFFECTIVE DATE: February 12, 1997.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons (Bureau) is finalizing its regulations on Research. An interim rule on this subject was published in the Federal Register March 23, 1994 (59 FR 13860).

The Bureau received comment from a university and from a professional organization. The commenters expressed concern that the provisions in § 512.11 (b) and (c) which require that a project contribute to the advancement of knowledge about corrections and which prescribe projects involving medical experimentation, cosmetic research, or pharmaceutical testing ''could serve to place at risk individual prisoners with medical problems.'' The commenters argued that, ''[i]n some cases, the only avenue for treating prisoners with diseases for which there are no alternative treatments or for which the standard of care has numerous side effects may be to enroll them in a clinical trial involving an experimental drug, device or procedure.'' The commenters further argued, on general principles, that excluding a class of subjects (i.e., prisoners) from participation in research which has potential direct benefit to them was unfair. The commenters noted that ''[t]he provisions as currently written appear to assume that participation in research is a 'burden' and do not take into account that for individual prisoners there may be real benefits of participating in medical research.''

The Bureau is strongly committed to its policy that medical experimentation or pharmaceutical testing may not be conducted on inmates in a research project. If a researcher initiated a request for inmate participation in medical experimentation or pharmaceutical testing, participation would not be permitted. The concerns raised by the commenters for the treatment of individual prisoners with medical problems are addressed under the Bureau's medical policy which follows standard medical protocols. The Bureau's medical policy does not preclude the use of U.S. Department of Health and Human Services-approved clinical trials that may be warranted for diagnosis or treatment of a specific inmate when recommended by the responsible physician and approved by the Medical Director. Consistent with standard medical protocols, such measures must have the prior written consent of the patient (i.e., the inmate) and must be conducted under conditions approved by the Department of Health and Human Services. Therefore, the Bureau believes that no modification of its policy on research is necessary.

The commenters also requested clarification on the relationship between the Bureau's regulations and the Department of Justice's requirements on research found in 28 CFR part 46. More specifically, the commenters asked whether the Bureau Research Review Board (BRRB) and the local research review boards will be expected to comply with the requirements of Justice's regulations, noting as an example that Justice's regulations required project review appropriate to the degree of risk but not less than once per year, while the Bureau's ''interim rule refers to yearly reviews.'' With respect to reviews of approved research, the Bureau notes that the wording in § 512.17 (''At a minimum, yearly reviews will be conducted'') paraphrases the Justice standard. In general, the BRRB meets the requirements specified in 28 CFR part 46; the Bureau's local research review boards are not required to meet those criteria and accordingly adhere to the provisions of the Bureau's regulations instead. The commenters also recommended that the Bureau's regulations be consistent with the Department of Health and Human Services' regulations in 45 CFR part 46, subpart C. The Department of Justice, when issuing its regulations, noted in the preamble that it intended to retain special (additional) protections for prison populations (56 FR 28012). The Bureau's provisions in 28 CFR part 512 serve this purpose. One protection is that the Bureau in 28 CFR part 512 requires a review of research proposals which are technically exempt from 28 CFR part 46. Some of the additional protections are similar to those in 45 CFR part 46, subpart C. With respect to the Bureau's additional protection for medical experimentation or pharmaceutical testing which is not present in 28 CFR part 46 or in subpart C of 45 CFR part 46, the Bureau received no adverse comment on this point from either the Department of Justice or the Department of Health and Human Services.

The commenters questioned whether expedited review would be possible under § 512.14(e) for modifications to a research project. The provisions in § 512.14(e) govern the conditions under which expedited review is possible. The requirement to submit planned methodological changes in a research project is contained in § 512.11(n). The intent of these provisions is that these changes can be approved by either the full Board or through expedited review depending upon the impact of the changes in the methodology on the subjects in the study.

Finally, the commenters urged the Bureau to obtain a Department of Health and Human Services ''assurance'' for its BRRB so that the BRRB could review research proposals in place of the research organization's Institution Review Board (IRB). The Bureau is not eligible to obtain a Multiple Project Assurance with the Department of Health and Human Services. Therefore, the Bureau's IRBs cannot officially substitute for an HHS-approved IRB. However, the Bureau is modifying its interim regulations to allow for both review of non-HHS-funded research by the BRRB and expedited review of research projects by the BRRB in place of the research organization's IRB if the research has been approved by another official IRB (either within or outside the Bureau).

In adopting the interim rules as final, the Bureau wishes to update an address contained in the regulations and to make one further change in order to streamline procedures for approval or disapproval of (1) information requests from Federal agencies, the Congress, the Federal judiciary, or State or local governments, and (2) requests by private organizations for organizational rather than personal information from Bureau staff. To this effect, the provisions in § 512.11 have been recodified within paragraph (a) and a new paragraph (b) has been added to specify that requests

from Federal agencies, the Congress, the Federal judiciary, or State or local governments to collect information about areas for which they are responsible and requests by private organizations for organizational rather than personal information from Bureau staff shall be reviewed by the Office of Research and Evaluation to determine which requirements may be waived without jeopardizing human subject protections and to document the actual waiver of any specific provisions. The address for the Office of Research and Evaluation, which appears in paragraphs (a) and (c) of § 512.14, is being modified to remove the obsolete room reference ''202 NALC Building'.

Members of the public may submit comment concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the Federal Register.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget pursuant to E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. The economic impact of the Bureau's interim provisions on Research is primarily determined by the existing requirements of the Federal government's common regulations for the protection of human subjects (see 28 CFR part 46 and 45 CFR part 46). The modifications to the Bureau's previously published interim procedures further serve to reduce the economic impact of these provisions in certain cases.

List of Subjects in 28 CFR Part 512

Human research subjects, Prisoners, Reporting and recordkeeping requirements, Safety.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), the interim rule which was published at 59 FR 13860 on March 23, 1994, is adopted as final with the following changes.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 512—RESEARCH

1. The authority citation for 28 CFR part 512 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Section 512.11 is revised to read as follows:

§ 512.11 Requirements for research projects and researchers.

(a) Except as provided for in paragraph (b) of this section, the Bureau requires the following:

(1) In all research projects the rights, health, and human dignity of individuals involved must be respected.

(2) The project must have an adequate research design and contribute to the advancement of knowledge about corrections.

(3) The project must not involve medical experimentation, cosmetic research, or pharmaceutical testing.

(4) The project must minimize risk to subjects; risks to subjects must be reasonable in relation to anticipated benefits. The selection of subjects within any one institution must be equitable. When applicable, informed consent must be sought and documented (see §§ 512.15 and 512.16).

(5) Incentives may not be offered to help persuade inmate subjects to participate. However, soft drinks and snacks to be consumed at the test setting may be offered. Reasonable accommodations such as nominal monetary recompense for time and effort may be offered to non-confined research subjects who are both:

(i) no longer in Bureau of Prisons custody, and

(ii) participating in authorized research being conducted by Bureau employees or contractors.

(6) The researcher must have academic preparation or experience in the area of study of the proposed research.

(7) The researcher must assume responsibility for actions of any person engaged to participate in the research project as an associate, assistant, or subcontractor to the researcher.

(8) Except as noted in the informed consent statement to the subject, the researcher must not provide research information which identifies a subject to any person without that subject's prior written consent to release the information. For example, research information identifiable to a particular individual cannot be admitted as evidence or used for any purpose in any action, suit or other judicial, administrative, or legislative proceeding without the written consent of the individual to whom the data pertains.

(9) The researcher must adhere to applicable provisions of the Privacy Act of 1974 and regulations pursuant to this Act.

(10) The research design must be compatible with both the operation of prison facilities and protection of human subjects. The researcher must observe the rules of the institution or office in which the research is conducted.

(11) Any researcher who is a non-employee of the Bureau must sign a statement in which the researcher agrees to adhere to the provisions of this subpart.

(12) Except for computerized data records maintained at an official Department of Justice site, records which contain nondisclosable information directly traceable to a specific person may not be stored in, or introduced into, an electronic retrieval system.

(13) If the researcher is conducting a study of special interest to the Office of Research and Evaluation (ORE), but the study is not a joint project involving ORE, the researcher may be asked to provide ORE with the computerized research data, not identifiable to individual subjects, accompanied by detailed documentation. These arrangements must be negotiated prior to the beginning of the data collection phase of the project.

(14) The researcher must submit planned methodological changes in a research project to the IRB for approval, and may be required to revise study procedures in accordance with the new methodology.

(b) Requests from Federal agencies, the Congress, the Federal judiciary, or State or local governments to collect information about areas for which they are responsible and requests by private organizations for organizational rather than personal information from Bureau staff shall be reviewed by ORE to determine which provisions of this subpart may be waived without jeopardizing the safety of human subjects. ORE shall document in writing the waiver of any specific provision along with the justification.

3. In § 512.14, paragraphs (a) and (c) are amended by removing the phrase ''202 NALC Building,'', and the introductory text of paragraph (e) is revised to read as follows:

§ 512.14 Submission and processing of proposal.

* * * * *

(e) The BRRB chairperson may exercise the authority of the full BRRB under an expedited review process when another official IRB (either within or outside the Bureau) has approved the research, or when, in his/her judgment, the research proposal meets the minimal risk standard and involves only the following:

* * * * *

§§ 512.10, 512.20, 512.21 [Amended]

4. In addition to the amendments set forth above, in 28 CFR part 512, subpart B, remove the words ''this rule'' and add, in their place, the words ''this subpart'' in the following places:

(a) Section 512.10;

(b) Section 512.20(a) introductory text and (b);

(c) Section 512.21 (b) and (c).

[FR Doc. 97–3394 Filed 2–11–97; 8:45 am]

BILLING CODE 4410–05–P

federal register

Wednesday
February 12, 1997

Part IV

Nuclear Regulatory Commission

10 CFR Part 2, et al.

USEC Privatization Act: Certification and Licensing of Uranium Enrichment Facilities; Final and Proposed Rule Policy and Procedure for Enforcement Actions; Policy Statement; Notice

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 40, 70, and 76

RIN 3150–AF56

USEC Privatization Act: Certification and Licensing of Uranium Enrichment Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the certification and licensing of uranium enrichment facilities to conform to changes made to the Atomic Energy Act of 1954, as amended (the Act), by the USEC Privatization Act legislation. Although the principal effect of this legislation is to direct the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity, this legislation also amended the Act with respect to NRC certification of gaseous diffusion plants leased by USEC and the licensing of atomic vapor laser isotope separation (AVLIS) technology. USEC is responsible for the operation of the two gaseous diffusion plants and the development of the AVLIS technology.

The legislation requires that AVLIS uranium enrichment facilities be licensed subject to the provisions of the Act pertaining to source material and special nuclear material rather than under the provisions pertaining to a production facility; provides for the issuance of civil penalties to USEC or its successor for failure to comply with regulatory requirements governing the operation of gaseous diffusion plants; prohibits issuance of a license/certificate to the Corporation or its successor if it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, or if its issuance would be inimical to the common defense and security of the United States or to the maintenance of a reliable and economical domestic source of enrichment services; and eliminates the annual requirement that the Commission certify that USEC or its successor is in compliance with NRC regulations. The Commission may determine how frequently USEC or its successor must submit a recertification application to the NRC, provided that the NRC recertify USEC's or its successor's compliance with its regulations not less frequently than every five years. The adopted rule changes bring the current regulations into conformance with these provisions.

DATES: The final rule is effective on April 14, 1997 unless significant adverse comments are received by March 14, 1997. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Mail written comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on Federal workdays.

For information on submitting comments electronically, see the discussion under Electronic Access in the Supplementary Information Section.

Copies of comments received may be examined or copied for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. C. W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6209.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 1996, President Clinton signed legislation that provides for fiscal year (FY) 1996 appropriations to a number of Federal agencies (H.R. 3019 (Pub. L. 104–134)). Included within the legislation is Title III, Chapter 1, entitled ''USEC Privatization Act,'' which directs the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity. The private sector corporation that purchases the assets of USEC will be responsible for the operation of the gaseous diffusion plants known as the Portsmouth Plant and the Paducah Plant, located at Piketon, Ohio, and Paducah, Kentucky, respectively, and the development of the atomic vapor laser isotope separation (AVLIS) technology. In addition, the legislation amended the Atomic Energy Act of 1954, as amended (the Act), with respect to the certification of gaseous diffusion plants and licensing of an AVLIS uranium enrichment facility. The gaseous diffusion plants are regulated under 10 CFR Part 76, ''Certification of Gaseous Diffusion Plants.'' Operation of an AVLIS uranium enrichment facility will be licensed under 10 CFR Parts 40, ''Domestic Licensing of Source material'' and 70, ''Domestic Licensing of Special Nuclear Material.''

Discussion

A principal effect of Pub. L. 104–134 on NRC licensing actions is that the referenced AVLIS uranium enrichment facilities will be licensed pursuant to the provisions of the Act pertaining to source material and special nuclear material rather than the provisions pertaining to a production facility. Under this legislation, AVLIS licensing will be a single-step licensing process with one license issued pursuant to 10 CFR parts 40 and 70, rather than a two-step licensing process under 10 CFR part 50. The regulations previously were amended on April 30, 1992 (57 FR 18388) to conform with the ''Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990,'' (Pub. L. 101–575) by providing a single-step process for licensing uranium enrichment. The April 30, 1992 amendments also made 10 CFR part 70 the basic regulation for licensing a uranium enrichment facility. Although the 1990 legislation specifically excluded AVLIS uranium enrichment, then under development by the Department of Energy, from the one-step licensing process, Pub. L. 104–134 made the development of AVLIS a responsibility of USEC (which will become a private entity as a result of this legislation) and removed the exclusion of AVLIS from one-step licensing. Therefore, licensing of AVLIS, as with other licensed uranium enrichment facilities, will be a one-step process requiring an environmental review, adjudicatory hearing, inspection before operation, and third party liability insurance. However, for other purposes of the Act, such as controlling the export of specially designed or prepared uranium enrichment equipment and preservation of Federal authority in Agreement States, all uranium enrichment facilities regulated by the NRC remain under the Atomic Energy Act provisions for production facilities. Specific implementing amendments are as follows:

In 10 CFR 70.1, ''Purpose'' is revised to indicate that all uranium enrichment facilities requiring a license will be licensed under 10 CFR part 70, ''Domestic Licensing of Special Nuclear Material.''

In 10 CFR 40.4 and 70.4, ''Definitions'' the term Corporation is added to refer appropriately to the licensing of the Corporation or its successor for operation of an AVLIS facility.

In 10 CFR 76.4, ''Definitions'' the term Corporation is amended to include the successor to USEC.

In addition, in conformance with the 1996 legislation, provisions are made in 10 CFR parts 2 and 76 to allow the NRC to impose civil penalties on the USEC or its successor for failure to comply with regulatory requirements governing the operation of the gaseous diffusion plants regulated under 10 CFR part 76. Civil penalty authority presently contained in 10 CFR part 70 would apply to AVLIS licensing. Furthermore, the ''General Statement of Policy and Procedures for NRC Enforcement Action'' NUREG–1600, is being supplemented to provide examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of gaseous diffusion plant operations. Specific implementing amendments are as follows:

In 10 CFR 2.200(a) concerning the scope of subpart B of part 2, a new sentence is added to read as follows: ''However, with regard to the holder of a part 76 Certificate of Compliance or Compliance Plan, except for civil penalty procedures in this subpart, the applicable procedures are set forth in § 76.70.'' This will clarify that the provisions governing the issuance of an order or notice of violation to the holder of a certificate of compliance or compliance plan under 10 CFR part 76 are contained in § 76.70 but the civil penalty procedures in subpart B of part 2 are applicable to these entities.

In 10 CFR 2.205(a), a reference to the § 76.70(d), ''notice of violation,'' and a reference to the provisions of a 10 CFR part 76, ''certificate of compliance or compliance plan,'' are added because the Commission now has authority to issue civil penalties to the Corporation for violation of its regulations.

Similarly, in 10 CFR 76.10(b), the last phrase, ''except, that the Corporation is not subject to the authority of Section 234 of the Act,'' is eliminated because the Corporation is now subject to Section 234 of the Act.

10 CFR 76.60 (c)(1) and (d)(1) are removed. These paragraph designations are reserved and the last phrase of § 76.60(i), ''provided, however, that civil penalties shall not be imposed on the Corporation pursuant to § 95.61 of this chapter except for violations of Section 206 of the Energy Reorganization Act'' is also eliminated. These prohibitions on issuing civil penalties are removed to permit the imposition of civil penalties. In 10 CFR 76.72(d), a reference to the new Section 234 civil penalty authority is added.

The 10 CFR 76.131(a)(3) reference to Title XI of the Energy Policy Act of 1992, is eliminated because this act's applicable provisions were amendments to the Atomic Energy Act of 1954. Reference to Section 206 of the Energy Reorganization Act has been relocated from § 76.131(b) to paragraph (b)(2). References to violations under Section 234 of the Atomic Energy Act of 1954, as amended, and specific references to sections of the Act are added as paragraphs (b)(1), (b)(3), and (b)(4) to describe the new civil penalty authority.

A provision is also added stating that the Commission will not issue a license or certificate to the Corporation or its successor if the Commission finds that the Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, or that issuance would be inimical to the common defense and security of the United States or to the maintenance of a reliable and economical domestic source of enrichment services. This provision is added to conform with the legislation which includes specific language that restricts issuance of a certificate or a license to the USEC or its successor if the issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services. Heretofore, the Commission has not been asked in its regulatory decisions to evaluate whether a proposed action is inimical to the viability of the domestic industries subject to NRC's regulation. Information about the intent of the language is contained in a Senate Committee report on an earlier version of the legislation (S. Rpt. No. 104–173 on S. 755, November 17, 1995), which states that the provision is to ''guard against the possibility of a foreign uranium enrichment company acquiring the Corporation with the intent of operating it in such a manner inconsistent with its maintenance as an ongoing uranium enrichment concern.'' The report further states that no certificate or license should be issued ''if in the opinion of the NRC the issuance of such a license or certificate of compliance would be inimical to the common defense and security of the United States or would be inimical to the maintenance of a reliable and economical domestic source of enrichment services because of the nature and extent of the ownership, control, or domination of the Corporation by a foreign corporation or a foreign government or any other relevant factors or circumstances.''

To comply with this provision of the 1996 legislation, the NRC staff will evaluate this restriction on certification and licensing based, in part, on the following:

Information required under §§ 70.22 and 76.33 ''information known to the applicant concerning the control or ownership, if any, exercised over the applicant by any alien, foreign corporation, or foreign government.''

Information to be obtained under a proposed rule (61 FR 40555; August 5, 1996) amending the provisions of 10 CFR parts 25 and 95 that deal with requirements for access to and protection of classified information. (The Commission expects to adopt this proposed rule as a final rule in January of 1997.) These amendments were proposed to conform the NRC's regulations with the nationally applicable requirements for the protection of and access to classified National Security Information, which have been revised through the issuance of the National Industrial Security Program Operating Manual (NISPOM), published January 1995; Executive Order 12958, ''Classified National Security Information,'' dated April 17, 1995; and Executive Order 12968, ''Access to Classified Information,'' dated August 4, 1995. Specifically, as related to foreign ownership, control, or domination, the NISPOM provides criteria for determining whether U.S. companies handling classified material are under foreign ownership, control, or influence (FOCI). FOCI requirements established in proposed revisions to 10 CFR part 95 are considered useful to the subject finding the Commission must make under the provisions of the 1996 legislation. This is especially so based upon the sensitive nature of the facilities and USEC's role, and the fact that USEC will have access to classified information and equipment.

Further, the existing regulations (§§ 40.31(b), 70.22(d), and 76.33(d)) reflect NRC authority under the Atomic Energy Act to require that an applicant, licensee, or certificate holder submit additional information concerning issuance of a license or certificate. Therefore, under these provisions USEC also may be required to submit additional information addressing whether issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services. The staff is considering whether there are specific additional information needs and will recommend to the Commission whether further amendments to the regulations are warranted. In addition the staff is preparing procedures for developing the required annual report to Congress and guidance for recertification, and developing procedures to consider the issues of foreign ownership and control, and inimicalness to the common defense and security and to a reliable and economical supply of domestic enrichments services. Specific

implementing amendments are as follows:

New sections 10 CFR 40.38 and 70.40 entitled ''Ineligibility of certain applicants,'' are added to state that the NRC will not issue a license to operate an AVLIS enrichment facility to the Corporation if:

(1) It is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government;

(2) Issuance would be inimical to the common defense and security of the United States; or

(3) Issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services.

A new section 10 CFR 76.22 entitled ''Ineligibility of certain applicants,'' is added that states that the NRC will not issue a certificate of compliance to the Corporation under these parts if:

(1) It is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government;

(2) Issuance would be inimical to the common defense and security of the United States; or

(3) Issuance would be inimical to the maintenance of a reliable and economical domestic source of enrichment services.

Another provision in the legislation eliminates the requirement that the NRC must certify that USEC or its successor's operation of the gaseous diffusion plants is in compliance with NRC regulations each year. Instead, the Commission may determine how frequently the USEC or its successor must submit a recertification application to the NRC. However, NRC must recertify the Corporation's compliance at least every 5 years. The initial certification, granted in a September 19, 1996 Director's decision, was made effective for 2 years to permit most items of USEC's compliance plan to be completed. As part of the certification process, the compliance plan details how the Corporation will achieve compliance with NRC regulations in transition from the operation of the gaseous diffusion plants under the requirements of the Department of Energy to operation under the regulatory authority of the NRC. Subsequent recertification will be based on a number of considerations, including implementation status of compliance plans and certification regulatory experience as determined by the NRC's inspection program. The exact term of each certification will be specified in the certificate. As noted in a Senate Committee report on a previous version of the legislation (S. Rpt. No. 104–173 on S. 755, November 17, 1995, page 31), ''With periodic certification, the NRC would have the flexibility to determine the appropriate length of certification, not to exceed five years.'' Specific implementing amendments are as follows:

10 CFR 76.31 is revised to provide for periodic application for recertification of compliance on or before April 15 of the year specified in an existing certificate of compliance as determined by the Commission, but not less frequently than every 5 years.

Accordingly, in 10 CFR 76.35, 76.36, 76.43, 76.45, 76.55, and 76.66 references to annual recertification are removed.

10 CFR 76.68 is revised to provide that the Corporation or its successor will continue to submit revised change pages to their approved application and safety analysis report annually to ensure current plant documentation, even though the requirement for an annual application has been removed.

In addition, in response to the ''Rulemaking Plan—USEC Privatization Act,'' which was made available to the public on the NRC electronic bulletin board, USEC by letter dated November 13, 1996, provided comment concerning the rulemaking action (enclosure 3). In their letter USEC provided proposed revisions to CFR parts 76, 70, and 40 for the purposes of implementing the USEC Privatization Act, and proposed language to § 76.45 to clarify the agency's intention concerning Director's decision on applications for amendments to the Certificate. USEC also proposed deleting certain sections which in their view are immaterial now that the Director's decision on the initial certification has been issued. With respect to the first item, no new information was provided beyond that which the staff had already considered in this direct final rulemaking. The other USEC proposed revisions are not included as a part of this limited scope direct final rulemaking as they are not revisions to the Commission's regulations which are required by the legislative amendments to the Act being here codified.

The Commission is proceeding with this rulemaking to amend 10 CFR parts 2, 40, 70, and 76 as required to implement section 3116 of Pub L. 104–134. To conform with these changes to the Act, the amendments in this rule contain several new and revised AVLIS licensing and gaseous diffusion plant certification requirements specific to the Corporation's and its successor's operation of uranium enrichment facilities.

In summary, the amendments to 10 CFR chapter I are being made to:

(a) Provide that uranium enrichment facilities will be licensed under 10 CFR part 70, Domestic Licensing of Special Nuclear Material (See § 70.1);

(b) Add and amend where needed the definition of ''Corporation'' to include the USEC privatized entity (See §§ 40.4, 70.4 and 76.4);

(c) Note that the Commission will not issue a license/certificate if the Commission finds that USEC or its successor is under foreign ownership or control or that issuance would be inimical to the common defense and security or to the maintenance of a reliable and economical source of domestic enrichment services (See §§ 40.38, 70.40, and 76.22);

(d) Amend the provision concerning periodic recertification for operation (See §§ 76.31, 76.35(n), 76.36(a), 76.43, 76.45(a), 76.55, 76.66 and 76.68(b)); and

(e) Note and clarify the authority to issue civil penalties to USEC or its successor for regulatory violations (See §§ 2.200(a), 2.205(a), 76.10(b), 76.60, 76.72(d) and 76.131).

The NRC is also amending the regulations in 10 CFR part 76 to correct several miscellaneous errors in the regulatory text. These errors in the Code of Federal Regulations text occurred in the process of preparing and printing the final rule published on September 23, 1994 (59 FR 48944). Specifically: in § 76.21(b) the reference to § 40.41 should be to § 40.51; in §§ 76.111 and 76.113 ''uncontrolled classified'' should be ''Unclassified Controlled'' Nuclear Information, and in § 76.76(a)(2) the ''(c)'' should be ''(b).'' In addition, the definition of ''Uranium enrichment plant'' is removed from § 76.4 because it is neither needed nor used in part 76, which is specific to gaseous diffusion plants.

Furthermore, the NRC is amending the regulations in 10 CFR part 2 to reflect an agency reorganization. Specifically: in § 2.205 paragraphs (a), (d), (g) and (h) all references to the ''Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support, or the Deputy's designee'' are changed to read ''Executive Director for Operations or the Executive Director's designee.''

Electronic Access

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

available, as practical, for downloading and viewing on the Bulletin Board.

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

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

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

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

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555–0001, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

Procedural Background

The NRC considers this action noncontroversial and routine because it implements specific statutory requirements (Pub. L. 104–134). Therefore, the Commission is approving it without seeking public comments on proposed amendments. This action will become effective on April 14, 1997. However, if the NRC receives significant adverse comments by March 14, 1997, the NRC will withdraw this action and address the significant adverse comments received in response to the revisions published in this document before a final rule becomes effective. The NRC will not initiate a second comment period on this action.

Revision to NUREG–1600, ''General Statement of Policy and Procedures for NRC Enforcement Actions''

Concurrently with this direct final rule the Commission is publishing a document elsewhere in this issue of the Federal Register that amends NUREG–1600, ''General Statement of Policy and Procedures for NRC Enforcement Action'' which provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the areas of fuel cycle and gaseous diffusion plant operations. The amendment is to Supplement VI, ''Fuel Cycle and Materials Operations,'' which provides additional examples of violations that should be categorized at Severity Levels I, II, III, and IV. In addition, the Enforcement Policy is being amended to establish base civil penalties for GDPs. The policy recognizes that regulatory requirements have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation, including both the technical significance and the regulatory significance, is evaluated as the first step in the enforcement process. In considering the significance of a violation, the staff considers the technical significance (i.e., actual and potential consequences) and regulatory significance.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

Paperwork Reduction Act Statement for Direct Final Rule

This direct 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 the Office of Management and Budget, approval numbers 3150–0020, –0021, –0009, –0039.

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

Changes to 10 CFR parts 2, 40, 70, and 76 must be made to bring these regulations into conformance with the Act as amended by the ''USEC Privatization Act'' (Public Law 104–134). The chief benefit to the public, industry, and NRC will be derived from codification of NRC regulations to conform to the changes to the Act. Codification should result in a better understanding of the procedures and requirements for licensing and/or certification of enrichment facilities, and thereby facilitate the process for review of a license application for uranium enrichment facility, and possibly reduce the litigative risk that might result from not having the regulatory basis for health and safety review of the application codified by regulation. The principal cost will be the expenditure of NRC staff resources in codifying the requirements. This constitutes the regulatory analysis for the direct final rule.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because it only addresses the Corporation or its successor. The Corporation does not fall within the scope of the definition of ''small entities'' set forth in 10 CFR 2.810 or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Small Business Regulatory Enforcement 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, Office of Management and Budget.

Backfit Analysis

The NRC has determined that the backfit rules, 10 CFR 50.109 and 76.76, do not apply to this rule. Thus, a backfit analysis is not required for these amendments because they do not involve any provisions that would impose backfits as defined in §§ 50.109(a)(1) and 76.76(a)(1).

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 40

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the Commission is adopting the following amendments to 10 CFR parts 2, 40, 70, and 76.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, I, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349, as amended (42 U.S.C. 2201 (b), (I), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*).

2. In § 2.200, paragraph (a) is revised to read as follows:

§ 2.200 Scope of subpart.

(a) This subpart prescribes the procedures in cases initiated by the staff, or upon a request by any person, to impose requirements by order, or to modify, suspend, or revoke a license, or to take other action as may be proper, against any person subject to the jurisdiction of the Commission. However, with regard to the holder of a part 76 certificate of compliance or compliance plan, except for civil penalty procedures in this subpart, the applicable procedures are set forth in § 76.70 of this chapter.

* * * * *

3. In § 2.205, paragraphs (a), (d), (g) and (h) are revised to read as follows:

§ 2.205 Civil penalties.

(a) Before instituting any proceeding to impose a civil penalty under section 234 of the Act, the Executive Director for Operations or the Executive Director's designee, as appropriate, shall serve a written notice of violation upon the person charged. This notice may be included in a notice issued pursuant to § 2.201 or § 76.70(d) of this chapter. The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged, and shall identify specifically the particular provision or provisions of the law, rule, regulation, license, permit, part 76 certificate of compliance or compliance plan, or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the Commission, if any, unless compromised, remitted, or mitigated, be collected by civil action, pursuant to Section 234c of the Act.

* * * * *

(d) If the person charged with violation files an answer to the notice of violation, the Executive Director for Operations or the Executive Director's designee, upon consideration of the answer, will issue an order dismissing the proceeding or imposing, mitigating, or remitting the civil penalty. The person charged may, within twenty (20) days of the date of the order or other time specified in the order, request a hearing.

* * * * *

(g) The Executive Director for Operations or the Executive Director's designee, as appropriate may compromise any civil penalty, subject to the provisions of § 2.203.

(h) If the civil penalty is not compromised, or is not remitted by the Executive Director for Operations or the Executive Director's designee, as appropriate, the presiding officer, or the Commission, and if payment is not made within ten (10) days following either the service of the order described in paragraph (c) or (f) of this section, or the expiration of the time for requesting a hearing described in paragraph (d) of this section, the Executive Director for Operations or the Executive Director's designee, as appropriate, may refer the

matter to the Attorney General for collection.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

4. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. In § 40.4, the term ''Corporation'' is added in alphabetical order to read as follows:

§ 40.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President.

* * * * *

6. A new § 40.38 is added to read as follows:

§ 40.38 Ineligibility of certain applicants.

A license may not be issued to the Corporation if the Commission determines that:

(a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(b) The issuance of such a license would be inimical to—

(1) The common defense and security of the United States; or

(2) The maintenance of a reliable and economical domestic source of enrichment services.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1 and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

8. In § 70.1, a new paragraph (e) is added to read as follows:

§ 70.1 Purpose.

* * * * *

(e) As provided in the Atomic Energy Act of 1954, as amended, the regulations in this part establish requirements, procedures, and criteria for the issuance of licenses to uranium enrichment facilities.

9. In § 70.4, the term ''Corporation'' is added in alphabetical order to read as follows:

§ 70.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President.

* * * * *

10. A new § 70.40 is added to read as follows:

§ 70.40 Ineligibility of certain applicants.

A license may not be issued to the Corporation if the Commission determines that:

(a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(b) The issuance of such a license would be inimical to—

(1) The common defense and security of the United States; or

(2) The maintenance of a reliable and economical domestic source of enrichment services.

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

11. The authority citation for part 76 is revised to read as follows:

Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349, (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)).

Sec. 76.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

12. In § 76.4, the term ''Corporation'' is revised to read as follows and the term ''Uranium enrichment plant'' is removed:

§ 76.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President.

* * * * *

13. In § 76.10, paragraph (b) is revised to read as follows:

§ 76.10 Deliberate misconduct.

* * * * *

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

* * * * *

14. In § 76.21, paragraph (b) is revised to read as follows:

§ 76.21 Certificate required.

* * * * *

(b) For the purposes of §§ 30.41, 40.51, and 70.42 of this chapter, the Corporation shall be authorized to receive, and licensees shall be authorized to transfer to the Corporation, byproduct material, source material, or special nuclear material to

the extent permitted under the certificate of compliance issued, and/or the compliance plan approved, pursuant to this part.

15. A new § 76.22 is added to read as follows:

§ 76.22 Ineligibility of certain applicants.

A certificate of compliance may not be issued to the Corporation if the Commission determines that:

(a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(b) The issuance of such a certificate of compliance would be inimical to—

(1) The common defense and security of the United States; or

(2) The maintenance of a reliable and economical domestic source of enrichment services.

16. Section 76.31 is revised to read as follows:

§ 76.31 Periodic application requirement.

The Corporation shall periodically apply to the Commission for a certificate of compliance, in accordance with § 76.36, on or before April 15 of the year specified in an existing certificate of compliance as determined by the Commission, but not less frequently than every 5 years.

17. In § 76.35, paragraph (n) is revised to read as follows:

§ 76.35 Contents of initial application.

* * * * *

(n) A description of the funding program to be established to ensure that funds will be set aside and available for those aspects of the ultimate disposal of waste and depleted uranium, decontamination and decommissioning, relating to the gaseous diffusion plants leased to the Corporation by the Department of Energy, which are the financial responsibility of the Corporation. The Corporation shall establish financial surety arrangements to ensure that sufficient funds will be available for the ultimate disposal of waste and depleted uranium, and decontamination and decommissioning activities which are the financial responsibility of the Corporation. The funding mechanism, such as prepayment, surety, insurance, or external sinking fund, must ensure availability of funds for any activities which are required to be completed both before or after the return of the gaseous diffusion facilities to the Department of Energy in accordance with the lease between the Department and the Corporation. The funding program must contain a basis for cost estimates used to establish funding levels and must contain means of adjusting cost estimates and associated funding levels over the duration of the lease. The funding program need not address funding for those aspects of decontamination and decommissioning of the gaseous diffusion plants assigned to the Department of Energy under the Atomic Energy Act of 1954, as amended. The Corporation should address the adequacy of the financing mechanism selected in its periodic application for certification.

18. In § 76.36, the section heading and paragraph (a) are revised to read as follows:

§ 76.36 Renewals.

(a) After issuance by the Commission of the initial certificate of compliance and/or an approved compliance plan, the Corporation shall file periodic applications for renewal, as required by § 76.31.

* * * * *

19. Section 76.43 is revised to read as follows:

§ 76.43 Date for decision.

The Director will render a decision on an application within 6 months of the receipt of the application unless the Director alters the date for decision and publishes notice of the new date in the Federal Register.

20. In § 76.45, paragraph (a) is revised to read as follows:

§ 76.45 Application for amendment of certificate.

(a) *Contents of amendment application.* In addition to the application for certification submitted pursuant to § 76.31, the Corporation may at any time apply for amendment of the certificate to cover proposed new or modified activities. The amendment application should contain sufficient information for the Director to make findings of compliance or acceptability for the proposed activities as required for the original certificate.

* * * * *

21. Section 76.55 is revised to read as follows:

§ 76.55 Timely renewal.

In any case in which the Corporation has timely filed a sufficient application for a certificate of compliance, the existing certificate of compliance or approved compliance plan does not expire until the application for a certificate of compliance has been finally determined by the NRC. For purposes of this rule, a sufficient application is one that addresses all elements of § 76.36.

22. In § 76.60, paragraphs (c)(1) and (d)(1) are removed and reserved and paragraph (i) is revised to read as follows:

§ 76.60 Regulatory requirements which apply.

* * * * *

(i) The Corporation shall comply with the applicable provisions of 10 CFR part 95, ''Security Facility Approval and Safeguarding of National Security Information and Restricted Data,'' as specified in subpart E to this part.

23. In § 76.66, paragraph (c) is revised to read as follows:

§ 76.66 Expiration and termination of certificates.

* * * * *

(c) If the Corporation does not submit a renewal application under § 76.36, the Corporation shall, on or before the expiration date specified in the existing certificate, terminate operation of the gaseous diffusion plants.

24. In § 76.68, paragraph (b) is revised to read as follows:

§ 76.68 Plant changes.

* * * * *

(b) To ensure that the approved application remains current with respect to the actual site description and that the plant's programs, plans, policies, and operations are in place, the Corporation shall submit revised pages to the approved application and safety analysis report, marked and dated to indicate each change. The Corporation shall evaluate any as-found conditions that do not agree with the plant's programs, plans, policies, and operations in accordance with paragraph (a) of this section. These revisions must be submitted before April 15 of each calendar year, or at a shorter interval as may be specified in the certificate. If a renewal application for a certificate is filed in accordance with § 76.36 of this part, the revisions shall be incorporated into the application.

* * * * *

25. In § 76.72, paragraph (d) is revised to read as follows:

§ 76.72 Miscellaneous procedural matters.

* * * * *

(d) The procedures set forth in 10 CFR 2.205, and in 10 CFR part 2, subpart G, will be applied in connection with NRC action to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, or Section 206 of the Energy Reorganization Act of 1974 and the implementing regulations in 10 CFR part 21 (Reporting of Defects and Noncompliance), as authorized by

Section 1312(e) of the Atomic Energy Act of 1954, as amended;

* * * * *

26. In § 76.76, paragraph (a)(2) is revised to read as follows:

§ 76.76 Backfitting.

(a) * * *

(2) Except as provided in paragraph (a)(4) of this section, the Commission shall require a systematic and documented analysis pursuant to paragraph (b) of this section for backfits which it seeks to impose.

* * * * *

27. Section 76.111 is revised to read as follows:

§ 76.111 Physical security, material control and accounting, and protection of certain information.

Nuclear Regulatory Commission regulations that will be used for certification of the Corporation [2] for physical security and material control and accounting are contained in title 10 of the Code of Federal Regulations as described in this subpart. The regulations referenced in this subpart contain requirements for physical security and material control and accounting for formula quantities of strategic special nuclear material (Category I), special nuclear material of moderate strategic significance (Category II), and special nuclear material of low strategic significance (Category III), and for protection of Restricted Data, National Security Information, Safeguards Information, and information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information.

28. In § 76.113, paragraph (c) is revised to read as follows:

§ 76.113 Formula quantities of strategic special nuclear material—Category I.

* * * * *

(c) The requirements for the protection of Safeguards Information pertaining to formula quantity of strategic special nuclear material (Category I) are contained in § 73.21 of this chapter. Information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information must be protected at a level equivalent to that accorded Safeguards Information.

* * * * *

29. Section 76.131 is revised to read as follows:

§ 76.131 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of:

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended;

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 234 of the Atomic Energy Act of 1954, as amended, or under Section 1312(e) of the Atomic Energy Act of 1954, as amended, and Section 206 of the Energy Reorganization Act of 1974, as amended, for violations of:

(1) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701 of the Atomic Energy Act of 1954, as amended;

(2) Section 206 of the Energy Reorganization Act;

(3) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1) of this section;

(4) Any term, condition, or limitation of any certificate of compliance or approved compliance plan issued under the sections specified in paragraph (b)(1) of this section.

Dated at Rockville, Maryland, this 6th day of February, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–3467 Filed 2–11–97; 8:45 am]

BILLING CODE 7590–01–P

[2] For the purpose of this subpart, the terms ''licensee'' or ''license'' used in parts 70, 73, and 74 of this chapter, mean, respectively, the Corporation, or the certificate of compliance or approved compliance plan.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 40, 70, and 76

RIN 3150–AF56

USEC Privatization Act: Certification and Licensing of Uranium Enrichment Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations concerning the certification and licensing of uranium enrichment facilities to conform to changes made to the Atomic Energy Act of 1954, as amended (the Act), by the USEC Privatization Act legislation. Although the principal effect of this legislation is to direct the Board of Directors of the United States Enrichment Corporation (USEC) to sell the assets of the USEC to a private sector entity, this legislation also amended the Act with respect to NRC certification of gaseous diffusion plants leased by USEC and the licensing of atomic vapor laser isotope separation (AVLIS) technology. USEC is responsible for the operation of the two gaseous diffusion plants and the development of the AVLIS technology.

The legislation requires that AVLIS uranium enrichment facilities be licensed subject to the provisions of the Act pertaining to source material and special nuclear material rather than under the provisions pertaining to a production facility; provides for the issuance of civil penalties to USEC or its successor for failure to comply with regulatory requirements governing the operation of gaseous diffusion plants; prohibits issuance of a license/certificate to the Corporation or its successor if it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government, or its issuance would be inimical to the common defense and security of the United States or to the maintenance of a reliable and economical domestic source of enrichment services; and eliminates the annual requirement that the Commission certify that USEC or its successor is in compliance with NRC regulations. The Commission may determine how frequently USEC or its successor must submit a recertification application to the NRC, provided that the NRC recertify USEC's or its successor's compliance with its regulations not less frequently than every five years. The proposed changes to the regulations bring 10 CFR parts 2, 40, 70, and 76 into conformance with the USEC Privatization Act.

DATES: Comments on the proposed rule must be received on or before March 14, 1997.

ADDRESSES: Mail written comments to: The Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Docketing and Service Branch.

Hand deliver comments to: 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

For information on submitting comments electronically, see the discussion under Electric Assess in the Supplementary Information Section.

Copies of comments received may be examined or copied for a fee, at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Nilsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6209.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in this issue of the Federal Register.

Procedural Background

The NRC considers this action noncontroversial and routine because it implements specific statutory requirements (Public Law 104–134). Therefore, we are publishing this proposed rule concurrently as a direct final rule in this issue of the Federal Register. The direct final rule will become effective on April 14, 1997.

However, if the NRC receives significant adverse comments by March 14, 1997, the NRC will withdraw the direct final rule and address the significant adverse comments received in response to the revisions. Any significant adverse comments will be addressed in a subsequent final rule on this proposal. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

Electronic Access

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

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

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

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

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

For more information on NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, DC 20555–0001, telephone (301) 415–5780; e-mail AXD3@nrc.gov.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 40

Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 70

Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the Commission is adopting the following amendments to 10 CFR parts 2, 40, 70, and 76.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

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

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, I, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349, as amended (42 U.S.C. 2201 (b), (I), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99–240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*).

2. In § 2.200, paragraph (a) is revised to read as follows:

§ 2.200 Scope of subpart.

(a) This subpart prescribes the procedures in cases initiated by the staff, or upon a request by any person, to impose requirements by order, or to modify, suspend, or revoke a license, or to take other action as may be proper, against any person subject to the jurisdiction of the Commission. However, with regard to the holder of a part 76 certificate of compliance or compliance plan, except for civil penalty procedures in this subpart, the applicable procedures are set forth in § 76.70 of this chapter.

* * * * *

3. In § 2.205, paragraphs (a), (d), (g) and (h) are revised to read as follows:

§ 2.205 Civil penalties.

(a) Before instituting any proceeding to impose a civil penalty under section 234 of the Act, the Executive Director for Operations or the Executive Director's designee, as appropriate, shall serve a written notice of violation upon the person charged. This notice may be included in a notice issued pursuant to § 2.201 or § 76.70(d) of this chapter. The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged, and shall identify specifically the particular provision or provisions of the law, rule, regulation, license, permit, Part 76 certificate of compliance or compliance plan, or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the Commission, if any, unless compromised, remitted, or mitigated, be collected by civil action, pursuant to section 234c of the Act.

* * * * *

(d) If the person charged with violation files an answer to the notice of violation, the Executive Director for Operations or the Executive Director's designee, upon consideration of the answer, will issue an order dismissing the proceeding or imposing, mitigating, or remitting the civil penalty. The person charged may, within twenty (20) days of the date of the order or other time specified in the order, request a hearing.

* * * * *

(g) The Executive Director for Operations or the Executive Director's designee, as appropriate, may compromise any civil penalty, subject to the provisions of § 2.203.

(h) If the civil penalty is not compromised, or is not remitted by the Executive Director for Operations or the Executive Director's designee, as appropriate, the presiding officer, or the Commission, and if payment is not made within ten (10) days following either the service of the order described in paragraph (c) or (f) of this section, or the expiration of the time for requesting a hearing described in paragraph (d) of this section, the Executive Director for Operations or the Executive Director's designee, as appropriate, may refer the matter to the Attorney General for collection.

* * * * *

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

4. The authority citation for Part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as

amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

5. In § 40.4, the term ''Corporation'' is added in alphabetical order to read as follows:

§ 40.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President.

* * * * *

6. A new § 40.38 is added to read as follows:

§ 40.38 Ineligibility of certain applicants.

A license may not be issued to the Corporation if the Commission determines that:

(a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(b) The issuance of such a license would be inimical to—

(1) The common defense and security of the United States; or

(2) The maintenance of a reliable and economical domestic source of enrichment services.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

7. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243).

Sections 70.1 and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

8. In § 70.1, a new paragraph (e) is added to read as follows:

§ 70.1 Purpose.

* * * * *

(e) As provided in the Atomic Energy Act of 1954, as amended, the regulations in this part establish requirements, procedures, and criteria for the issuance of licenses to uranium enrichment facilities.

9. In § 70.4, the term ''Corporation'' is added in alphabetical order to read as follows:

§ 70.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President.

* * * * *

10. A new § 70.40 is added to read as follows:

§ 70.40 Ineligibility of certain applicants.

A license may not be issued to the Corporation if the Commission determines that:

(a) The Corporation is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government; or

(b) The issuance of such a license would be inimical to—

(1) The common defense and security of the United States; or

(2) The maintenance of a reliable and economical domestic source of enrichment services.

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

11. The authority citation for part 76 is revised to read as follows:

Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349, (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846); sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)).

Sec. 76.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

12. In § 76.4, the term ''Corporation'' is revised to read as follows and the term ''Uranium enrichment plant'' is removed:

§ 76.4 Definitions.

* * * * *

Corporation means the United States Enrichment Corporation (USEC), or its successor, a Corporation that is authorized by statute to lease the gaseous diffusion enrichment plants in Paducah, Kentucky, and Piketon, Ohio, from the Department of Energy, or any person authorized to operate one or both of the gaseous diffusion plants, or other facilities, pursuant to a plan for the privatization of USEC that is approved by the President.

* * * * *

13. In § 76.10, paragraph (b) is revised to read as follows:

§ 76.10 Deliberate misconduct.

* * * * *

(b) A person who violates paragraph (a)(1) or (a)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

* * * * *

14. In § 76.21, paragraph (b) is revised to read as follows:

§ 76.21 Certificate required.

* * * * *

(b) For the purposes of §§ 30.41, 40.51, and 70.42 of this chapter, the Corporation shall be authorized to receive, and licensees shall be authorized to transfer to the Corporation, byproduct material, source material, or special nuclear material to the extent permitted under the certificate of compliance issued, and/or the compliance plan approved, pursuant to this part.

15. A new § 76.22 is added to read as follows:

§ 76.22 Ineligibility of certain applicants.

A certificate of compliance may not be issued to the Corporation if the Commission determines that:

(a) The Corporation is owned, controlled, or dominated by an alien, a

foreign corporation, or a foreign government; or

(b) The issuance of such a certificate of compliance would be inimical to—

(1) The common defense and security of the United States; or

(2) The maintenance of a reliable and economical domestic source of enrichment services.

16. Section 76.31 is revised to read as follows:

§ 76.31 Periodic application requirement.

The Corporation shall periodically apply to the Commission for a certificate of compliance, in accordance with § 76.36, on or before April 15 of the year specified in an existing certificate of compliance as determined by the Commission, but not less frequently than every 5 years.

17. In § 76.35, paragraph (n) is revised to read as follows:

§ 76.35 Contents of initial application.

* * * * *

(n) A description of the funding program to be established to ensure that funds will be set aside and available for those aspects of the ultimate disposal of waste and depleted uranium, decontamination and decommissioning, relating to the gaseous diffusion plants leased to the Corporation by the Department of Energy, which are the financial responsibility of the Corporation. The Corporation shall establish financial surety arrangements to ensure that sufficient funds will be available for the ultimate disposal of waste and depleted uranium, and decontamination and decommissioning activities which are the financial responsibility of the Corporation. The funding mechanism, such as prepayment, surety, insurance, or external sinking fund, must ensure availability of funds for any activities which are required to be completed both before or after the return of the gaseous diffusion facilities to the Department of Energy in accordance with the lease between the Department and the Corporation. The funding program must contain a basis for cost estimates used to establish funding levels and must contain means of adjusting cost estimates and associated funding levels over the duration of the lease. The funding program need not address funding for those aspects of decontamination and decommissioning of the gaseous diffusion plants assigned to the Department of Energy under the Atomic Energy Act of 1954, as amended. The Corporation should address the adequacy of the financing mechanism selected in its periodic application for certification.

18. In § 76.36, the section heading and paragraph (a) are revised to read as follows:

§ 76.36 Renewals.

(a) After issuance by the Commission of the initial certificate of compliance and/or an approved compliance plan, the Corporation shall file periodic applications for renewal, as required by § 76.31.

* * * * *

19. Section 76.43 is revised to read as follows:

§ 76.43 Date for decision.

The Director will render a decision on an application within 6 months of the receipt of the application unless the Director alters the date for decision and publishes notice of the new date in the Federal Register.

20. In § 76.45, paragraph (a) is revised to read as follows:

§ 76.45 Application for amendment of certificate.

(a) *Contents of amendment application.* In addition to the application for certification submitted pursuant to § 76.31, the Corporation may at any time apply for amendment of the certificate to cover proposed new or modified activities. The amendment application should contain sufficient information for the Director to make findings of compliance or acceptability for the proposed activities as required for the original certificate.

* * * * *

21. Section 76.55 is revised to read as follows:

§ 76.55 Timely renewal.

In any case in which the Corporation has timely filed a sufficient application for a certificate of compliance, the existing certificate of compliance or approved compliance plan does not expire until the application for a certificate of compliance has been finally determined by the NRC. For purposes of this rule, a sufficient application is one that addresses all elements of § 76.36.

22. In § 76.60, paragraphs (c)(1) and (d)(1) are removed and reserved and paragraph (i) is revised to read as follows:

§ 76.60 Regulatory requirements which apply.

* * * * *

(i) The Corporation shall comply with the applicable provisions of 10 CFR part 95, ''Security Facility Approval and Safeguarding of National Security Information and Restricted Data,'' as specified in subpart E to this part.

23. In § 76.66, paragraph (c) is revised to read as follows:

§ 76.66 Expiration and termination of certificates.

* * * * *

(c) If the Corporation does not submit a renewal application under § 76.36, the Corporation shall, on or before the expiration date specified in the existing certificate, terminate operation of the gaseous diffusion plants.

24. In § 76.68, paragraph (b) is revised to read as follows:

§ 76.68 Plant changes.

* * * * *

(b) To ensure that the approved application remains current with respect to the actual site description and that the plant's programs, plans, policies, and operations are in place, the Corporation shall submit revised pages to the approved application and safety analysis report, marked and dated to indicate each change. The Corporation shall evaluate any as-found conditions that do not agree with the plant's programs, plans, policies, and operations in accordance with paragraph (a) of this section. These revisions must be submitted before April 15 of each calendar year, or at a shorter interval as may be specified in the certificate. If a renewal application for a certificate is filed in accordance with § 76.36 of this part, the revisions shall be incorporated into the application.

* * * * *

25. In § 76.72, paragraph (d) is revised to read as follows:

§ 76.72 Miscellaneous procedural matters.

* * * * *

(d) The procedures set forth in 10 CFR 2.205, and in 10 CFR part 2, subpart G, will be applied in connection with NRC action to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, or Section 206 of the Energy Reorganization Act of 1974 and the implementing regulations in 10 CFR part 21 (Reporting of Defects and Noncompliance), as authorized by Section 1312(e) of the Atomic Energy Act of 1954, as amended;

* * * * *

26. In § 76.76, paragraph (a)(2) is revised to read as follows:

§ 76.76 Backfitting.

(a) * * *

(2) Except as provided in paragraph (a)(4) of this section, the Commission shall require a systematic and documented analysis pursuant to

paragraph (b) of this section for backfits which it seeks to impose.

* * * * *

27. Section 76.111 is revised to read as follows:

§ 76.111 Physical security, material control and accounting, and protection of certain information.

Nuclear Regulatory Commission regulations that will be used for certification of the Corporation [2] for physical security and material control and accounting are contained in title 10 of the Code of Federal Regulations as described in this subpart. The regulations referenced in this subpart contain requirements for physical security and material control and accounting for formula quantities of strategic special nuclear material (Category I), special nuclear material of moderate strategic significance (Category II), and special nuclear material of low strategic significance (Category III), and for protection of Restricted Data, National Security Information, Safeguards Information, and information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information.

28. In § 76.113, paragraph (c) is revised to read as follows:

§ 76.113 Formula quantities of strategic special nuclear material—Category I.

* * * * *

(c) The requirements for the protection of Safeguards Information pertaining to formula quantity of strategic special nuclear material (Category I) are contained in § 73.21 of this chapter. Information designated by the U.S. Department of Energy as Unclassified Controlled Nuclear Information must be protected at a level equivalent to that accorded Safeguards Information.

* * * * *

29. Section 76.131 is revised to read as follows:

§ 76.131 Violations.

(a) The Commission may obtain an injunction or other court order to prevent a violation of the provisions of:

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974, as amended;

(3) A regulation or order issued pursuant to those Acts.

(b) The Commission may obtain a court order for the payment of a civil penalty imposed under Section 234 of the Atomic Energy Act of 1954, as amended, or under Section 1312(e) of the Atomic Energy Act of 1954, as amended, and Section 206 of the Energy Reorganization Act of 1974, as amended, for violations of:

(1) Sections 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, 109, or 1701 of the Atomic Energy Act of 1954, as amended;

(2) Section 206 of the Energy Reorganization Act;

(3) Any rule, regulation, or order issued pursuant to the sections specified in paragraph (b)(1) of this section;

(4) Any term, condition, or limitation of any certificate of compliance or approved compliance plan issued under the sections specified in paragraph (b)(1) of this section.

Dated at Rockville, Maryland, this 6th day of February, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–3466 Filed 2–11–97; 8:45 am]

BILLING CODE 7590–01–P

[2] For the purpose of this subpart, the terms ''licensee'' or ''license'' used in parts 70, 73, and 74 of this chapter, mean, respectively, the Corporation, or the certificate of compliance or approved compliance plan.

NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

Policy and Procedure for Enforcement Actions; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement; amendment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its General Statement of Policy and Procedure for Enforcement Actions (Enforcement Policy) to modify Supplement VI, ''Fuel Cycle and Materials Operations,'' as well as to reflect recent NRC organizational changes. The Supplement VI amendment is warranted to reflect experience gained through fuel cycle enforcement actions and as a result of the Commission's recently designated responsibility for jurisdiction over the Gaseous Diffusion Plants (GDPs). The Enforcement Policy is also being amended to establish base civil penalties for GDPs. By a separate action published in this issue in the Federal Register, the Commission has issued a final rule amending the current regulations that govern GDPs. The revision to the Enforcement Policy reflects those amendments.

In addition, the Enforcement Policy is being amended to reflect recent NRC organizational changes. These changes redesignate which NRC officials are delegated the responsibility for performing certain enforcement functions. A clarification is also being made to remove ambiguity as to when the Commission is to be consulted prior to issuance of certain actions proposing civil penalties.

DATES: This amendment is effective on February 12, 1997. Comments are due on or before March 14, 1997.

ADDRESSES: Send written comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Docketing and Service Branch. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm, Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2741.

SUPPLEMENTARY INFORMATION:

The Commission's Enforcement Policy was first issued on September 4, 1980. The Enforcement Policy is published as NUREG–1600, ''General Statement of Policy and Procedure for NRC Enforcement Actions (60 FR 34381; June 30, 1995).'' The Enforcement Policy has been amended on a number of occasions, most recently on October 18, 1996 (61 FR 54461). As a result of experience gained through fuel cycle enforcement actions and amendments to 10 CFR part 76 being published today as a final regulation, an amendment to the Enforcement Policy is warranted to provide guidance on categorizing potential violations of 10 CFR part 76 and establish base civil penalties for violation of part 76. This amendment to the Enforcement Policy is being issued concurrently with the new rule.

Base Civil Penalties

Table 1A of the policy, which establishes base civil penalties for different types of licensees, is being modified to add GDPs to category ''a.'' The amended table will provide that the base civil penalty for a Severity Level I violation of the Commission's requirements by a GDP will be at the statutory limit of $110,000. In accordance with Table 1B, base civil penalties for Severity Level II and III violations are lesser amounts. In determining the proper civil penalty amount, the Commission considered the structures of these tables, which generally take into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration.

Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and to workers receive higher civil penalties. In the case of GDPs, there are large numbers of workers at the sites, significant source term present (i.e., inventory of licensed material), and various chemical and toxic substances used as part of the GDPs operations. Therefore, in the event of an accident, there is the potential for significant radiological and non-radiological hazards to members of the public, including workers, and the environment.

With regard to the secondary factor of ability to pay, it is not the NRC's intention that the economic impact of a civil penalty be so severe that it puts the licensee or certificate holder out of business [1] or adversely affects a licensee's or certificate holder's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amount of penalties take into account a licensee's or certificate holder's ability to pay. In this case, issuing a civil penalty of less than $110,000 to the Corporation for a significant violation would be disproportionate to the Corporation's significant revenues. In other words, a civil penalty of $110,000 for a Severity Level I violation would be financially appropriate, but not financially crippling. In addition, a penalty based on this amount should get more attention from the Corporation and should have a greater deterrent effect.

Given the financial resources of GDPs, it is appropriate to utilize significant civil penalties to provide an effective deterrence from violating the Commission's requirements such that the likelihood of performance necessitating a shutdown order would be minimal. Accordingly, a base civil penalty of $110,000 is appropriate in view of the potential consequences during an accident and the ability to pay. In addition, establishing the base civil penalty at the statutory limit would provide, at the outset, a clear message concerning the cost of noncompliance and additional motivation to maintain safety and compliance.

Severity Levels

The policy recognizes that regulatory requirements have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation, including both the technical significance and the regulatory significance, is evaluated as the first step in the enforcement process. In considering the significance of a violation, the staff considers the technical significance (i.e., actual and potential consequences) and regulatory significance. Supplement VI, ''Fuel Cycle and Materials Operations,'' is being amended to provide additional examples for categorizing the severity levels of violations.

The changes are:

Severity Level I

1. Example A.5, which is being added to Supplement VI, is consistent with Supplement I guidance. This example is applicable for the Gaseous Diffusion Plants (GDPs) because other fuel facilities do not have Technical Safety Requirements (TSRs). Safety limits are those bounds within which the process variables must be maintained for adequate control of the operation and that must not be exceeded in order to protect the integrity of the physical

[1] Orders, rather than civil penalties, are used when the intent is to suspend or terminate licensed activities.

system that is designed to guard against the uncontrolled release of radioactivity.

2. Example A.6 is being added to Supplement VI to emphasize that a significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not, is of very significant regulatory concern. This concern exists because an actual impact to the health and safety of the public or workers has occurred from activities related to the processing of radioactive material.

Severity Level II

1. Example B.4 is being added to Supplement VI to emphasize that, although less significant than Example A.3 in Supplement VI, the absence of all the criticality safety controls for a single anticipated or unanticipated nuclear criticality scenario is of very significant regulatory concern when the availability of fissile material makes a nuclear criticality accident possible.

2. Example B.5 is being added to Supplement VI to underscore that events which do not involve actual significant injuries or loss of life, but reasonably could have if circumstances had been different, are considered of very significant regulatory concern.

Severity Level III

1. Example C.5 is being modified in Supplement VI so that it is consistent with Supplement IV guidance. The NRC considers that a substantial potential for exposures, radiation levels, contamination levels, or releases (including releases of toxic material) caused by the failure to comply with NRC regulations or with procedures established to comply with license conditions to be a significant regulatory concern because it could have serious consequences to the public and licensee employees.

2. Example C.12 is being added to Supplement VI to emphasize that the failure of a certified facility to comply with a limiting condition for operation is considered a significant regulatory concern. This example is similar to Supplement I guidance and has been selected for the GDPs because other fuel cycle facilities do not have TSRs.

3. Example C.13 is being added to Supplement VI to emphasize that the loss of defense-in-depth over licensed or certified activities is considered a significant regulatory concern. This example is consistent with Supplement I guidance and is applicable to both fuel cycle and gaseous diffusion operations.

4. Example C.14, which is consistent with Supplement I guidance, is being added to Supplement VI. This example is generally applicable to the fuel cycle facilities.

5. Example C.15 is being added to Supplement VI. The failure to meet the requirements of 10 CFR 76.68 is significant because of the importance of certificate holders using the required process for maintaining and operating the facilities in accordance with the design and procedures described in their safety analysis report when there is uncertainty as to whether an unreviewed safety question is present. An after-the-fact evaluation that demonstrates that an unreviewed safety question was not involved would, in general, not mitigate the regulatory significance of failing to perform an appropriate evaluation prior to implementation of the change.

6. Example C.16 is being added to Supplement VI to emphasize that adequate control over vendors or contractors performing safety-related work or providing safety-related services is a significant regulatory concern. This example amplifies the NRC's concern that all safety-related activities, whether performed by the certificate holder or by one of its contractors, be conducted in accordance with the requirements in the application, TSRs and certificates.

7. Example C.17, which is consistent with the Supplement I guidance, is being added to Supplement VI. This example points out that equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient is a significant regulatory concern.

8. Example C.18 is being added to Supplement IV. This example indicates that the absence of all but one criticality safety control for a single anticipated or unanticipated nuclear criticality scenario is a significant regulatory concern when a critical mass of fissile material was present or reasonably available, because a nuclear criticality accident was possible.

Severity Level IV

1. Although less significant than the above examples, examples D.5 through D.8 are being added to Supplement VI to stress that such failures are more than a minor concern because they could lead to a more serious concern if left uncorrected.

Organizational Changes

In addition to the above changes, recent NRC organizational changes have redistributed certain staff functions reporting to the Executive Director for Operations. Under the previous organization, the Deputy Executive Director for Nuclear Material Safety, Safeguards, and Operations Support (DEDS) was delegated the authority to approve and/or issue escalated enforcement actions associated with licensees of the Office of Nuclear Material Safety and Safeguards (NMSS). Similarly, the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research (DEDR) was delegated the authority to approve and/or issue escalated enforcement actions associated with licensees of the Office of Nuclear Reactor Regulation (NRR). Based on this distribution of functions, these two Deputy Executive Directors were designated as the principal enforcement officers of the NRC.

The NRC organizational changes have replaced the previous two Deputy Executive Director positions with three new Deputy Executive Director positions. Under the new organizational arrangement, the NRC Office of Enforcement (OE) reports to the Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations, and Enforcement (DEDO), and NMSS and NRR both report to the Deputy Executive Director for Regulatory Programs (DEDR). This change in reporting responsibilities consolidates the technical office oversight under the new DEDR, and redesignates a single deputy, the DEDO, as the NRC's principal enforcement officer.

Consistent with this change, the NRC Enforcement Policy is being modified to replace all previous references to either Deputy Executive Director with references to the DEDO. As such, the Enforcement Policy will designate the DEDO as having the authority to approve and/or issue escalated enforcement actions associated with either NRR or NMSS licensees. These changes will be reflected in the amendment to NUREG–1600.

Clarification

The Commission previously published (61 FR 65088, December 10, 1996) changes to the Enforcement Policy concerning consultation with the Commission prior to issuance of enforcement actions that proposed a civil penalty more than three times the Severity Level value shown in Table 1A for a single violation. The Commission is re-publishing that portion of the Policy (Section III.2) with slightly revised language to remove ambiguity and make clear that the requirement applies to a single violation or problem and not the total of multiple penalties

that may be proposed in one enforcement action. This is consistent with the Commission's original understanding and intent.

Paperwork Reduction Act Statement

This policy statement 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 the Office of Management and Budget, approval number 3150–0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

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.

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, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy is amended by:

a. Changing the first paragraph under Section III, ''Responsibilities,'' by designating the principal enforcement officer of the NRC as ''the Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations, and Enforcement (DEDO), hereafter referred to as the Deputy Executive Director,'' and deleting the references to the former Deputy Executive Director for Nuclear Material Safety, Safeguards, and Operations Support (DEDS) and the former Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations, and Research (DEDR).

b. Revising all subsequent references to ''the appropriate Deputy Executive Director'' to read ''the Deputy Executive Director.''

c. Revising Section III, ''Responsibilities,'' Section VI, ''Enforcement Actions,'' Subsection B., Table 1A, Category a., and Supplement VI, ''Fuel Cycle and Materials Operations,'' as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

* * * * *

III. Responsibilities

* * * * *

Unless Commission consultation or notification is required by this policy, the NRC staff may depart, where warranted in the public's interest, from this policy as provided in Section VII, ''Exercise of Enforcement Discretion.'' The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. The Commission will also be provided notice the first time that discretion is exercised for a plant meeting the criteria of Section VII.B.2. In addition, the Commission will be consulted prior to taking action in the following situations (unless the urgency of the situation dictates immediate action):

* * * * *

(2) Proposals to impose a civil penalty for a single violation or problem that is greater than 3 times the Severity Level I value shown in Table 1A for that class of licensee;

* * * * *

VI. Enforcement Actions

* * * * *

B. Civil Penalty

TABLE 1A—BASE CIVIL PENALTIES

a. Power reactors and gaseous diffusion plants	$110,000
b. Fuel fabricators, industrial processors, and independent spent fuel and monitored retrievable storage installations	27,500
c. Test reactors, mills and uranium conversion facilities, contractors, vendors, waste disposal licensees, and industrial radiographers	11,000
d. Research reactors, academic, medical, or other material licensee [1]	5,500

[1] This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

* * * * *

Supplement VI—Fuel Cycle and Materials Operations

This supplement provides examples of violations in each of the four severity levels as guidance in determining the appropriate severity level for violations in the area of fuel cycle, gaseous diffusion plants, and materials operations.

A. Severity Level I—Violations involving for example:

* * * * *

3. A nuclear criticality accident;

4. A failure to follow the procedures of the quality management program, required by 10 CFR 35.32, that results in a death or serious injury (e.g., substantial organ impairment) to a patient;

5. A safety limit, as defined in 10 CFR 76.4, the Technical Safety Requirements, or the application being exceeded; or

6. Significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not.

B. Severity Level II—Violations involving for example:

* * * * *

2. A system designed to prevent or mitigate a serious safety event being inoperable;

3. A substantial programmatic failure in the implementation of the quality management program required by 10 CFR 35.32 that results in a misadministration;

4. A failure to establish, implement, or maintain all criticality controls (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible; or

5. The potential for a significant injury or loss of life due to a loss of control over licensed or certified activities, including chemical processes that are integral to the licensed or certified activity, whether radioactive material is released or not (e.g., movement of liquid UF_6 cylinder by unapproved methods).

C. Severity Level III—Violations involving for example:

1. A failure to control access to licensed materials for radiation protection purposes as specified by NRC requirements;

* * * * *

5. A substantial potential for exposures, radiation levels, contamination levels, or releases, including releases of toxic material caused by a failure to comply with NRC regulations, from licensed or certified activities in excess of regulatory limits;

* * * * *

10. A failure to receive required NRC approval prior to the implementation of a change in licensed activities that has radiological or programmatic significance, such as, a change in ownership; lack of an RSO or replacement of an RSO with an unqualified individual; a change in the

location where licensed activities are being conducted, or where licensed material is being stored where the new facilities do not meet safety guidelines; or a change in the quantity or type of radioactive material being processed or used that has radiological significance;

11. A significant failure to meet decommissioning requirements including a failure to notify the NRC as required by regulation or license condition, substantial failure to meet decommissioning standards, failure to conduct and/or complete decommissioning activities in accordance with regulation or license condition, or failure to meet required schedules without adequate justification;

12. A significant failure to comply with the action statement for a Technical Safety Requirement Limiting Condition for Operation where the appropriate action was not taken within the required time, such as:

(a) In an autoclave, where a containment isolation valve is inoperable for a period in excess of that allowed by the action statement; or

(b) Cranes or other lifting devices engaged in the movement of cylinders having inoperable safety components, such as redundant braking systems, or other safety devices for a period in excess of that allowed by the action statement;

13. A system designed to prevent or mitigate a serious safety event:

(a) Not being able to perform its intended function under certain conditions (e.g., safety system not operable unless utilities available, materials or components not according to specifications); or

(b) Being degraded to the extent that a detailed evaluation would be required to determine its operability;

14. Changes in parameters that cause unanticipated reductions in margins of safety;

15. A significant failure to meet the requirements of 10 CFR 76.68, including a failure such that a required certificate amendment was not sought;

16. A failure of the certificate holder to conduct adequate oversight of vendors or contractors resulting in the use of products or services that are of defective or indeterminate quality and that have safety significance;

17. Equipment failures caused by inadequate or improper maintenance that substantially complicates recovery from a plant transient; or

18. A failure to establish, maintain, or implement all but one criticality control (or control systems) for a single nuclear criticality scenario when a critical mass of fissile material was present or reasonably available, such that a nuclear criticality accident was possible.

D. Severity Level IV—Violations involving for example:

* * * * *

2. Other violations that have more than minor safety or environmental significance;

3. Failure to follow the quality management (QM) program, including procedures, whether or not a misadministration occurs, provided the failures are isolated, do not demonstrate a programmatic weakness in the implementation of the QM program, and have limited consequences if a misadministration is involved; failure to conduct the required program review; or failure to take corrective actions as required by 10 CFR 35.32;

4. A failure to keep the records required by 10 CFR 35.32 or 35.33;

5. A less significant failure to comply with the Action Statement for a Technical Safety Requirement Limiting Condition for Operation when the appropriate action was not taken within the required time;

6. A failure to meet the requirements of 10 CFR 76.68 that does not result in a Severity Level I, II, or III violation;

7. A failure to make a required written event report, as required by 10 CFR 76.120(d)(2); or

8. A failure to establish, implement, or maintain a criticality control (or control system) for a single nuclear criticality scenario when the amount of fissile material available was not, but could have been sufficient to result in a nuclear criticality.

* * * * *

Dated at Rockville, Maryland, this 6th day of February, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–3465 Filed 2–11–97; 8:45 am]

BILLING CODE 7590–01–P

federal register

Wednesday
February 12, 1997

Part V

Department of Commerce

Bureau of Export Administration

15 CFR Part 738, et al.

Export Licensing; Addition of the Republic of South Korea to Australia Group; Final Rule

Revisions to the Commerce Control List: Exports of Mixtures Containing Trace Quantities of Precursor Chemicals; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 738, 740, 770, 772, and 774

[Docket No. 961219362–6362–01]

RIN 0694–AB52

Revisions to the Export Administration Regulations: Addition of the Republic of South Korea to Australia Group (AG), Clarification to the Sample Shipments Exemption in ECCN 1C350, and Correction to the Commerce Country Chart

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: As of October 1996, the Republic of Korea (South Korea) is a member of the Australia Group (AG). Therefore, South Korea is to be treated as an AG member under U.S. regulations. This includes exemption from certain requirements under the Export Administration Regulations (EAR) for items controlled for Chemical/Biological weapons proliferation (CB) reasons.

In addition, this rule makes a clarification to the exemption for sample shipments in ECCN 1C350 and corrections to Supplement Number 1 to part 738, the Commerce Country Chart, CB Column 3 (Chemical and Biological Weapons), by removing the license requirement symbol ''X'' from Romania and South Africa, as this symbol was inadvertently included in previous regulations, and removing all the license requirement symbols ''X'' from the Iraq row and replacing them with the phrase that is common to all embargoed destinations, ''See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination''.

This action will lessen the administrative burden on U.S. exporters, by decreasing license application requirements for exports of items controlled for CB reasons to South Korea, Romania, and South Africa.

DATE: This rule is effective February 12, 1997.

FOR FURTHER INFORMATION CONTACT: For questions of a general nature, call Sharron Cook, Regulatory Policy Division, at (202)482–2440.

For questions of a technical nature, contact Jim Seevaratnam, Chemical and Biological Controls Division, at (202)482–3343 or at facsimile (202) 482–0751.

For questions on Chemical and Biological Warfare policy controls, contact Patricia Sefcik, Chemical and Biological Controls Division at (202) 482–0707 or at facsimile (202) 482–0751.

SUPPLEMENTARY INFORMATION:

Background

As a result of the Republic of Korea (South Korea) being admitted to the Australia Group (AG), this rule adds South Korea to Supplement Number 1 to part 740, Country Group A, Column A:3 (Australia Group) and removes the license requirement symbol ''X'' from South Korea in Supplement Number 1 to part 738, the Commerce Country Chart, CB Column 2 (Chemical and Biological Weapons).

In addition, the license requirement symbol ''X'' is removed from Romania and South Africa, in Supplement Number 1 to part 738, the Commerce Country Chart, CB Column 3 (Chemical and Biological Weapons), as this symbol was inadvertently included in previous regulations.

Additional corrections are made to Supplement Number 1 to part 738, the Commerce Country Chart, by removing all the license requirement symbols ''X'' from the Iraq row and replacing them with the phrase, ''See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination'', and removing the footnote 1 reference from Bosnia & Herzegovina, Croatia, and Serbia & Montenegro.

In section 770.2(k) of the EAR, interpretation 11, ''precursor chemicals'', has been revised by adding South Korea to the countries that are exempt from the ECCN 1C350 license requirements for the chemicals listed. In addition, Poland, Romania, and Slovak Republic have been added to this paragraph, as they were inadvertently omitted in previous regulations.

In addition, the definition for ''Australia Group'', in part 772, has been revised to include South Korea.

Lastly, this rule makes a clarification to the exemption for sample shipments found in License Requirement Note 1 of ECCN 1C350. The clarification is listed in paragraph (c) of the note and states, ''A consignee that receives a sample shipment under this exclusion may not resell, transfer, or reexport the sample shipment but may use the sample shipment for any other purpose unrelated to chemical weapons. However, a sample shipment received under this exclusion remains subject to all General Prohibitions including the end-use restriction described in § 744.4 of the EAR.'' This end-use restriction was added to make clear to exporters that when BXA deleted ''for research or evaluation'' from the sample shipment exclusion (60 F.R. 54030, October 19, 1995), BXA did not intend to allow the resell, transfer or reexport of the sample shipments by consignees.

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. 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 0694–0086 and 0694–0088. The effect of this rule will decrease license application requirements, thus reduce the paperwork burden on the public. Notwithstanding any other provision of law, no person is required to respond 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.

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 (see 5 U.S.C. 553(a)(1)). 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 Sharron Cook, 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 738, 770, 772, and 774

Exports, Foreign trade.

15 CFR Part 740

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

Accordingly, parts 738, 740, 770, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–799A) are amended as follows:

1. The authority citation for 15 CFR parts 738 and 774 continue to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995, 3 C.F.R. 1995 Comp. 501 (1996); Notice of August 14, 1996 (61 FR 42527, August 15, 1996).

2. The authority citation for 15 CFR parts 740, 770 and 772 continue 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, 3 C.F.R. 1995 Comp. 501 (1996); Notice of August 14, 1996 (61 FR 42527, August 15, 1996).

PART 738—[AMENDED]

3. Supplement Number 1 to Part 738, Commerce Country Chart, is revised to read as follows:

COMMERCE COUNTRY CHART

Reason for Control

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Crime control			Anti-terrorism	
	CB column 1	CB column 2	CB column 3	NP column 1	NP column 2	NS column 1	NS column 2	MT column 1	RS column 1	RS column 2	CC column 1	CC column 2	CC column 3	AT column 1	AT column 2
Afghanistan	X	X	X	X		X	X	X	X	X	X		X		
Albania	X	X		X		X	X	X	X	X	X	X			
Algeria	X	X		X	X	X	X	X	X	X	X		X		
Andorra	X	X		X	X	X	X	X	X	X	X		X		
Angola [1]	X	X		X	X	X	X	X	X	X	X		X		
Antigua & Barbuda	X	X		X		X	X	X	X	X	X		X		
Argentina	X					X	X	X	X	X	X		X		
Armenia	X	X	X	X		X	X	X	X	X	X	X			
Australia	X					X		X	X						
Austria	X					X		X	X	X	X		X		
Azerbaijan	X	X	X	X		X	X	X	X	X	X	X			
Bahamas, The	X	X		X		X	X	X	X	X	X		X		
Bahrain	X	X	X	X		X	X	X	X	X	X		X		
Bangladesh	X	X		X		X	X	X	X	X	X		X		
Barbados	X	X		X		X	X	X	X	X	X		X		
Belarus	X	X	X	X		X	X	X	X	X	X	X			
Belgium	X					X		X	X						
Belize	X	X		X		X	X	X	X	X	X		X		
Benin	X	X		X		X	X	X	X	X	X		X		
Bhutan	X	X		X		X	X	X	X	X	X		X		
Bolivia	X	X		X		X	X	X	X	X	X		X		
Bosnia & Herzegovina	X	X		X		X	X	X	X	X	X		X		
Botswana	X	X		X		X	X	X	X	X	X		X		
Brazil	X	X				X	X	X	X	X	X		X		
Brunei	X	X		X		X	X	X	X	X	X		X		
Bulgaria	X	X	X			X	X	X	X	X	X	X			
Burkina Faso	X	X		X		X	X	X	X	X	X		X		
Burma	X	X	X	X		X	X	X	X	X	X		X		
Burundi	X	X		X		X	X	X	X	X	X		X		
Cambodia	X	X		X		X	X	X	X	X	X	X			
Cameroon	X	X		X		X	X	X	X	X	X		X		
Canada															
Cape Verde	X	X		X		X	X	X	X	X	X		X		
Central African Republic	X	X		X		X	X	X	X	X	X		X		
Chad	X	X		X		X	X	X	X	X	X		X		
Chile	X	X		X		X	X	X	X	X	X		X		
China	X	X	X	X		X	X	X	X	X	X		X		
Colombia	X	X		X		X	X	X	X	X	X		X		
Comoros	X	X		X	X	X	X	X	X	X	X		X		
Congo	X	X		X		X	X	X	X	X	X		X		
Costa Rica	X	X		X		X	X	X	X	X	X		X		
Cote d'Ivoire	X	X		X		X	X	X	X	X	X		X		
Croatia	X	X		X		X	X	X	X	X	X		X		
Cuba	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.														
Cyprus	X	X		X		X	X	X	X	X	X		X		
Czech Republic	X					X	X	X	X	X	X		X		
Denmark	X					X		X	X						
Djibouti	X	X		X	X	X	X	X	X	X	X		X		
Dominica	X	X		X		X	X	X	X	X	X		X		
Dominican Republic	X	X		X		X	X	X	X	X	X		X		
Ecuador	X	X		X		X	X	X	X	X	X		X		
Egypt	X	X	X	X		X	X	X	X	X	X		X		

COMMERCE COUNTRY CHART—Continued

Reason for Control

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Crime control			Anti-terrorism	
	CB column 1	CB column 2	CB column 3	NP column 1	NP column 2	NS column 1	NS column 2	MT column 1	RS column 1	RS column 2	CC column 1	CC column 2	CC column 3	AT column 1	AT column 2
El Salvador	X	X		X		X	X	X	X	X	X		X		
Equatorial Guinea	X	X		X		X	X	X	X	X	X		X		
Eritrea	X	X		X		X	X	X	X	X	X		X		
Estonia	X	X		X		X	X	X	X	X	X	X			
Ethiopia	X	X		X		X	X	X	X	X	X		X		
Fiji	X	X		X		X	X	X	X	X	X		X		
Finland	X					X		X	X	X	X		X		
France	X					X		X	X						
Gabon	X	X		X		X	X	X	X	X	X		X		
Gambia, The	X	X		X		X	X	X	X	X	X		X		
Georgia	X	X	X	X		X	X	X	X	X	X	X			
Germany	X					X		X	X						
Ghana	X	X		X		X	X	X	X	X	X		X		
Greece	X					X		X	X						
Grenada	X	X		X		X	X	X	X	X	X		X		
Guatemala	X	X		X		X	X	X	X	X	X		X		
Guinea	X	X		X		X	X	X	X	X	X		X		
Guinea-Bissau	X	X		X		X	X	X	X	X	X		X		
Guyana	X	X		X		X	X	X	X	X	X		X		
Haiti	X	X		X		X	X	X	X	X	X		X		
Honduras	X	X		X		X	X	X	X	X	X		X		
Hong Kong	X	X		X		X	X[2]	X	X	X	X		X		
Hungary	X					X	X	X	X	X	X		X		
Iceland	X			X		X	X	X	X						
India	X	X	X	X	X	X	X	X	X	X	X		X		
Indonesia	X	X		X		X	X	X	X	X	X		X		
Iran	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.														
Iraq[1]	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.														
Ireland	X					X		X	X	X	X		X		
Israel	X	X	X	X	X	X	X	X	X	X	X		X		
Italy	X					X		X	X						
Jamaica	X	X		X		X	X	X	X	X	X		X		
Japan	X					X		X	X						
Jordan	X	X	X	X		X	X	X	X	X	X		X		
Kazakhstan	X	X	X	X		X	X	X	X	X	X	X			
Kenya	X	X		X		X	X	X	X	X	X		X		
Kiribati	X	X		X		X	X	X	X	X	X		X		
Korea, North	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.														
Korea, South	X					X	X[2]	X	X	X	X		X		
Kuwait	X	X	X	X		X	X	X	X	X	X		X		
Kyrgyzstan	X	X	X	X		X	X	X	X	X	X	X			
Laos	X	X		X		X	X	X	X	X	X	X			
Latvia	X	X		X		X	X	X	X	X	X	X			
Lebanon	X	X	X	X		X	X	X	X	X	X		X		
Lesotho	X	X		X		X	X	X	X	X	X		X		
Liberia	X	X		X		X	X	X	X	X	X		X		
Libya	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.														
Liechtenstein	X	X		X		X	X	X	X	X	X		X		
Lithuania	X	X		X		X	X	X	X	X	X	X			
Luxembourg	X					X		X	X						
FYROM (Macedonia)	X	X		X		X	X	X	X	X	X		X		
Madagascar	X	X		X		X	X	X	X	X	X		X		
Malawi	X	X		X		X	X	X	X	X	X		X		
Malaysia	X	X		X		X	X	X	X	X	X		X		
Maldives	X	X		X		X	X	X	X	X	X		X		
Mali	X	X		X		X	X	X	X	X	X		X		
Malta	X	X		X		X	X	X	X	X	X		X		
Marshall Islands	X	X		X		X	X	X	X	X	X		X		
Mauritania	X	X		X		X	X	X	X	X	X		X		
Mauritius	X	X		X		X	X	X	X	X	X		X		
Mexico	X	X		X		X	X	X	X	X	X		X		
Micronesia	X	X		X	X	X	X	X	X	X	X		X		
Moldova	X	X	X	X		X	X	X	X	X	X				
Monaco	X	X		X		X	X	X	X	X	X		X		
Mongolia	X	X	X	X		X	X	X	X	X	X	X			
Morocco	X	X		X		X	X	X	X	X	X		X		
Mozambique	X	X		X		X	X	X	X	X	X		X		
Namibia	X	X		X		X	X	X	X	X	X		X		
Nauru	X	X		X		X	X	X	X	X	X		X		
Nepal	X	X		X		X	X	X	X	X	X		X		
Netherlands	X					X		X	X						
New Zealand	X					X		X	X						
Nicaragua	X	X		X		X	X	X	X	X	X		X		
Niger	X	X		X		X	X	X	X	X	X		X		

COMMERCE COUNTRY CHART—Continued

Reason for Control

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Crime control			Anti-terrorism	
	CB column 1	CB column 2	CB column 3	NP column 1	NP column 2	NS column 1	NS column 2	MT column 1	RS column 1	RS column 2	CC column 1	CC column 2	CC column 3	AT column 1	AT column 2
Nigeria	X	X		X		X	X	X	X	X	X		X		
Norway	X					X		X	X						
Oman	X	X	X	X	X	X	X	X	X	X	X		X		
Pakistan	X	X	X	X	X	X	X	X	X	X	X		X		
Palau	X	X		X		X	X	X	X	X	X		X		
Panama	X	X		X		X	X	X	X	X	X		X		
Papua New Guinea	X	X		X		X	X	X	X	X	X		X		
Paraguay	X	X		X		X	X	X	X	X	X		X		
Peru	X	X		X		X	X	X	X	X	X		X		
Philippines	X	X		X		X	X	X	X	X	X		X		
Poland	X					X	X	X	X	X	X		X		
Portugal	X					X		X	X						
Qatar	X	X	X	X		X	X	X	X	X	X		X		
Romania	X					X	X	X	X	X	X	X			
Russia	X	X	X			X	X	X	X	X	X	X			
Rwanda [1]	X	X		X		X	X	X	X	X	X	X	X		
St. Kitts & Nevis	X	X	X	X		X	X	X	X	X	X		X		
St. Lucia	X	X		X		X	X	X	X	X	X		X		
St. Vincent & Grenadines	X	X		X		X	X	X	X	X	X		X		
San Marino	X	X		X		X	X	X	X	X	X		X		
Sao Tome & Principe	X	X		X		X	X	X	X	X	X		X		
Saudi Arabia	X	X	X	X		X	X	X	X	X	X		X		
Senegal	X	X		X		X	X	X	X	X	X		X		
Serbia & Montenegro	X	X		X		X	X	X	X	X	X		X		
Seychelles	X	X		X		X	X	X	X	X	X		X		
Sierra Leone	X	X		X		X	X	X	X	X	X		X		
Singapore	X	X		X		X	X	X	X	X	X		X		
Slovakia	X					X	X	X	X	X	X		X		
Slovenia	X	X		X		X	X	X	X	X	X		X		
Solomon Islands	X	X		X		X	X	X	X	X	X		X		
Somalia	X	X		X		X	X	X	X	X	X		X		
South Africa	X	X				X	X	X	X	X	X		X		
Spain	X					X		X	X						
Sri Lanka	X	X		X		X	X	X	X	X	X		X		
Sudan	X	X		X		X	X	X	X	X	X		X	X	X
Surinam	X	X		X		X	X	X	X	X	X		X		
Swaziland	X	X		X		X	X	X	X	X	X		X		
Sweden	X					X		X	X	X	X		X		
Switzerland	X					X		X	X	X	X		X		
Syria	X	X	X	X		X	X	X	X	X	X		X	X	
Taiwan	X	X	X	X		X	X	X	X	X	X		X		
Tajikistan	X	X	X	X		X	X	X	X	X	X	X			
Tanzania	X	X		X		X	X	X	X	X	X		X		
Thailand	X	X		X		X	X	X	X	X	X		X		
Togo	X	X		X		X	X	X	X	X	X		X		
Tonga	X	X		X		X	X	X	X	X	X		X		
Trinidad & Tobago	X	X		X		X	X	X	X	X	X		X		
Tunisia	X	X		X		X	X	X	X	X	X		X		
Turkey	X	X		X		X		X	X						
Turkmenistan	X	X	X	X		X	X	X	X	X	X	X			
Tuvalu	X	X		X		X	X	X	X	X	X		X		
Uganda	X	X		X		X	X	X	X	X	X		X		
Ukraine	X	X	X			X	X	X	X	X	X	X			
United Arab Emirates	X	X	X	X	X	X	X	X	X	X	X		X		
United Kingdom	X					X		X	X						
Uruguay	X	X		X		X	X	X	X	X	X		X		
Uzbekistan	X	X	X	X		X	X	X	X	X	X	X			
Vanuatu	X	X		X	X	X	X	X	X	X	X		X		
Vatican City	X	X		X		X	X	X	X	X	X		X		
Venezuela	X	X		X		X	X	X	X	X	X		X		
Vietnam	X	X	X	X		X	X	X	X	X	X	X			
Western Sahara	X	X		X		X	X	X	X	X	X		X		
Western Samoa	X	X		X		X	X	X	X	X	X		X		
Yemen	X	X	X	X		X	X	X	X	X	X		X		
Zaire	X	X		X		X	X	X	X	X	X		X		
Zambia	X	X		X		X	X	X	X	X	X		X		
Zimbabwe	X	X		X		X	X	X	X	X	X		X		

[1] This country is subject to United Nations Sanctions. See part 746 of the EAR for additional OFAC licensing requirements that may apply to your proposed transaction.

[2] A license is required only for computers controlled by 4A001, 4A002, & 4A003 if the CTP is greater than 10,000 Mtops. A license is NOT required for any other items subject to NS Column 2.

PART 740—[AMENDED]

4. In Supplement Number 1 to Part 740, Country Groups, Country Group A is revised to read as follows:

COUNTRY GROUP A

Country	[A:1]	Missile technology control regime [A:2]	Australia group [A:3]	Nuclear suppliers group [A:4]
Argentina		X	X	X
Australia	X	X	X	X
Austria [1]		X	X	X
Belgium	X	X	X	X
Brazil		X		
Bulgaria				X
Canada	X	X	X	X
Czech Republic			X	X
Denmark	X	X	X	X
Finland [1]		X	X	X
France	X	X	X	X
Germany	X	X	X	X
Greece	X	X	X	X
Hong Kong [1]				
Hungary		X	X	X
Iceland		X	X	
Ireland [1]		X	X	X
Italy	X	X	X	X
Japan	X	X	X	X
Korea, South [1]			X	X
Luxembourg	X	X	X	X
Netherlands	X	X	X	X
New Zealand [1]		X	X	X
Norway	X	X	X	X
Poland			X	X
Portugal	X	X	X	X
Romania			X	X
Russia		X		X
Slovakia			X	X
South Africa		X		X
Spain	X	X	X	X
Sweden [1]		X	X	X
Switzerland [1]		X	X	X
Turkey	X			
United Kingdom	X	X	X	X
United States	X	X	X	X

[1] Cooperating Countries.

PART 770—[AMENDED]

5. In section 770.2 paragraph (k) is amended by revising the third sentence to read as follows:

§ 770.2 Commodity interpretations.

* * * * *

(k) * * * These chemicals require a license to all countries except Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea (South), Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, and the United Kingdom.

* * * * *

PART 772—[AMENDED]

6. In part 772, the definition of ''Australia Group'' is revised to read as follows:

PART 772—DEFINITIONS OF TERMS

* * * * *

Australia Group. The members belonging to this group have agreed to adopt controls on dual-use chemicals, i.e., weapons precursors, equipment, and biological microorganisms and related equipment in order to prevent the proliferation of chemical and biological weapons. Member countries as of October 1996 include: Argentina, Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea (South), Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Spain, Sweden, Switzerland, the United Kingdom, and the United States. See also § 742.2 of the EAR.

* * * * *

PART 774—[AMENDED]

In Supplement No. 1 to part 774, Category 1—Materials, Chemicals, ''Microorganisms'', and Toxins, ECCN 1C350 is amended by revising the License Requirement Notes section to read as follows:

1C350 Chemicals, that may be used as precursors for toxic chemical agents.

* * * * *

License Requirement Notes

1. *SAMPLE SHIPMENTS:* Certain sample shipments of chemicals controlled under ECCN 1C350 may be made without a license, as provided by the following: a. Chemicals Not Eligible: The following chemicals are not eligible for sample shipments: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0), and

Methylphosphonyl difluoride (C.A.S. #676–99–3).

b. Countries Not Eligible: The following countries are not eligible to receive sample shipments: Cuba, Iran, Libya, North Korea, Sudan, Syria.

c. Sample Shipments: A license is not required for sample shipments when the cumulative total of these shipments does not exceed a 55-gallon container or 200 kg of each chemical to any one consignee per calendar year. Multiple sample shipments, in any quantity, not exceeding the totals indicated in this paragraph may be exported without a license, in accordance with the provisions of this NOTE 1. A consignee that receives a sample shipment under this exclusion may not resell, transfer or reexport the sample shipment, but may use the sample shipment for any other legal purpose unrelated to chemical weapons. However, a sample shipment received under this exclusion remains subject to all General Prohibitions including the end-use restriction described in § 744.4 of the EAR.

d. The exporter is required to submit a quarterly written report for shipments of samples made under this Note 1. The report must be on company letterhead stationery (titled ''Report of Sample Shipments of Chemical Precursors'' at the top of the first page) and identify the chemical(s), Chemical Abstract Service Registry (C.A.S.) number(s), quantity(ies), the ultimate consignee's name and address, and the date exported. The report must be sent to the U.S. Department of Commerce, Bureau of Export Administration, Room 2705, Washington, DC 20230, Attn: ''Report of Sample Shipments of Chemical Precursors''.

2. *MIXTURES*: Mixtures controlled by this entry that contain certain concentrations of precursor and intermediate chemicals are subject to the following licensing requirements:

a. A license is required, regardless of the concentrations in the mixture, for the following chemicals: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0) and Methylphosphonyl difluoride (C.A.S. #676–99–3);

b. A license is required when at least one of the following chemicals constitutes more than 10 percent of the weight of the mixture on a solvent free basis: Arsenic trichloride (C.A.S. #7784–34–1), Benzilic acid (C.A.S. #76–93–7), Diethyl ethylphosphonate (C.A.S. #78–38–6), Diethyl methylphosphonite (C.A.S. #15715–41–0), Diethyl-N,N-dimethylphosphoroamidate (C.A.S. #2404–03–7), N,N-Diisopropyl-beta-aminoethane thiol (C.A.S. #5842–07–9), N,N-Diisopropyl-2-aminoethyl chloride hydrochloride (C.A.S. #4261–68–1), N,N-Diisopropyl-beta-aminoethanol (C.A.S. #96–80–0), N,N-Diisopropyl-beta-aminoethyl chloride (C.A.S. #96–79–7), Dimethyl ethylphosphonate (C.A.S. #6163–75–3), Dimethyl methylphosphonate (C.A.S. #756–79–6), Ethylphosphonous dichloride [Ethylphosphinyl dichloride] (C.A.S. #1498–40–4), Ethylphosphonus difluoride [Ethylphosphinyl difluoride] (C.A.S. #430–78–4), Ethylphosphonyl dichloride (C.A.S. #1066–50–8), Methylphosphonous dichloride [Methylphosphinyl dicloride] (C.A.S. #676–83–5), Methylphosphonous difluoride [Methylphosphinyl difluoride] (C.A.S. #753–59–3), Methylphosphonyl dichloride (C.A.S. #676–97–1), Pinacolyl alcohol (C.A.S. #464–07–3), 3-Quinuclidinol (C.A.S. #1619–34–7), and Thiodiglycol (C.A.S. #111–48–8); (Related ECCN: 1C995)

c. A license is required when at least one of all other chemicals in the List of Items Controlled constitutes more than 25 percent of the weight of the mixture on a solvent free basis (related ECCN: 1C995); and

d. A license is not required under this entry for mixtures when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are controlled by ECCN EAR99.

e. Calculation of concentrations of AG-controlled chemicals.

1. Usual Commercial Purposes. In calculating the percentage of an AG controlled chemical in a mixture (solution), any other chemical must be excluded if it was not added for usual commercial purposes, but was added for the sole purpose of circumventing the Export Administration Regulations.

2. ''Solvent Free Basis Requirement.'' When calculating the percentage, by weight, of components in a chemical mixture, you must exclude from the calculation any component of the mixture that acts as a solvent.

3. Solvent—For purposes of this ECCN ''A substance capable of dissolving another substance to form a uniformly dispersed mixture (solution)''.

- Solvents are liquids at standard temperature and pressure (STP).
- In no instance is an AG controlled chemical considered a ''solvent''.
- All ingredients of mixtures are expressed in terms of weight.
- The solvent component of the mixture converts it into a solution.

3. *COMPOUNDS:* A license is not required under this entry for chemical compounds created with any chemicals identified in this ECCN 1C350, unless those compounds are also identified in this entry.

* * * * *

Dated: February 7, 1997.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 97–3490 Filed 2–11–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 961206342–6342–01]

RIN 0694–AB46

Revisions to the Commerce Control List: Exports of Mixtures Containing Trace Quantities of Precursor Chemicals; ECCNs 1C350 and 1C995

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration is amending the Commerce Control List (CCL) of the Export Administration Regulations (15 CFR parts 730–774) to simplify export controls on mixtures that contain relatively small amounts, ''traces'', of controlled precursor chemicals.

DATES: This rule is effective February 12, 1997.

FOR FURTHER INFORMATION CONTACT: For questions on foreign policy controls, call Patricia Sefcik, Bureau of Export Administration, Telephone: (202) 482–0707.

For questions of a technical nature on chemical weapon precursors, biological agents, and equipment that can be used to produce chemical and biological weapons agents, call James Seevaratnam, Bureau of Export Administration, Telephone: (202) 482–3343.

SUPPLEMENTARY INFORMATION: Currently, Export Control Classification Number (ECCN) 1C350 on the Commerce Control List (CCL) includes an exemption from controls for mixtures containing certain concentrations of precursor and intermediate chemicals identified by that entry. This exemption is on a solvent-free basis.

This final rule amends the CCL of the Export Administration Regulations (EAR) to implement a new treatment of ''trace chemicals'' under ECCN 1C350. If all the criteria set forth are met and the relevant General Prohibitions found in

part 736 do not apply, exports may be made under ECCN 1C350 without applying for a license, for mixtures that contain a cumulative total concentration of no more than 10,000 parts by weight (pbw) per million, of all precursor or intermediate chemicals listed in ECCN 1C350. Such mixtures are controlled under ECCN 1C995. This treatment is not available for mixtures containing the following precursor chemicals: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0), and Methylphosphonyl difluoride (C.A.S. #676–99–3).

This rule also revises the ''Related Definition'' section of ECCN 1C995 to clarify that mixtures containing trace quantities are controlled under this entry.

This new treatment will permit export without applying for a license for many common commercial products while requiring license applications for those mixtures that contain significant quantities of precursor chemicals.

Rulemaking Requirements

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

2. 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 number 0694–0088. The effect of this rule will decrease license application requirements, thus reduce the paperwork burden on the public. Notwithstanding any other provision of law, no person is required to respond 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.

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 (see 5 U.S.C. 553(a)(1)). 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 Sharron Cook, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR part 774

Exports, Foreign trade.

Accordingly, part 774 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s)); 30 U.S.C. 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, (3 CFR, 1994 Comp., p. 917 (1995)); Notice of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)); Notice of August 14, 1996 (61 FR 42527, August 15, 1996).

PART 774—[AMENDED]

2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'', and Toxins:

a. The License Requirements section of Export Control Classification Number (ECCN) 1C350 is amended by redesignating License Requirement note 3 as note 4, and by adding a new License Requirement note 3; and

b. the List of Items Controlled under ECCN 1C995 is revised to read as follows:

1C350 Chemicals that may be used as precursors for toxic chemical agents.

License Requirements

* * * * *

License Requirement Notes

* * * * *

3. *Trace Quantities:*

a. A license is required for mixtures containing any amount (including trace quantities) of the following chemicals: 0-Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0), and Methylphosphonyl difluoride (C.A.S. #676–99–3).

b. Except as noted in paragraph (a) of this Note, a license is *not* required under this entry for mixtures that contain a cumulative total concentration of no more than 10,000 parts by weight (pbw) per million of all precursor or intermediate chemicals listed in this entry. The calculation for this paragraph (b) should not be done on a solvent-free basis (related ECCN: 1C995).

c. Countries Not Eligible: The following countries are not eligible for exports under this Trace Quantities Note: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

* * * * *

1C995 Mixtures containing precursor and intermediate chemicals used in the ''production'' of chemical warfare agents that are not controlled by ECCN 1C350.

License Requirements

* * * * *

License Exceptions

* * * * *

List of Items Controlled

Unit: Kilograms.

Related Controls: N/A.

Related Definition: For calculation of *de minimis* quantities of controlled chemicals in mixtures, see License Requirement Notes 2 and 3 under ECCN 1C350, and § 770.4 of the EAR.

Items: The list of items controlled is contained in the ECCN heading.

* * * * *

Dated: February 7, 1997.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 97–3489 Filed 2–11–97; 8:45 am]

BILLING CODE 3510–33–P

federal register

Wednesday
February 12, 1997

Part VI

Department of Labor

Office of the Secretary

Wage and Hour Division

Occupational Safety and Health Administration

Office of Federal Contract Compliance Programs

29 CFR Parts 24, et al.

Expanded Use of Alternative Dispute Resolution in Programs Administered by the Department of Labor; Proposed Rule

DEPARTMENT OF LABOR

Office of the Secretary

Wage and Hour Division

Occupational Safety and Health Administration

Office of Federal Contract Compliance Programs

29 CFR Parts 24, 825, and 1977

29 CFR Chapter V

41 CFR Chapter 60

Expanded Use of Alternative Dispute Resolution in Programs Administered by the Department of Labor

AGENCY: Office of the Secretary, Wage and Hour Division, Occupational Safety and Health Administration, Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice; request for comments.

SUMMARY: This notice amends the Department of Labor's interim policy on the use of alternative dispute resolution (ADR), originally published on February 28, 1992 (57 FR 7292), and revised on June 26, 1992 (57 FR 28701). The Department of Labor (DOL) is interested in expanding the voluntary use of ADR in programs administered by the Department. Accordingly, the Department seeks public comment on a proposed pilot test of voluntary mediation and/or arbitration in six categories of cases: Discrimination cases arising under Section 11(c) of the Occupational Safety and Health Act; environmental ''whistleblower'' cases arising under the employee-protection provisions of the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Energy Reorganization Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act; cases arising under the Family and Medical Leave Act; cases arising under the Fair Labor Standards Act; compliance review cases arising under Executive Order 11246; and complaint investigation cases under the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212).

DATES: Comments are due by April 14, 1997.

ADDRESSES: Submit written comments to Roland G. Droitsch, Deputy Assistant Secretary for Policy, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue, N.W., Washington, DC 20210.

The Department is using this notice to experiment with the electronic filing of comments. Submit comments in electronic format through the World Wide Web of the Internet at the following Website: http://www.dol.gov/dol/public/regs/comments/main.htm.

Commenters who file electronically do not need to confirm their comments by submitting written confirmation copies. Interested parties will also be able to review comments filed (whether submitted in written or electronic format) at the same Website.

Questions about or problems with filing electronically should be submitted to: webmaster@dol.gov.

All of the comments received can be viewed at the Office of the Assistant Secretary for Policy, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue, N.W., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Jim Jones, Office of the Assistant Secretary for Policy, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue, N.W., Washington, DC 20210. Telephone (202) 219–6026. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: After discussing the legal authority for the Department's use of ADR, this Notice describes: a prior pilot test of ADR (the Philadelphia ADR Pilot), the use of ADR by public agencies, the DOL programs involved in the current pilot test, and the details of the test. The Department is interested in receiving comments on ADR and the pilot test generally, as well as on a number of specific issues identified in the Notice. For example, the Department invites comments on the use of mediation and arbitration in the pilot test, as well as on the relationship between these two ADR techniques, including the issue of whether arbitration (in addition to mediation) should be offered as an option in all categories of cases included in the pilot test.

Legal Authority

On February 28, 1992, under the original Administrative Dispute Resolution Act, Public Law 101–552, which expired on September 30, 1995, the Department published in the Federal Register (57 FR 7292) an interim policy on the use of ADR in the programs administered by DOL.

On October 19, 1996, President Clinton signed the Administrative Dispute Resolution Act of 1996 (ADR Act), Public Law 104–320, which reauthorized alternative means of dispute resolution in the Federal administrative process.

As did its predecessor statute (codified at 5 USC 575–580), the ADR Act of 1996 authorizes and encourages federal agencies to use arbitration, mediation, negotiated rulemaking, and other consensual methods of dispute resolution. With respect to arbitration, the ADR Act, in conjunction with the Federal Arbitration Act (9 USC 1–16): Provides for federal judicial enforcement of arbitration agreements; provides for judicial review and enforcement of arbitration awards; specifies the authority of the arbitrator; and establishes rules for arbitration proceedings, as well as rules governing the effect of arbitration awards.

The pilot test includes, among other methods of ADR, voluntary arbitration to which the Department would be a party. The Department believes that the arbitration procedure described in this Notice would be consistent with the Constitution, as currently interpreted by the Department of Justice.[1] In compliance with Section 8 of the ADR Act of 1996, before participating in binding arbitration, the Department will consult with the Attorney General and will issue guidance on the appropriate use of arbitration and when Department staff are authorized to use arbitration.

The Department also believes that the pilot test would advance the goals of Executive Order 12988 on Civil Justice Reform, issued by the President on February 5, 1996 (61 FR 4729). Section 1(c) of the Executive Order encourages the use of ADR techniques and processes by litigation counsel for federal agencies, if the ''use of a particular technique is warranted in the context of a particular claim or claims, and * * * such use will materially contribute to the prompt, fair, and efficient resolution of the claims.''

The Philadelphia ADR Pilot

The Department issued its 1992 interim ADR policy in conjunction with the start of a pilot test in the Philadelphia Region in which DOL managers served as mediators for enforcement cases that were awaiting litigation. The results of the Philadelphia ADR Pilot were encouraging. Of the 27 cases mediated in the pilot, 22 (81 per cent) were settled, and most were resolved in a single mediation session. The DOL participants independently concluded that the settlements were at least comparable to the likely outcome of litigation. Some of the cases were

[1] The most recent views of the Department of Justice are reflected in a September 7, 1995 memorandum from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, to John Schmidt, Associate Attorney General (''Constitutional Limitations on Federal Government Participation in Binding Arbitration'').

complex and would have cost the Department and the outside parties substantial time and resources to litigate.

Public Agency Use of ADR

In 1993, a National Performance Review report strongly endorsed ADR as a means of reducing governments costs and improving efficiency. Today, the use of ADR by public agencies is growing.

In the federal government, for example, the Equal Employment Opportunity Commission (with the assistance of the Federal Mediation and Conciliation Service) and the National Labor Relations Board are exploring various ADR techniques for employment-related disputes brought before those agencies. The Department of Justice (DOJ), in turn, has begun a program to facilitate mediation in civil litigation handled by DOJ. A pilot test of mediation to resolve complaints under the Americans with Disabilities Act is also underway at DOJ.

The States have begun to expand their use of alternative dispute resolution as well. On February 16, 1996, for example, the Massachusetts Commission against Discrimination (MCAD) launched an ADR program that will offer voluntary arbitration of employment discrimination disputes. The MCAD program will operate under a new due-process protocol to assure that the arbitration process is fair.

The December 1994 Report and Recommendations of the Commission on the Future of Worker-Management Relations (the Dunlop Commission) urged the Department to expand the Philadelphia ADR Pilot to the remaining DOL regions and to enlarge the mix of cases submitted to mediation. The Dunlop Commission also advised DOL to ''explore the use of different forms of ADR, including mini trials, early neutral evaluation, and arbitration to determine which processes are most effective for different kinds of cases.''

Proposed Pilot Test

In light of the enactment of the ADR Act of 1996, the recommendations of the National Performance Review and the Dunlop Commission, as well as the ADR initiatives of federal and state agencies, the Department is interested in building on its past use of mediation and in exploring the possible benefits of arbitration, under appropriate circumstances. After inviting and considering public comments, the Department therefore plans to proceed with a pilot test to help determine whether private, voluntary mediation and/or arbitration can achieve the goals of (1) resolving disputes faster and more cheaply than conventional litigation; (2) producing resolutions that satisfy the parties and DOL; and (3) using the enforcement and litigation resources of DOL more effectively. (The Department will continue to consider, on a case-by-case basis, other opportunities to participate in ADR, either when DOL is asked to do so by an outside party or by a court or other adjudicative authority, or when a DOL agency otherwise believes that ADR would be effective in resolving a particular dispute.)

Under the proposed pilot test, the Department will continue to fully investigate employees' complaints of violations of the laws covered by this pilot test, as warranted. In selected cases, as described below, employees and employers will be offered the option to mediate and/or arbitrate disputes under the Department's auspices. In these cases, the Solicitor's Office may provide legal representation to employees. In other types of cases, as indicated, the Department would offer an employer/contractor the option of mediation or arbitration, and the Department itself would be a party to the proceeding. The pilot test will not include disputes in which private parties entered into an arbitration or mediation agreement prior to the dispute.

The Department recognizes that Federal agencies acquired little if any experience with arbitration during the five-year life of the original ADR Act (1990–1995) and thus intends to proceed carefully in this area. For example, the Department is committed to following proper due process safeguards in any use of ADR techniques. In proposing the pilot test described in this Notice, the Department reviewed the ''Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising out of the Employment Relationship'' issued by the Task Force on Alternative Dispute Resolution in Employment. (The Task Force, an outgrowth of the Dunlop Commission, included representatives of diverse organizations involved in labor and employment law.) In addition to developing fair ADR procedures, the Department would also make arbitrators' decisions available to the public.

The Department's proposed pilot test will be limited to six types of cases, described below. These programs were selected because they seem to present promising opportunities for effective use of voluntary ADR. The results of the proposed pilot test will guide DOL in future ADR initiatives, including the possible expansion of voluntary mediation and/or arbitration to other types of cases. The Department invites comment on its selection of programs for the proposed pilot test and on possible alternatives or additions to the programs selected.

The six types of cases that would be included in the Department's pilot test are: (1) Discrimination cases under Section 11(c) of the Occupational Safety and Health Act (OSH Act), 29 U.S.C. 660(c); (2) environmental whistleblower cases under the employee-protection provisions of seven separate environmental safety and health statutes;[2] (3) cases under the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. 2601 *et seq.*; (4) cases under the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.*; (5) compliance review cases under Executive Order 11246; and (6) complaint investigation cases under the Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. 4212.

OSH Act Discrimination Cases: Section 11(c) of the OSH Act prohibits employers from discharging or discriminating against employees for engaging in protected, safety-related activity under the Act. Discrimination cases under Section 11(c) are initiated by an employee filing a complaint with the Occupational Safety and Health Administration (OSHA). OSHA investigates such complaints. Meritorious complaints which OSHA cannot settle administratively are referred to the Solicitor's Office for legal action. The OSH Act authorizes the Secretary of Labor to file suit in federal district court to enforce Section 11(c). The statute does not create a private right of action for employees. (The Department's regulations interpreting OSH Act Section 11(c) appear at 29 CFR Part 1977.)

In recent years, OSHA has been receiving approximately 3,200–3,300 complaints under Section 11(c) annually. The great majority of these complaints are either determined to be meritless or are settled administratively. On average, about 120 cases per year are referred to the Solicitor's Office, which in turn files about 20 cases per year in federal district court. Because of heavy caseloads in the courts, these cases can be subject to significant delays.

[2] The statutes are: the Clean Air Act, 42 U.S.C. 7622; the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9610; the Energy Reorganization Act, 42 U.S.C. 5821; the Federal Water Pollution Control Act, 33 U.S.C. 1367; the Safe Drinking Water Act, 42 U.S.C. 300j–9(I); the Resource Conservation and Recovery Act, 42 USC 6971; and the Toxic Substances Control Act, 15 U.S.C. 2622.

Environmental Whistleblower Cases: The Secretary of Labor is responsible for administering the employee-protection provisions of several environmental safety and health statutes (identified above). (The Environmental Protection Agency, the Nuclear Regulatory Commission, or the Department of Energy otherwise administer and enforce these laws.) These laws protect employees against discharge or discrimination for certain conduct, such as testifying in a statutory enforcement proceeding.

Environmental whistleblower cases are handled in an administrative process which results in a determination by the Department's Administrative Review Board (ARB). Employees who believe that they have been discriminated against may file complaints with the Occupational Safety and Health Administration. (Under Secretary's Order 6–96, issued on December 27, 1996, responsibility for handling these cases was transferred to OSHA, from the Wage and Hour Division of the Employment Standards Division.)

Under DOL regulations (29 CFR Part 24), within 30 days, the Department must complete an investigation, determine whether the alleged violation occurred, and notify the parties. That determination becomes final unless the employee or the employer seeks a hearing before the Department's Office of Administrative Law Judges. After the hearing, the administrative law judge (ALJ) will issue a recommended decision, which is forwarded to the ARB for a final order. Final orders may be appealed to the federal courts of appeals. The DOL Solicitor's Office does not represent employees in the administrative hearing process, nor does DOL typically participate in the administrative adjudication. Employees must secure their own legal representation.

In recent years, the Department has received about 90 environmental whistleblower complaints every year. The Department's Office of Administrative Law Judges (OALJ) conducts about 80 hearings each year in this type of case, resulting in 30 to 40 final decisions of the ARB. In the past, there have been significant delays in the administrative adjudication process. Most recently, cases have been adjudicated or resolved more promptly. The OALJ has instituted a ''settlement judge'' procedure, in which cases may be temporarily transferred from the presiding judge to another judge, whose role is to explore the possibility of settling the case.

Family and Medical Leave Act Cases: Under the recently-enacted FMLA, the Department's Wage and Hour Division is authorized to receive, investigate, and attempt to resolve complaints of statutory violations. The Wage and Hour Division first seeks to resolve complaints by conciliation. If that effort is unsuccessful, the Division may choose to conduct a complete investigation. Meritorious complaints that cannot be settled administratively are referred to the Solicitor's Office, which may bring suit in federal district court. The FMLA also creates a private right of action for employees, who may bring suit themselves in either state or federal court.

Since the FMLA was enacted in 1993, the Department has received more than 6,300 employee complaints, through September 30, 1996. The great majority of these complaints were resolved through conciliation, many without the need for a full investigation by the Wage and Hour Division. The Solicitor's Office has filed fifteen lawsuits to enforce the FMLA. Federal courts have issued preliminary or final rulings in more than twenty FMLA cases brought directly by individual employees against their employers.

Fair Labor Standards Act Cases: Under the Fair Labor Standards Act, which establishes minimum-wage and overtime compensation standards (as well as other employee protections), the Wage and Hour Division is authorized to receive, investigate, and attempt to resolve complaints of statutory violations. Meritorious complaints that cannot be settled in conciliation are referred to the Solicitor's Office, which may bring suit in federal court. The FLSA also creates a private right of action for employees, who may file suit in either state or federal court. The vast majority of cases under the FLSA are brought by private employees directly against their employers.

Compliance Review Cases under Executive Order 11246 and Complaint Investigation Cases under the Vietnam Era Veterans'' Readjustment Assistance Act: The Department's Office of Federal Contract Compliance Programs (OFCCP) administers three equal employment opportunity programs applicable to Federal contractors and subcontractors: Executive Order 11246, Section 503 of the Rehabilitation Act, and the affirmative action provisions of the Vietnam Era Veterans'' Readjustment Assistance Act (VEVRAA). Taken together, these laws require covered contractors and subcontractors to refrain from discrimination and to take affirmative action to ensure equal employment opportunity without regard to race, color, sex, national origin, religion, or status as an individual with disabilities, a Vietnam era veteran, or a special disabled veteran.

OFCCP conducts compliance reviews of covered contractors and subcontractors, and investigates and attempts to resolve complaints received from employees and job applicants who allege that there have been violations of these laws. OFCCP first seeks to resolve complaints and issues revealed during a compliance review by conciliation. If that effort is unsuccessful, OFCCP refers the matter to the Solicitor's Office, which is authorized to institute administrative enforcement proceedings.

After a full evidentiary hearing, a Department of Labor Administrative Law Judge issues a recommended decision. On the basis of the entire record, the Department's Administrative Review Board issues a final administrative order. Contractors may appeal final adverse orders to the Federal district courts. The laws administered by OFCCP do not create a private right of action for contractors'' employees or job applicants. (OFCCP regulations implementing contract compliance laws are published at 41 CFR Chapter 60.)

About 4,000 compliance reviews are closed by OFCCP annually. About 3,000 reviews result in findings of violations. About 200 complaints per year alleging violations of the affirmative action provisions of VEVRAA are filed with OFCCP. On average, OFCCP refers 20 cases a year to the Solicitor's Office, which in turn files about 10 administrative complaints annually. Lengthy delays may occur in cases resolved through the complete formal enforcement process.

Scope of Mediation or Arbitration Under the Proposed Pilot

The Department invites comment on the scope of mediation and arbitration under the proposed pilot test. In DOL's experience, employment disputes that involve laws enforced by the Department often implicate other statutory, common-law, or other legal rights, outside of DOL's jurisdiction. For example, an employee with a colorable claim under the Family and Medical Leave Act or Section 503 of the Rehabilitation Act may also have a claim under the Americans with Disabilities Act. An employee with a colorable OSH Act discrimination claim or environmental whistleblower claim may also have claims under the National Labor Relations Act, a private collective bargaining agreement, or state common law.

An ADR proceeding that addresses only claims under DOL-administered laws may not resolve the entire dispute between an employee and an employer. Employers may be reluctant to participate in a process that leaves some employee claims outstanding. The Department's authority, however, is limited to the laws it administers and enforces. DOL invites comments on how best to ensure that the pilot test appropriately addresses the full range of employees' legal rights and remedies.

Case Selection Process

Cases for the proposed pilot test will be selected from the six categories described. After a complaint has been investigated and found to have merit (or violations have been identified during a compliance review), and after efforts to settle the case administratively have failed, cases will be screened for ADR suitability by the local office of the program agency (e.g., OSHA), in consultation with the regional office of the Solicitor. (The criteria for case selection are described below.) Employers who agreed to mediate or arbitrate a dispute would be expected to waive any applicable statute of limitations.

OSH Act Discrimination Cases: As explained, Section 11(c) of the OSH Act creates no private right of action for employees. The Department thus anticipates that in OSHA discrimination cases, the Department would decide whether to seek mediation or arbitration.

This decision would be made after an employee's complaint was investigated, but before suit was filed in federal district court. In selecting cases for mediation or arbitration, the Department would be governed by the case selection criteria set forth in this Notice. The Department would consult the complaining employee, as well as the National Labor Relations Board (NLRB) if the employee has filed a related complaint with the NLRB. The Department invites comment on whether it should ever pursue mediation or arbitration without the agreement of the complaining employee.

DOL would be a party to the subsequent mediation or arbitration proceeding, and the Solicitor's Office would represent the public interest and the interests of the employee. The Department would be bound by the results of the ADR proceedings, except as otherwise provided by law. The Department invites comment on whether employees' own attorneys or other representatives should ordinarily be permitted to participate in a mediation or arbitration proceeding.

Alternatively, if the Department determined that a case is suitable for ADR under the criteria described below, DOL could invite the employee and the employer to participate in a mediation or arbitration proceeding. DOL would not be a party or a participant, nor would it necessarily be bound by a settlement or an arbitrator's decision. Rather, the Department would determine whether to defer to the parties' resolution by foregoing its exclusive right to bring suit under Section 11(c) of the OSHA Act. (The Department's current policy on deferral to the outcome of other proceedings initiated by a complainant appears at 29 CFR 1977.18(c).) The Department invites comment on this alternative approach.

Only the OSH Act discrimination complaint would be subject to mediation or arbitration. Consistent with longstanding OSHA practice, the underlying allegation of a safety or health standard violation would be handled separately in administrative proceedings prescribed by the OSH Act.

The Department would revise or supplement its existing regulations for OSHA discrimination cases (29 CFR Part 1977), as necessary, to incorporate the procedures described here.

Environmental Whistleblower Cases: Environmental whistleblower cases are handled through an administrative process (described above) in which employees are responsible for securing their own representation or proceeding *pro se*. Under the proposed pilot test, after an employee's complaint had been investigated by the Department, DOL would determine whether the case was suitable for ADR under the criteria described in this Notice. If ADR was appropriate, the Department would offer the employer and the employee the option of mediation and/or arbitration, conducted either by a Settlement Judge in DOL's Office of Administrative Law Judges or by a private mediator or arbitrator. The Department would not be a party to, or participant in, this mediation or arbitration. The Department invites comment on how best to coordinate the pilot test with OALJ's existing settlement judge process.

The Administrative Review Board would not be bound by any resolution reached by the parties, but instead would review the results of mediation or arbitration. If appropriate (using the same standard now applied in ARB review of certain environmental-whistleblower settlements between employees and employers), the parties' mediated settlement or the arbitrator's decision would be embodied in a final order of the Administrative Review Board. The Department would revise or supplement its existing regulations for environmental whistleblower cases (29 CFR Part 24), as necessary, to incorporate these procedures.

Family and Medical Leave Act Cases: Under the pilot test, after an employee's FMLA complaint was investigated and found to be meritorious, and after administrative efforts to settle the case had failed, the Department would determine whether the case was suitable for ADR under the criteria described in this Notice. (The Department would consult the complaining employee in making this determination.) If ADR was appropriate, the Department would offer the employer and the employee the option of mediation.

If requested by the employee, the DOL Solicitor's Office would represent the employee in mediation. The employee would be free to choose other representation (including representation by non-lawyers) at the employee's expense, or to proceed individually. Whether or not an employee was represented by the Solicitor's Office in mediation, the employee would be free to resolve the dispute on terms acceptable to the employee. If a mediated settlement were reached, the Department ordinarily would close its file on the matter.

Because only a few judicial decisions have been issued under the FMLA, the need to develop authoritative precedent on many issues remains. This consideration will guide the Department's use of ADR. Moreover, about ninety per cent of the FMLA complaints that the Department finds to be meritorious are resolved in conciliation. Therefore, the pool of cases that are appropriate for ADR may be quite small. The Department invites comment on the types of FMLA cases that are most likely to be appropriate for mediation.

Fair Labor Standards Act Cases: Under the pilot test, after an employee's FLSA complaint was investigated and found to be meritorious, and after administrative efforts to settle the case had failed, the Department would determine whether the case was suitable for ADR under the criteria described in this Notice. (The Department would consult the complaining employees in making this determination.) If ADR was appropriate, the Department would offer the employer and the employee the option of mediation.

If requested by the employee, the DOL Solicitor's Office would represent the employee in mediation. The employee would be free to choose other representation (including representation

by non-lawyers) at the employee's expense, or to proceed individually. Whether or not an employee was represented by the Solicitor's Office in mediation, the employee would be free to resolve the dispute on terms acceptable to the employee. If a mediated settlement were reached, the Department ordinarily would close its file on the matter.

Executive Order 11246 Compliance Review Cases and Complaint Investigation Cases under the Vietnam Era Veterans' Readjustment Assistance Act (38 U.S.C. 4212): As explained, there is no private right of action under the laws administered by OFCCP. Under the pilot test, after an Executive Order 11246 compliance review or a Vietnam Era Veterans' Readjustment Assistance Act discrimination complaint investigation are completed, violations have been identified, and administrative efforts to resolve the case have failed, the Department would determine whether the case was suitable for ADR under the criteria described in this Notice. If ADR was appropriate, the Department would offer the contractor the option of mediation. If the contractor agreed to mediation, the Department's OFCCP staff would represent the interests of the Department in the mediation process. The Department would revise or supplement its existing regulations (41 C.F.R. Chapter 60), as necessary, to incorporate these procedures.

Case Selection Criteria

Whether or not DOL is a party to an arbitration or mediation proceeding, the Department will use, encourage, or defer to ADR only when it is consistent with existing law. The Department will not use, encourage, or defer to ADR when it believes (1) That the need for injunctive relief makes ADR inappropriate; or (2) based on consultation with the Department of Justice or other concerned government agencies, that the dispute involves a criminal violation; or (3) that the dispute implicates the authority of the DOL Inspector General. Nor will the Department recognize any prior agreement that makes the use of mediation or arbitration a condition of employment or otherwise prospectively requires the use of ADR in an employment dispute.

In selecting cases for possible voluntary mediation or arbitration, the Department will follow the ADR Act, which provides that:

An agency shall consider not using a dispute resolution proceeding if—

(1) a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) the matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) the matter significantly affects persons or organizations who are not parties to the proceeding;

(5) a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

(6) the agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.

5 U.S.C. 572.

The Department invites comment on appropriate case-selection criteria. In particular, the Department invites comment on the suitability of ADR proceedings, especially arbitration, in cases in which an employee-complainant lacks legal or other representation. The Department is advised that some court-sponsored ADR programs exclude unrepresented persons.

Selection of Mediators and Arbitrators

Mediators and arbitrators under the proposed pilot test will be selected consistent with all applicable legal requirements.

The Department intends for mediation and arbitration to be conducted only by impartial, experienced, and qualified persons. Mediators and arbitrators who participate in the pilot test would be required to disclose to the parties and to the Department any relationship that might reasonably constitute or be perceived as a conflict of interest. The Department invites comment on appropriate conflict-of-interest standards.

The Department also invites comment on the best means of selecting suitable mediators and arbitrators. DOL anticipates that it will maintain a roster of qualified persons. Parties to a mediation or arbitration proceeding would be provided with a panel of mediators and arbitrators from which they could make a selection.

The Department is considering entering into an agreement with a qualified nation-wide contractor who would serve as a sponsor of mediators and arbitrators and who would handle the administration of the roster. The Department would reserve the right to set standards for inclusion on the roster and to oversee its final composition. DOL invites comment on this approach.

The Department also invites comment on the specific qualifications that should be required for mediators and arbitrators. DOL believes that only mediators and arbitrators who are able to provide evidence of an established part-time or full-time practice in mediation or arbitration, and to complete a DOL classroom training course in the relevant statutes and ADR procedures, should be eligible for the pilot-test roster. In addition, DOL believes that the following factors, among others, should be considered: (1) Professional standing and good character; (2) experience as an arbitrator, mediator, adjudicator, or litigator of employment-related disputes, particularly in the areas covered by the pilot test; and (3) other experience in the fields of labor and employment law, industrial relations, or dispute resolution.

Compensation of Mediators and Arbitrators

Mediators and arbitrators who participate in the proposed pilot test would be compensated by the parties to the proceeding (including the Department), according to their agreement. The parties themselves would determine how to fairly allocate the fees and expenses of a mediator or arbitrator.

The Department believes that requiring the parties to share the fees and expenses of the mediator or arbitrator helps ensure impartiality. In cases in which the Department is a party or a participant, DOL generally expects that it would pay one-half of the mediator or arbitrator's fees and expenses. The Department invites comment on whether permitting the negotiation of a different arrangement is advisable. To reduce the possibility of bias based on disparate contributions, payment would be forwarded to the mediator or arbitrator by the sponsor of the roster (or by the Department, when it is not a party or participant), without disclosing the parties' respective shares.

One of the potential benefits of using ADR is lower litigation costs to the parties and, in the case of government agencies, the ability to resolve more cases with the same resources. Based on its experience with the Philadelphia ADR pilot test, the Department believes that ADR can reduce enforcement and litigation costs per case. In this pilot test, the threshold questions of who

pays the private mediator or arbitrator (the neutral) and how much the neutral is paid are central to the evaluation of the program's costs and benefits.

DOL tentatively estimates that the typical neutral's fees in cases under the proposed pilot test will be in the range of $1,000 to $1,500 per case. (The Department invites comment on this estimate.) If the Department pays these fees, the opportunity to reduce agency costs per case (and to increase DOL's ability to process more cases with the same resources) will be greatly diminished. At the same time, the Department recognizes both that employer payment of the arbitrator or mediator raises conflict-of-interest concerns, and that in many cases employees will be unable or unwilling to pay half of the neutral's fee.

Accordingly, the Department invites comment on the best mechanism for compensating mediators and arbitrators, as well as on the following specific issues: (1) Whether the Department should consider making a contribution toward the fees of a mediator or arbitrator in cases involving a low-income complainant; and (2) whether to authorize arbitrators to tax attorney's fees and costs to the losing party (if lawful) and/or to apportion the arbitrator's fees and costs equitably.

Authority of the Mediator or Arbitrator; Arbitration Proceedings

The authority of mediators and arbitrators under the proposed pilot test, as well as the rules for arbitration proceedings, would be determined largely by the ADR Act.

The Department anticipates that consistent with the ADR Act, DOL would draft standard mediation and/or arbitration agreements recognizing the authority of mediators and arbitrators under the pilot test. Parties who agreed to mediation or arbitration would be expected to sign such a standard agreement.

Under Section 8 of the ADR Act of 1996, arbitration agreements ''shall specify a maximum award that may be issued by the arbitrator and may specify other conditions limiting the range of possible outcomes.'' DOL anticipates that arbitrators would be authorized to make awards imposing the full range of remedies provided by the statutes involved in the pilot test.

Consistent with the ADR Act, arbitrators would have the authority to regulate the course of and conduct hearings, to administer oaths and affirmations, and to compel the attendance of witnesses and the production of evidence to the extent permitted by law. The Department also expects to authorize pre-hearing discovery by the parties, such as the production of documents.

With the consent of the parties, arbitrators would be responsible for ensuring that a record (stenographic or tape recording) of the proceeding was made. Arbitrators would also be required to issue a written opinion and award within 30 days of the close of the proceeding. Copies of the opinion and award would be provided to the parties and to the Department and would be made available to the public.

The Department invites comment on the relationship between mediation and arbitration proceedings. In some instances, the parties may wish to attempt mediation and proceed to arbitration only if mediation fails. In those cases, it may be inappropriate for the mediator to serve as an arbitrator of the dispute.

Effect of an Arbitrator's Award

If a case were mediated to a successful conclusion or arbitrated under the proposed pilot test, the Department would ordinarily close its file on the matter at the conclusion of the proceeding. In environmental whistleblower cases (as described above), an arbitrator's award would, if appropriate, be incorporated in a final order of the Administrative Review Board.

The binding effect of an arbitrator's award under the pilot test will be determined by the ADR Act, which provides that an award becomes final 30 days after service on all parties, that a final award is binding on the parties, and that a final award may be enforced pursuant to the provisions of the Federal Arbitration Act (9 USC 9–13).

The Federal Arbitration Act (9 USC 10) specifies the circumstances under which a federal court may vacate an arbitration award. They include cases: where there has been dishonesty by a party or an arbitrator, where there has been prejudicial misconduct by the arbitrator, or where the arbitrator has exceeded his authority or failed to make a definite award. Only in such cases would the Department choose not to recognize an arbitration award issued under the pilot test.

The Department invites comment on its appropriate role in reviewing the results of ADR proceedings to ensure fairness to the parties and conformity with the law.

Evaluation

The Department has not yet established a time-table for the proposed pilot and invites comment on this issue. DOL does intend to carefully evaluate the results of the pilot test described in this Notice. This evaluation would be conducted by a working group drawn from participating DOL agencies and from the Solicitor's Office, comprised of both field and national office staff members. The Department also contemplates a review of the pilot test by representatives of employees, employers, and the public. Comments and suggestions on the implementation of the Department's ADR policy are welcome.

Signed at Washington, DC this 6th day of February, 1997.

Cynthia A. Metzler,

Acting Secretary of Labor.

[FR Doc. 97–3475 Filed 2–11–97; 8:45 am]

BILLING CODE 4510–23–P

federal register

Wednesday
February 12, 1997

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of the Myrtle Beach International Airport Class C Airspace Area, SC, and Revocation of the Myrtle Beach AFB Class D Airspace Area, SC; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–AWA–6]

RIN 2120–AA66

Establishment of the Myrtle Beach International Airport Class C Airspace Area, SC, and Revocation of the Myrtle Beach AFB Class D Airspace Area, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class C airspace area at Myrtle Beach International Airport, SC, and revokes the Class D airspace area at Myrtle Beach AFB, SC. Myrtle Beach International Airport is a public-use facility with a Level II control tower served by a Radar Approach Control. The establishment of this Class C airspace area will require pilots to maintain two-way radio communications with air traffic control (ATC) while in Class C airspace. Implementation of the Class C airspace, at this location promotes the efficient control of air traffic and reduces the risk of midair collision in the terminal area. Additionally, the graphic that accompanied the notice proposing this action incorrectly identified the Grand Strand Airport in North Myrtle Beach, SC. This action corrects that error.

EFFECTIVE DATE: 0901 UTC, March 27, 1997.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the Federal Register (47 FR 17448). The plan encompassed a review of airspace use and procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that Terminal Radar Service Areas (TRSA) should be replaced. Four types of airspace configurations were considered as replacement candidates, and Model B, the Airport Radar Service Area (ARSA) configuration, was recommended by a consensus of the task group.

The FAA published NAR Recommendation 1–2.2.1, ''Replace Terminal Radar Service Areas with Model B Airspace and Service'' in Notice 83–9 (48 FR 34286; July 28, 1983) proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by Special Federal Aviation Regulation No. 45 (48 FR 50038; October 28, 1983) to provide an operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining ARSA airspace and establishing air traffic rules for operation within such an area.

Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, Columbus, OH, and the Baltimore/Washington International Airports (50 FR 9250; March 6, 1985). The FAA stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

A number of problems with the TRSA program were identified by the NAR Task Group. The task group stated that because of the different levels of service offered in terminal areas, users are not always sure of what restrictions or privileges exist or how to cope with them. According to the NAR Task Group, there is a shared feeling among users that TRSA's are often poorly defined, are generally dissimilar in dimensions, and encompass more area than is necessary or desirable. There are other users who believe that the voluntary nature of the TRSA does not adequately address the problems associated with nonparticipating aircraft operating in relative proximity to the airport and associated approach and departure courses. The consensus among the user organizations is that within a given standard airspace designation, a terminal radar facility should provide all pilots the same level of service and in the same manner, to the extent feasible.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for establishing ARSA's at locations other than those which were included in the TRSA replacement program. The task group recommended that these criteria include, among other things, traffic mix, flow and density, airport configuration, geographical features, collision risk assessment, and ATC capabilities to provide service to users. These criteria have been developed and are being published via the FAA directives system (Order 7400.2D, Procedures for Handling Airspace Matters).

Related Rulemaking Actions

Airspace Reclassification which became effective September 16, 1996, discontinued the use of the term ''airport radar service area'' and replaced it with the designation ''Class C airspace area.'' This change in terminology is reflected in this final rule.

The FAA has established Class C airspace areas at 121 locations under a paced implementation plan to replace TRSA's with Class C airspace areas.

This rule establishes a Class C airspace area at a location which was not identified as a candidate for an ARSA (a Class C airspace area) in the preamble to Amendment No. 71–10 (50 FR 9252).

The Myrtle Beach International Airport is a public-use facility with a Level II control tower serviced by a Radar Approach Control. Passenger enplanements reported at Myrtle Beach International Airport were 316,809, 274,531, and 290,295 for calendar years 1994, 1993, and 1992, respectively. This volume of passenger enplanements meets the FAA criteria for establishing a Class C airspace area to enhance safety. In addition, this action revokes the existing Class D airspace area at Myrtle Beach AFB, SC.

Public Input

As announced in the Federal Register on June 29, 1994 (59 FR 33568), a pre-Notice of Proposed Rulemaking (NPRM) airspace meeting was held on August 16, 1994, in Conway, SC. This meeting provided local airspace users with an opportunity to present input on the design of the proposed establishment of the Myrtle Beach, SC, Class C airspace area.

On August 22, 1996, the FAA published an NPRM (61 FR 43320) that proposed to designate a Class C airspace area at the Myrtle Beach International Airport, SC. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal to the FAA. In response to this NPRM, the FAA received two comments, the Air Line Pilots Association and the South Carolina Department of Commerce, Division of Aeronautics. Both commenters supported the proposal.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (l4 CFR part 71) establishes a Class C airspace area at the Myrtle Beach International Airport and removes the Class D airspace area at Myrtle Beach AFB, SC. The Myrtle Beach International Airport is a public-use facility with a Level II control tower served by Radar Approach Control. The establishment of this Class C airspace area will require pilots to establish two-way radio communications with the ATC facility providing air traffic services prior to entering the airspace and thereafter maintain those communications while within the Class C airspace area. Implementation of the Class C airspace area will promote the efficient control of air traffic and reduce the risk of midair collision in the terminal area.

The Myrtle Beach Class C airspace area will be effective on March 27, 1997. The effective date for this final rule does not correspond with a scheduled publication date for the appropriate aeronautical chart for this area. The Myrtle Beach Class C airspace area will, therefore, be published on the Charlotte Sectional Aeronautical Chart effective August 14, 1997. In the interim, the FAA will disseminate information regarding the implementation of the Myrtle Beach Class C airspace area in the Notices to Airmen publication and will publish a special notice in the Airport/Facility Directory to ensure that pilots and airspace users are advised of the status. Additionally, the FAA's Southern Regional Office will distribute Letters to Airmen that will advertise the implementation of the airspace area. The revocation of the Class D airspace area coincides with the effective date for the Class C airspace area.

In addition, the graphic included in the NPRM incorrectly identified the Grand Strand Airport in North Myrtle Beach, SC. This action corrects that error. Except for editorial changes and the correction to the airport name on the graphic, this amendment is the same as that proposed in the notice. The coordinates in this document are based on North American Datum 83. Class C and Class D airspace designations are published in paragraphs 4000 and 5000, respectively, of FAA Order 7400.9D dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area listed in this document will be published subsequently in the Order and the Class D airspace area listed in this document will be removed subsequently from the Order.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on small entities changes on international trade. In conducting these analyses, the FAA has determined that this Final Rule: (1) will generate benefits that justify its minimal costs and is not ''a significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble and the full Regulatory Evaluation is in the docket.

Costs-Benefit Analysis

The FAA has determined that the establishment of Myrtle Beach Class C airspace area will enhance operational efficiency (through the implementation of additional air traffic control operating procedures) and aviation safety (in the form of reduced risk of midair collision in the newly established Class C airspace area).

Costs

Cost Impact on Aircraft Operators

This final rule will impose minimal, if any, costs on general aviation aircraft or air carrier operators. This determination is based on data contained in the most recent General Aviation and Avionics Survey Report. The report indicates an estimated 82 percent of all General Aviation (GA) aircraft operators are currently equipped with two-way radios, which are required to enter Class C airspace. As of December 30, 1990 all aircraft (except those without an electrical system, balloons and gliders) flying in the vicinity of the Myrtle Beach International Airport have been required to have a Mode C transponder under Federal Aviation Regulations (14 CFR part 91.215). The FAA assigns no aircraft equipment cost to this final rule because the agency has already allocated those cost to the Mode C Rule, requiring essentially all aircraft to be equipped with Mode C transponders. The FAA has traditionally accommodated GA aircraft operators without two-way radio communication equipment and operators of aircraft without electrical systems, via letters of agreement, when practical to do so without jeopardizing aviation safety. However, a few aircraft operators will not request or receive letters of agreement, and these operators will be required to utilize circumnavigation procedures. The FAA has determined that operators could circumnavigate around the newly established airspace (5 miles), over, or in certain cases, under the airspace without significantly deviating from their regular flight paths. Therefore, the FAA has determined the final rule will impose minimal, if any, cost impact on any aircraft operators.

Cost Impact on the FAA

The FAA assumed responsibility for ATC at the Myrtle Beach International Airport from the United States Air Force on December 27, 1992. In that same year, the agency conducted a review of the radar system at Myrtle Beach. As a result of that review, the FAA decided to expedite the replacement of the computer system and other radar equipment. Myrtle Beach International Airport installed a new computer system, after the FAA's 1992 review. Consequently, the agency will not incur any additional cost for equipment (such as consoles) with the establishment of Class C airspace. The newly established Class C airspace area will also be able to function effectively with existing personnel resources. Before this final rule becomes effective, the FAA will distribute a Letter To Airmen to pilots residing within 50 miles of the Class C airspace area. This one-time incurred cost of the established rule will be approximately $535 dollars. The FAA already systematically revises sectional charts every six months; therefore, the final rule will not impose any additional charting cost on the agency.

The FAA recognizes that delays might develop in the Myrtle Beach airspace area following the initial establishment of the Class C airspace area. However, those delays that may occur are typically transitional in nature. Based on past experience at other locations, the FAA concludes that any potential delays will eventually be more than offset by the increased flexibility afforded controllers in handling traffic as a result of Class C separation standards.

Benefits

The number of aircraft operations and operational complexity has been steadily increasing in the Myrtle Beach area. That activity has now reached the level where the increased air traffic control provided in Class C airspace is necessary to maintain safety. The FAA has carefully studied existing and forecast activity in the area and establishes by this rule the extent of Class C airspace necessary to maintain operational safety now and into the foreseeable future. The final rule will also enhance aircraft operational efficiency. Aircraft operators in this type of airspace will receive additional information in the form of traffic advisories and separation and sequencing of arrivals.

Conclusion

In view of the minimal cost of compliance, enhanced aviation safety and operational efficiency, the FAA has determined that the final rule will be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a final rule will have ''significant economic impact on a substantial number of small entities.'' FAA Order 2100.14A outlines the FAA's procedures and criteria for implementing the RFA.

The small entities that may potentially incur minimal, if any, cost with the implementation of the final rule are operators of aircraft who do not meet Class C airspace navigational equipment standards (primarily parts 91, 121 and 135 aircraft without two-way radios and Mode C transponders). The small entities potentially impacted by the final rule will not incur any additional cost for navigational equipment and more rigorous operating procedures because they routinely fly into airspace where such requirements are already in place. As the result the Mode C rule, all of these commercial operators are assumed to have Mode C transponders. The FAA has traditionally accommodated GA and other aircraft operators without two-way radio communication equipment and Mode C transponders, via letters of agreement, when practical to do so without jeopardizing safety. Therefore, the FAA has determined that the final rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The final rule will not constitute a barrier to international trade, including the export of American goods and services to foreign countries and the import of foreign goods and services into the United States. This assessment is based on the fact that the final rule will neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign).

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g) 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 4000—Subpart C-Class C Airspace

* * * * *

ASO SC C Myrtle Beach, SC [New]

Myrtle Beach International Airport
(lat. 33°40′47″ N., long. 78°55′42″ W.)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the Myrtle Beach International Airport, and that airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the Myrtle Beach International Airport. This Class C airspace area is effective during the specific dates and times of operation of the Myrtle Beach Approach Control facility, as established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in Airport/Facility Directory.

* * * * *

Paragraph 5000—Subpart D-Class D Airspace

* * * * *

ASO SC D Myrtle Beach AFB, SC [Removed]

* * * * *

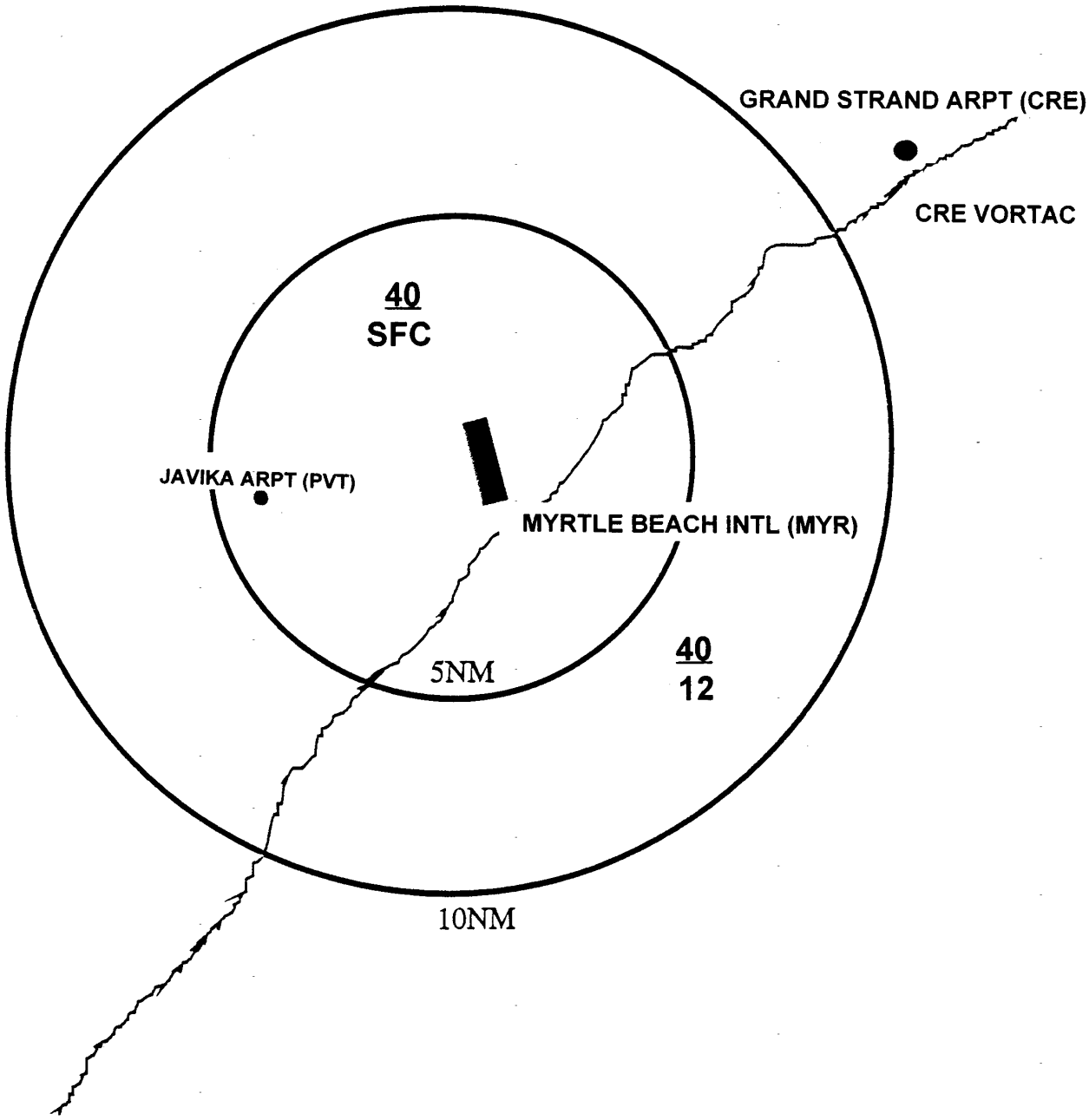
Issued in Washington, DC, on February 6, 1997.

Jeff Griffith,

Program Director for Air Traffic Airspace Management.

BILLING CODE 4910–13–P

MYRTLE BEACH, SOUTH CAROLINA
CLASS "C" AIRSPACE AREA
(EFFECTIVE MARCH 27, 1997)



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
Air Traffic Airspace Management Program

[FR Doc. 97–3509 Filed 2–11–97; 8:45 am]
BILLING CODE 4910–13–C

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