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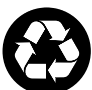

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Contents

Federal Register

Vol. 62, No. 98

Wednesday, May 21, 1997

Agency for International Development
NOTICES
Meetings:
International Food and Agricultural Development Board, 27775

Agriculture Department
See Rural Business-Cooperative Service

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27719–27720

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Adoption opportunities program, 27738–27768
Head Start program; correction, 27837
Low income home energy assistance program; 1996 FY funds reallotment, 27768

Commerce Department
See Census Bureau
See International Trade Administration
See Minority Business Development Agency
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 27718–27719

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 27725

Delaware River Basin Commission
NOTICES
Hearings, 27725–27726

Drug Enforcement Administration
RULES
List I chemicals; manufacturers, distributors, importers and exporters; registration:
Combination ephedrine products, 27693
NOTICES
Applications, hearings, determinations, etc.:
Research Biochemicals, L.P., 27775–27776

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 27726

Employment and Training Administration
NOTICES
Adjustment assistance:
Copper Basin Garments et al., 27778–27779
Desert Cleaners et al., 27779
Eagle Nest, Inc., 27779–27780
Johnson Controls, Inc., 27780
Kerr-McGee Corp., 27780–27781
Parkway Building Systems, Inc., 27781
Ryobi Motor Products Corp., 27781
Adjustment assistance and NAFTA transitional adjustment assistance:
FMC Corp. et al., 27776–27778
Agency information collection activities:
Proposed collection; comment request, 27781–27782
NAFTA transitional adjustment assistance:
Carrier Corp., 27782
General Motors, 27783
Lucent Technologies, Inc., 27783
Redpath Apparel Group, 27783–27784
Standard Products et al., 27784–27785

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Secretary of Energy Advisory Board, 27726–27727

Energy Efficiency and Renewable Energy Office
NOTICES
Consumer product test procedures; waiver petitions:
HEAT-N-GLO Fireplace Products, Inc., 27727–27729

Environmental Protection Agency
RULES
Toxic substances:
Significant new uses—
Aliphatic polyisocyanates, etc., correction, 27694–27695
PROPOSED RULES
Acquisition regulations:
Profit or fee calculations, 27712–27715
Air pollutants, hazardous; national emission standards:
Pharmaceuticals production, 27707
Air programs:
Stratospheric ozone protection—
Significant new alternatives policy program, 27874–27888
Water pollution control:
Water quality standards—
Alaska; arsenic human health criteria; withdrawal, 27707–27710
NOTICES
Meetings:
Acute Exposure Guideline Levels for Hazardous Substances National Advisory Committee, 27733–27734

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Air carrier certification and operations:
Autopilot use; minimum altitudes revision, 27920–27923
Airworthiness standards:
Special conditions—
McDonnell-Douglas model DC-9-31/-32 airplanes, 27687–27688

Class E airspace, 27688–27690
Enroute domestic airspace area, 27690–27691
PROPOSED RULES
Class E airspace, 27705–27707
NOTICES
Advisory circulars; availability, etc.:
Auto flight guidance systems; operational approval criteria, 27924–27925
Environmental statements; availability, etc.:
Seattle-Tacoma International Airport, WA, 27830–27831
Meetings:
Aviation Rulemaking Advisory Committee, 27831–27832
National Civil Aviation Review Commission, 27832
Technical standard orders:
Seating systems; rotorcraft, transport airplanes, and utility airplanes, 27832–27833

Federal Communications Commission
RULES
Radio stations; table of assignments:
Colorado, 27700–27701
Idaho, 27701
Michigan, 27700
Montana, 27702
New Mexico, 27701–27702
PROPOSED RULES
Practice and procedure:
Regulatory fees (1997 FY); assessment and collection, 27710
Radio stations; table of assignments:
Idaho, 27710
Illinois et al., 27710–27711
Minnesota, 27711–27712
Nevada, 27711
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 27734–27735
Reporting and recordkeeping requirements, 27735–27736
Telecommunications Act of 1996; implementation:
Inflation-adjusted revenue threshold; 1996 adjustment, 27736

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Southeastern Power Administration et al., 27730–27732
Environmental statements; availability, etc.:
Grand River Dam Authority, 27732–27733
Applications, hearings, determinations, etc.:
American Electric Power Services Corp., 27729
Colorado Interstate Gas Co., 27729
Indeck Pepperell Power Associates, Inc., 27729
National Fuel Gas Supply Corp., 27729–27730
Wisconsin Distributor Group, 27730

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
King County, OR, 27833–27834

Federal Maritime Commission
NOTICES
Agreements filed, etc., 27736
Casualty and nonperformance certificates:
American Canadian Caribbean Line, Inc., et al., 27736–27737
Cape Canaveral Cruise Line, Inc., et al., 27737

Federal Railroad Administration
NOTICES
Meetings:
Maglev Study Advisory Committee, 27834

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 27737–27738
Formations, acquisitions, and mergers, 27738

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Labeler code, 27691–27692
New drug applications—
Oxytetracycline injection, 27692–27693
NOTICES
Meetings:
Medical Devices Advisory Committee, 27768–27769
Vaccines and Related Biological Products Advisory Committee et al., 27769–27770

Geological Survey
NOTICES
Grant and cooperative agreement awards:
TriCal, 27772

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration

Housing and Urban Development Department
NOTICES
Privacy Act:
Computer matching programs, 27770–27772

Interior Department
See Geological Survey
See Land Management Bureau
See Minerals Management Service

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27720
Antidumping:
Fresh kiwifruit from—
New Zealand, 27721–27722
Antidumping and countervailing duties:
Administrative review requests, 27720–27721
Applications, hearings, determinations, etc.:
University of —
Illinois, 27722

International Trade Commission
NOTICES
Meetings; Sunshine Act, 27775

Justice Department
See Drug Enforcement Administration
See Prisons Bureau

Labor Department
See Employment and Training Administration

See Mine Safety and Health Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Meetings:
Resource advisory councils—
Arizona, 27773
Mojave-Southern Great Basin, 27772
New Mexico, 27772–27773
Public land orders:
Wyoming, 27773–27774

Legal Services Corporation
RULES
Non LSC funds use:
Statutory restrictions; implementation, 27695–27700

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Alaska OCS—
Lease sales, 27774–27775

Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27785

Minority Business Development Agency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27722–27723

National Aeronautics and Space Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27787
Inventions, Government-owned; availability for licensing, 27787–27788
Meetings:
Aeronautics and Space Transportation Technology Advisory Committee, 27788
Technology and Commercialization Advisory Committee, 27788–27789

National Institute for Literacy
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27789

National Labor Relations Board
NOTICES
Meetings; Sunshine Act, 27789

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic shark, 27703–27704
NOTICES
Agency information collection activities:
Proposed collection; comment request, 27723–27724
Meetings:
New England Fishery Management Council, 27724
Permits:
Marine mammals, 27724–27725

National Science Foundation
NOTICES
Meetings:
Education and Human Resources Advisory Committee, 27789–27790

National Transportation Safety Board
RULES
Legal proceedings; production of records, 27702–27703

Nuclear Regulatory Commission
RULES
Nuclear power reactors, standard design certifications; and combined licenses; early site permits:
Boiling water reactors—
System 80+ design; standard design certification approval, 27840–27870
NOTICES
Environmental statements; availability, etc.:
Duquesne Light Co. et al., 27791–27792
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 27792–17810
Applications, hearings, determinations, etc.:
Commonwealth Edison Co., 27790
Consumers Power Co., 27790–27791
Southern Nuclear Operating Co., Inc., et al., 27791

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension and Welfare Benefits Administration
NOTICES
Meetings:
Employee Welfare and Pension Benefit Plans Advisory Council, 27785–27787

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Transfer of offenders to or from foreign countries, 27872

Public Health Service
See Food and Drug Administration

Railroad Retirement Board
NOTICES
Meetings; Sunshine Act, 27810

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Pipeline Personnel Qualification Negotiated Rulemaking Committee—
Meetings, 27715

Rural Business-Cooperative Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Cooperative services program, 27716–27718

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 27814–27818
Government Securities Clearing Corp., 27818
National Association of Securities Dealers, Inc., 27818–27821
National Securities Clearing Corp., 27821–27822

New York Stock Exchange, Inc., 27822–27826
Pacific Exchange, Inc., 27826–27828
Applications, hearings, determinations, etc.:
AIM Equity Funds, Inc., et al., 27810–27813
Sparta Surgical Corp., 27813–27814

State Department
RULES
Visas; immigrant documentation:
Immigrant visas; validity period extended, 27693–27694
NOTICES
Meetings:
International Telecommunications Advisory Committee, 27828

Surface Transportation Board
NOTICES
Motor carriers:
Control exemptions—
Greyhound Lines, Inc., 27834–27835
Railroad services abandonment:
Consolidated Rail Corp., 27835

Trade Representative, Office of United States
NOTICES
Generalized System of Preferences:
Annual product review (1997 FY); petitions submission deadline, 27828–27829
Tariff-rate quota amount determinations:
Raw cane sugar, 27829–27830

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 27830

Treasury Department
PROPOSED RULES
Currency and foreign transactions; financial reporting and recordkeeping rquirements:
Banck Secrecy Act; implementation—
Money transmitters; special currency transaction reporting requirement, 27909–27917
Bank Secrecy Act; implementation—
Money services businesses, 27890–27900
Money transmitters and money order and traveler's check issuers, sellers and redeemers; suspicious transaction reporting requirements, 27900–27909

United States Information Agency
NOTICES
Cultural property:
Guatemala; request for U.S. protection of certain categories of archaeological and ethnological material from pillage, 27835–27836
Meetings:
Cultural Property Advisory Committee, 27836

Separate Parts In This Issue

Part II
Nuclear Regulatory Commission, 27840–27870

Part III
Department of Justice, 27872

Part IV
Environmental Protection Agency, 27874–27888

Part V
Department of Treasury, 27890–27917

Part VI
Department of Transportation, 27920–27925

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

10 CFR
52....................................27840

14 CFR
25....................................27687
71 (3 documents) 27688, 27690
121..................................27920
125..................................27920
135..................................27920

Proposed Rules:
71 (2 documents) 27705, 27706

21 CFR
510..................................27691
520..................................27691
522..................................27692
558..................................27691
1310................................27693

22 CFR
42....................................27693

28 CFR
527..................................27872

31 CFR

Proposed Rules:
103 (3 documents) 27890 27900, 27909

40 CFR
721..................................27694

Proposed Rules:
63....................................27707
82....................................27874
131..................................27707

45 CFR
1610................................27695

47 CFR
73 (6 documents) 27700, 27701, 27702

Proposed Rules:
1......................................27710
73 (4 documents) 27710, 27711

48 CFR

Proposed Rules:
1515................................27712

49 CFR
801..................................27702
837..................................27702

Proposed Rules:
192..................................27715
195..................................27715

50 CFR
678..................................27703

Rules and Regulations

Federal Register

Vol. 62, No. 98

Wednesday, May 21, 1997

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–142; Special Conditions No. 25–ANM–126]

Special Conditions: McDonnell-Douglas Model DC–9–31/–32, High-Intensity Radiated Fields

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for McDonnell-Douglas Model DC–9–31/–32 airplanes as modified by Innovative Solutions & Support, Inc. The Innovative Solutions & Support, Inc. altimeter P/N 9D–80110–2 will utilize an electronic system which performs a critical function. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is May 13, 1997. Comments must be received on or before July 7, 1997.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–142, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–142. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2011.

SUPPLEMENTARY INFORMATION:

Comment Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM–142.'' The postcard will be date stamped and returned to the commenter.

Background

On January 17, 1997, Innovative Solutions & Support, Inc. applied for a supplemental type certificate to modify the altimeter system of McDonnell-Douglas Model DC–9–31/–32 airplanes to an electronic system. The Model DC–9–31/–32 is currently approved under Type Certificate No. A6WE.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Innovative Solutions & Support, Inc. must show that the Model DC–9–31/–32 airplanes meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A6WE or the applicable regulations in effect on the date of application for the changes to the Model DC–9–31/–32. In addition, the certification basis includes certain special conditions and later amended sections of 14 CFR part 25 that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the DC–9–31/–32 because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16 to establish a level of safety equivalent to that established in the regulations.

In addition to the applicable airworthiness regulations and special conditions, the McDonnell Douglas DC–9–31/–32 must comply with the fuel and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by 14 CFR 11.28 and 11.29, and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The Model DC–9–31/–32, as modified, incorporates a new electronic altimeter system. This system may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are issued for the DC–9–31/–32, as modified by Innovative Solutions & Support, Inc., which require that new technology electronic systems, such as altimeter system, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields

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

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

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

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

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

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

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 MHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

As discussed above, these special conditions would be applicable initially to the modified Model DC–9–31/–32. Should Innovative Solutions & Support, Inc. apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well, under the provisions of 14 CFR 21.101(a)(1).

Conclusion

This action affects only certain design features on McDonnell-Douglas DC–9–31/–32 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the McDonnell-Douglas DC–9–31/–32 airplane, as modified by Innovative Solutions & Support, Inc.

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

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 13, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 97–13264 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 97–ACE–8]

Amendment to Class E Airspace, Storm Lake, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Storm Lake Municipal Airport, Storm Lake, IA. The Federal Aviation Administration has developed a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) which has made this change necessary. The effect of this rule is to provide additional controlled airspace for aircraft arriving and departing the Storm Lake Municipal Airport.

DATES: *Effective date:* 0901 UTC, September 11, 1997.

Comment date: Comments must be received on or before June 28, 1997.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Operations Branch, Air Traffic Division, ACE–530, Federal Aviation Administration, Docket Number 97–ACE–8, 601 East 12th St., Kansas City, MO 64106.

The official docket may be examined in the Office of the Assistant Chief Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours

in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Operations Branch, ACE–530C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106, telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed a Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at Storm Lake Municipal Airport, Storm Lake, IA. The amendment to Class E airspace at Storm Lake, IA, will provide additional controlled airspace to segregate aircraft operating under Visual Flight Rules (VFR) from aircraft operating under Instrument Flight Rules (IFR) procedures while arriving or departing the airport. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending 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 will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–ACE–8.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for 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 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 or more above the surface of the earth.

* * * * *

ACE IA E5 Storm Lake, IA. [Revised]

Storm Lake Municipal Airport, IA.
(Lat. 42°35′50″ N., long. 95°14′26″ W.)
Storm Lake NDB
(Lat. 42°36′02″ N., long. 95°14′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Storm Lake Municipal Airport and within 2.6 miles each side of the 167° bearing from the Storm Lake NDB extending from the 6.6-mile radius to 7 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on May 1, 1997.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97–13257 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–6]

Modification of Class E Airspace; Spearfish, SD, Black Hills—Clyde Ice Field

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Spearfish, SD. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 12 has been developed for Black Hills-Clyde Ice Field. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 UTC, July 17, 1997.

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

SUPPLEMENTARY INFORMATION:

History

On Wednesday, February 19, 1997, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Spearfish, SD (62 FR 7389). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

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. Class E airspace designations for 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 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 Spearfish, SD, to accommodate aircraft executing the GPS Runway 12 SIAP at Black Hills-Clyde Ice Field. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area will be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures.

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. Therefore, this 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 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 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 Spearfish, SD [Revised]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Black Hills-Clyde Ice Field Airport and within 2.1 miles each side of the 305° bearing from the airport extending from the 7-mile radius to 8.3 miles northwest of the airport; and that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 44°29′50″N, long. 103°56′17″W; to lat. 44°13′37″N, long. 104°14′00″W; to lat. 44°18′41″N, long. 104°23′24″W;to lat. 44°44′11″N, long. 103°57′49″W; to lat. 44°50′13″N, long. 103°28′11″W; to lat. 44°47′27″N, long. 102°57′40″W; to lat. 44°39′31″N, long. 102°56′34″W; to lat. 44°38′27″N, long. 103°12′26″W; to lat. 44°25′51″N, long. 103°37′45″W, then clockwise via the 7-mile radius of the airport to the point of beginning.

* * * * *

Issued in Des Plaines, Illinois on May 7, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–13263 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AAL–1]

RIN 2120–AA66

Modification and Renaming of Enroute Domestic Airspace; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule modifies the Browerville/Barter Island Enroute Domestic Airspace Area by removing that portion of the area protected by controlled airspace known as Federal Airway 438 (V–438). This action will redefine the remaining Browerville/ Barter Island, AK, Enroute Domestic Airspace Area, and rename the airspace area as the Barter Island, AK, Enroute Domestic Airspace Area.

EFFECTIVE DATE: 0901 UTC, July 17, 1997.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, 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:

History

On February 20, 1997, the FAA proposed to amend part 71 of Title 14 of the Code of Regulations (14 CFR part 71) to modify the Browerville/Barter

Island, AK, Enroute Domestic Airspace Area (62 FR 7741). Interested parties were invited by the FAA to participate in the rulemaking effort by submitting written comments on the proposal. No comments were received. Except for editorial changes, this amendment is the same as proposed in the notice. Enroute domestic airspace areas are published in paragraph 6006 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 enroute domestic airspace area, as modified by this final rule, will be published subsequently in the Order.

The Rule

This amendment to part 71 of Title 14 of the Code of Federal Regulations (14 CFR part 71) modifies the Browerville/Barter Island, AK, Enroute Domestic Airspace Area by removing that portion of the area protected by controlled airspace known as V–438. This action also renames the airspace area as the Barter Island, AK, Enroute Domestic Airspace Area. Enroute domestic airspace areas provide controlled airspace in those areas where there is a requirement for enroute air traffic control services, but where the Federal airway segment is inadequate. The recent creation of V–438 eliminated the need for that portion of the enroute domestic airspace area removed by this final rule.

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. Therefore, this 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 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 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 6006—Enroute Domestic Airspace Areas

* * * * *

Barter Island, AK [Revised]

From the Put River, AK, NDB 12 AGL to Barter Island, AK, NDB.

* * * * *

Issued in Washington, DC, on May 15, 1997.

Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–13265 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, and 558

Animal Drugs, Feeds, and Related Products; Drug Labeler Code; Technical Amendment

AGENCY: Food and Drug Administration, HHS

ACTION: Final rule, technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the correct drug labeler code for the ADM Animal Health & Nutrition Division that is used in title 21 of the Code of Federal Regulations. This action is being taken to ensure the accuracy of the regulations.

EFFECTIVE DATE: May 21, 1997.

FOR FURTHER INFORMATION CONTACT: David L. Gordon, Center for Veterinary Medicine (HFV–238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1737.

SUPPLEMENTARY INFORMATION: Parts 510, 520, and 558 (21 CFR parts 510, 520, and 558) contain references to the incorrect drug labeler code number for ADM Animal Health and Nutrition Division. FDA is correcting the regulations in §§ 510.600, 520.445b, 558.128, 558.274, 558.485, 558.625, and 558.630 by removing ''012286'' and adding in its place ''017519''.

List of Subjects

21 CFR Part 510

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

21 CFR Part 520

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

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

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

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for ''ADM Animal Health & Nutrition Div.'' and in paragraph (c)(2) in the entry for ''012286'' by removing ''012286'' and adding in its place ''017519'', and in paragraph (c)(2) placing the entry in alphanumeric order.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.445b [Amended]

4. Section 520.445b *Chlortetracycline powder (chlortetracycline hydrochloride or chlortetracycline bisulfate)* is amended in paragraph (b) by removing ''012286'' and adding in its place ''017519''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

5. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.128 [Amended]

6. Section 558.128 *Chlortetracycline* is amended in paragraph (a)(4) and in the table in paragraph (d)(1) in the ''sponsor'' column by removing ''012286'' each time it appears and adding in its place ''017519''.

§ 558.274 [Amended]

7. Section 558.274 *Hygromycin B* is amended in paragraph (a)(7) and in the table in paragraph (c)(1), under the ''sponsor''column, by removing ''012286'' each time it appears and adding in its place, ''017519''.

§ 558.485 [Amended]

8. Section 558.485 *Pyrantel tartrate* is amended in paragraph (a)(11) by removing ''012286'' and adding in its place''017519''.

§ 558.625 [Amended]

9. Section 558.625 *Tylosin* is amended in paragraphs (b)(10) and (b)(52) by removing ''012286'' and adding in its place ''017519''.

§ 558.630 [Amended]

10. 558.630 *Tylosin and sulfamethazine* is amended in paragraphs (b)(3), (b)(8), and (b)(10) by removing ''012286'' and adding in its place ''017519''.

Dated: May 7, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–13269 Filed 5–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation and Injectable Dosage Form New Animal Drugs; Oxytetracycline Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer Animal Health. The supplemental NADA provides for subcutaneous use of oxytetracycline injection in addition to intramuscular and intravenous use in beef cattle and nonlactating dairy cattle, and calves including preruminating (veal) calves.

EFFECTIVE DATE: May 21, 1997.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed supplemental NADA 113–232 that provides for use of Liquamycin® LA–200® (oxytetracycline injection) for subcutaneous in addition to intramuscular and intravenous treatment of beef cattle, nonlactating dairy cattle, and calves including preruminating (veal) calves. The supplemental NADA is approved as of April 23, 1997, and the regulations are amended in § 522.1660 (21 CFR 522.1660) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Section 522.1660(c) is redesignated as paragraph (d) and new paragraph (c) is added to provide for more uniform regulations and future expansion.

Also § 522.1660 is amended in new paragraph (d)(1) to add the phrase ''and calves including preruminating (veal) calves'' after the phrase ''nonlactating cattle'' in the title and an additional sentence following the text of newly redesignated paragraph (d)(1)(iii) to provide for subcutaneous use for this sponsor.

Furthermore, § 522.1660 is amended to correct several typographical errors. The errors are: In § 522.1660(d)(1)(ii), *Haemophilis* is misspelled, *Staphylococcus* is not capitalized, and in § 522.1660(d)(2)(ii), *multocida* is misspelled.

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

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning April 23, 1997, because the supplement contains substantial evidence of effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplement and conducted or sponsored by the applicant. Exclusivity applies only to the subcutaneous route of administration.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

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

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

2. Section 522.1660 is amended by redesignating paragraph (c) as (d) and reserving paragraph (c), in newly redesignated paragraph (d)(1) by revising the heading, in newly redesignated paragraph (d)(1)(ii) by removing the word ''*Hemophilis*'' and adding in its place ''*Haemophilis*'' and by removing the word ''*staphylococcus*'' and adding in its place ''*Staphylococcus*'', in newly redesignated paragraph (d)(2)(ii) by removing the word ''*multicida*'' and adding in its place ''*multocida*'', and by adding a new sentence at the end of newly redesignated paragraph (d)(1)(iii) to read as follows:

§ 522.1660 Oxytetracycline injection.

* * * * *

(c) [Reserved]

(d) * * *

(1) *Beef cattle, nonlactating dairy cattle and calves including preruminating (veal) calves.* * * *

(iii) * * * For sponsor 000069, use subcutaneously with a maximum of 10 milliliters per injection site in adult cattle as well as intramuscularly and intravenously.

* * * * *

Dated: May 7, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–13268 Filed 5–20–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA–154E]

RIN 1117–AA42

Temporary Exemption From Chemical Registration for Distributors of Combination Ephedrine Products; Extension of Application Deadline

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim rule.

SUMMARY: DEA is amending its regulations to extend the temporary exemption from the chemical registration requirements from May 12, 1997 to July 12, 1997. Certain segments of the industry that distribute combination ephedrine products did not realize that they would be subject to the registration requirement due to questions regarding the application of the registration requirements to their activities. Persons failing to meet the May 12, 1997 deadline would have been required to cease all distributions of combination ephedrine products until they had obtained a registration. In order to avoid interruption of legitimate distributions of combination ephedrine products, based upon the request of this industry group, DEA is extending the temporary exemption from the registration requirement for the additional period to allow affected persons sufficient time to make application for registration.

EFFECTIVE DATE: May 21, 1997. The new deadline for submitting an application for registration is July 12, 1997.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–4025.

SUPPLEMENTARY INFORMATION: The Comprehensive Methamphetamine Control Act of 1996 (MCA) removed the exemption from DEA's chemical controls for combination ephedrine drug products, effective October 3, 1996. As a result, these products became subject to the chemical registration, recordkeeping, and reporting requirements set forth in Title 21, Code of Federal Regulations (CFR), parts 1309, 1310, and 1313.

To allow businesses to continue to distribute combination ephedrine products pending issuance of a registration to engage in such activities, DEA amended its regulations by interim rule published in the **Federal Register** on February 10, 1997 (62 FR 5914) to provide that any person who submitted a properly completed application for registration to DEA on or before May 12, 1997, would be exempt from the registration requirement until DEA took final action on such application (21 CFR 1310.09).

Following publication of the interim rule, questions were raised by a segment of the industry distributing combination ephedrine products regarding whether the registration requirements applied to their activities. Following clarification of the chemical registration requirements, a request was received from Food Distributors International for an extension of the application deadline to allow adequate time for the affected distributors to make application for registration. DEA has no objection to granting the request. Therefore, 21 CFR 1310.09 is being amended to provide that the deadline for submitting an application is extended to July 12, 1997.

The Acting Deputy Administrator of the Drug Enforcement Administration hereby certifies that this interim rulemaking will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This interim rulemaking extends a temporary exemption from the registration requirement for distributors of combination ephedrine products.

This rule is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

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

List of Subjects in 21 CFR Part 1310

Drug traffic control, List I and List II chemicals, Reporting and recordkeeping requirements.

For reasons set out above, Title 21, Code of Federal Regulations, part 1310 is amended as follows.

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.09 is revised to read as follows:

§ 1310.09 Temporary exemption from registration.

Each person required by Section 302 of the Act (21 U.S.C. 822) to obtain a registration to distribute, import, or export a combination ephedrine product is temporarily exempted from the registration requirement, provided that the person submits a proper application for registration on or before July 12, 1997. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in parts 1309, 1310, and 1313 of this chapter remain in full force and effect.

Dated: May 14, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–13313 Filed 5–20–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 2546]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act; Validity of Immigrant Visas

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: On September 30, 1996, the Immigration and Nationality Act (INA) was amended to, inter alia, grant authority to the Secretary of State to extend the period of validity of an immigrant visa to six months from the date of issuance. The Secretary of State, hereby, exercises that authority and amends the Department's regulations accordingly.

DATES: This rule is effective October 1, 1997.

ADDRESSES: Chief, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Washington, D.C. 20520–0106.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation

and Regulations Division, (202) 663–1203.

SUPPLEMENTARY INFORMATION: On September 30, 1996 the President signed into law Division ''C'' of the Omnibus Consolidated Appropriations Act, 1997, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, (IIRIRA), Public Law 104–208, 110 stat. 3009. Section 631(a) amends INA 221(c) by altering the maximum period of validity of an immigrant visa from four months to six months. The Department is amending the corresponding regulation at 22 CFR 42.72(a) to extend the validity period of an immigrant visa to six months. The Department is also amending 22 CFR 42.72(e) regarding the scheduling of the immigrant visa appointment to comply.

Benefit to State Department and Visa Applicants

The Department has found that the four-month validity period of the immigrant visa does not always provide sufficient time for visa recipients to finalize their plans and complete necessary preparations for their permanent move to the United States. It sometimes takes longer than four months to sell homes and businesses, as well as coordinate school schedules for family members. Other unforeseen events such as medical emergencies may arise. Such unforeseen events often result in the necessity of issuing a new visa. The amendment of the regulations to extend the validity period to six months will greatly reduce the necessity of issuing new visas to visa recipients who could not gain admission to the United States during that four-month period for reasons beyond their control. It also will provide visa recipients greater flexibility in preparing for the transfer of their permanent residence.

Final Rule

The implementation of this rule as a final rule is based upon the ''good cause'' exceptions established by 5 U.S.C. 553(b)(B) and 553(d)(3). This rule grants or recognizes an exemption or relieves a restriction under 5 U.S.C. 553(d)(1) and is considered beneficial to the United States Government.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act (5 U.S.C. 605(b)). This rule imposes no reporting or record-keeping action from the public requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12988 and certified to be in compliance therewith. This rule is exempted from E.O. 12866 but has been reviewed to ensure consistency therewith.

List of Subjects in 22 CFR Part 42

Aliens, Immigrants, Passports and visas, Visa validity.

In view of the foregoing, 22 CFR is amended as follows:

PART 42—[AMENDED]

1. The authority citation for Part 42 continues to read:

Authority: 8 U.S.C. 1104.

2. Section 42.72 is amended by revising the first sentence in paragraph (a), paragraph (e)(1), and the first two sentences of paragraph (e)(4) to read as follows:

§ 42.72 Validity of visas.

(a) Period of validity. With the exception indicated herein, the period of validity of an immigrant visa shall not exceed six months, beginning with the date of issuance. * * *

* * * * *

(e) Aliens entitled to the benefits of sections 154 (a) and (b) of Pub. L. 101–649. (1) Notwithstanding the provisions of paragraphs (a) through (d) of this section, the period of validity of an immigrant visa issued to an immigrant described in paragraph (e)(2) of this section may, at the request of the applicant, be extended until January 1, 2002, if the applicant so requests either at the time of issuance of the visa or within six months thereafter. If an applicant entitled to issuance of an immigrant visa having an extended period of validity fails to request extended validity at the time of issuance but subsequently, within six months thereafter, requests that the validity be extended pursuant to this paragraph, the consular officer shall issue a replacement visa to the alien in accordance with the provisions of § 42.74(b).

* * * * *

(4) An alien who has elected to have the period of validity of his or her visa extended pursuant to paragraph (e)(1) of this section shall, if his or her contemplated date of application for admission into the United States is no later than six months following the date of visa issuance, notify the appropriate consular officer of his or her intention to travel to the United States for this purpose. The consular officer shall thereupon schedule an appointment with such alien for the purpose of determining whether or not the alien remains admissible into the United States as an immigrant. Such appointment shall be scheduled not sooner than six months preceding the alien's contemplated date of application for admission for permanent residence. * * *

* * * * *

Dated: April 30, 1997.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 97–13332 Filed 5–20–97; 8:45 am]

BILLING CODE 4710–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50623A; FRL–5715–7]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a document (FR Doc. 96-30474) in the **Federal Register** of December 2, 1996 (61 FR 63726), promulgating significant new use rules in § 721.4484. Two cross-references were inadvertently incorrect. This document corrects those cross-references.

EFFECTIVE DATE: The effective date of this rule is January 31, 1997.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460; telephone: (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a document (FR Doc. 96-30474) in the **Federal Register** of December 2, 1996 (61 FR 63726) (FRL–4964–3), adding § 721.4484. In § 721.4484, two cross-references were inadvertently incorrect. This document corrects the cross-references appearing in § 721.4484 (a)(2)(i) and (a)(2)(ii).

On page 63737, in the second column, in § 721.4484, in paragraph (a)(2)(i), in the third line, ''§ 721.72'' should read ''§ 721.63'' and in paragraph (a)(2)(ii), in the third line, ''§ 721.63'' should read ''§ 721.72''.

Dated: May 13, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–13328 Filed 5–20–97; 8:45 am]

BILLING CODE 6560–50–F

LEGAL SERVICES CORPORATION

45 CFR Part 1610

Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Legal Services Corporation's (''Corporation'' or ''LSC'') interim rule concerning the use of non-LSC funds by LSC recipients. The revisions are intended to address constitutional challenges while ensuring that no LSC-funded entity engages in restricted activities. This final rule continues the interim rule's deletion of the provisions on transfers of non-LSC funds and revises the interim rule's new section that sets out standards for the integrity of recipient programs. The final rule also makes several conforming revisions, including changes to definitions and section titles.

EFFECTIVE DATE: This final rule is effective June 20, 1997.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, (202) 336–8817.

SUPPLEMENTARY INFORMATION: On December 2, 1996, the Corporation published a completely revised final rule to implement Section 504 in the Corporation's FY 1996 appropriations act, Public Law 104–134, 110 Stat. 1321 (1996), as incorporated by the Corporation's FY 1997 appropriations act, Public Law 104–208, 110 Stat. 3009. Section 504 applies certain restrictions to any person or entity receiving LSC funds, effectively restricting the use of virtually all of a recipient's funds to the same degree that it restricts LSC funds. Although not required to by law, the Corporation extended the restrictions on a recipient's funds to a transfer of a recipient's non-LSC funds. Thus, the rule required that when a recipient transferred its non-LSC funds to an entity that had no LSC funds, the conditions would remain attached to the transferred funds. However, the other funds of the entity would not be affected.

In January 1997, five legal services recipients in Hawaii, Alaska, and California, together with two of their program lawyers, two non-federal funders and a client organization, filed suit in the United States District Court for the District of Hawaii challenging a number of the Section 504 restrictions as unconstitutional conditions on their use of non-LSC funds. *Legal Aid Society of Hawaii et al.* v. *Legal Services Corporation*, Civil Action No. 97–00032 ACK, (hereinafter referred to as *LASH*). The Court entered an order on February 14, 1997, which preliminarily enjoined the Corporation from enforcing restrictions on the recipients' use of non-LSC funds for certain restrictions as to which the Court determined that the plaintiffs had a fair likelihood of demonstrating an infringement of First Amendment rights. (The Court denied the preliminary injunction request with respect to certain other restrictions, including those relating to class actions and representation of ineligible aliens.) The Court's preliminary ruling was grounded in pertinent part on its understanding of the Corporation's interrelated organization policy, but also implicated the expansive reach of the Corporation's restrictions on non-LSC funds. The effect of the preliminary order was to allow those recipients who are plaintiffs in the case to use their non-LSC funds to engage in certain prohibited activities within their recipient programs during the interim period before a trial on the merits and a final ruling by the judge.

A similar suit to *LASH* was also filed in January 1997, as a class action in the United States District Court for the Eastern District of New York, which sought, *inter alia,* to have the court declare certain restrictions unconstitutional and grant preliminary and final injunctive relief. *Velazquez et al.* v. *Legal Services Corporation,* 97 Civ. 00182 (FB) (E.D.N.Y.). There has been no ruling or order issued to date.

Because the Court's order in *LASH* created a situation clearly at odds with Congressional intent, the Operations and Regulations Committee (''Committee'') of the Corporation's Board of Directors (''Board'') held public hearings and considered a draft interim rule on March 7, 1997. The Committee recommended and the Board agreed on March 8, 1997, on an interim rule, which was published in the **Federal Register** on March 14, 1997, with a request for comments.

The interim rule revised the final rule with the intent of addressing the constitutional concerns raised in *LASH* while preserving the statutory system created by Congress that forbids recipients from engaging in prohibited activities and subsidizing prohibited activities with LSC funds. Generally, the interim rule deleted provisions in § 1610.7 on the transfer of non-LSC funds and added a new § 1610.8 dealing with the integrity of recipient programs. Section 1610.8 replaced and nullified Section 1–7 of the Corporation's 1986 Audit and Accounting Guide, which set out the Corporation's policy on interrelated organizations.

The Corporation received three timely comments and several other comments thereafter, each of which was given careful consideration. Based on the comments and its own internal research and review, the Corporation has made several revisions to the interim rule. A section-by-section analysis of this final rule is provided below. The analysis includes explanations of provisions in the December 1996 final rule that remain unchanged by the interim or this final rule.

Section 1610.1 Purpose

The purpose section is intended to reflect Congressional intent that no LSC-funded organization engage in any restricted activities. This final rule adds language clarifying that the purpose of the rule is to ensure that recipients maintain objective integrity and independence from organizations that engage in restricted activities. The term ''restricted activities'' is used in the preamble and text of this rule as an umbrella term to refer to the restrictions included in the definitions of ''purpose prohibited by the LSC Act'' and ''activity prohibited by or inconsistent with Section 504.''

Section 1610.1 Definitions

This section provides definitions for terms used in this part. Paragraph (a) defines ''purpose prohibited by the LSC Act.'' The December 1996 final rule revised the Corporation's longstanding definition in several ways. This rule deleted reference to a prohibition on the representation of juveniles, because the prohibition is no longer in the LSC Act. This rule also deleted reference to those restrictions on activities in the LSC Act that are now included in the broader restrictions in the Corporation's appropriations act. Numbering changes were also made to conform to 1977 amendments to the LSC Act. These changes have been retained in this rule.

Paragraph (b) defines ''activity prohibited by or inconsistent with Section 504'' by listing the prohibitions and requirements in Section 504 of the Corporation's FY 1996 appropriations which have been incorporated by reference in the Corporation's FY 1997 appropriations act. These prohibitions and requirements apply to a recipient's activities, regardless of the source of

funding. The definition also makes reference to subsections 504(b) and 504(e), which provide exceptions for specific activities supported by non-LSC funds.

This section also includes definitions of ''IOLTA funds,'' ''non-LSC funds,'' ''private funds,'' ''public funds,'' and ''tribal funds.'' No changes in these definitions have been made by this rule.

Changes have been made to the definition of ''transfer'' to help clarify the meaning of the term and to reflect the deletion of the provisions on transfers of non-LSC funds. Minor changes were made to the first sentence of the definition to clarify that a ''transfer'' includes payments of LSC funds by a recipient to a person or entity for programmatic activities normally conducted by the recipient, such as the representation of eligible clients. A second sentence is added to clarify what is not included in the term. The additional language provides that a ''transfer'' does not include payments of LSC funds to vendors, accountants or other providers of goods and services in the normal course of business. The term is now found in the section on program integrity as well as in the section on transfers of LSC funds.

Section 1610.3 Prohibition

This section sets out the prohibition which states that recipients may not use non-LSC funds for any purpose prohibited by the LSC Act or for any activity prohibited by or inconsistent with Section 504, unless authorized by other provisions in this part.

Section 1610.4 Authorized Use of Non-LSC Funds

This section sets out the circumstances where the restrictions in Section 504 and the LSC Act do not apply to certain categories of a recipient's non-LSC funds. Generally, pursuant to § 1010(c) of the LSC Act, the restrictions in the LSC Act apply to a recipient's LSC and private funds but do not apply to a recipient's public or tribal funds if they are used for the purposes for which they are provided. Restrictions in Section 504, however, generally apply to all of a recipient's funds, including public funds. Paragraph (a) clarifies that, under the LSC Act and Section 504, tribal funds may be used for the purposes for which they were provided. Paragraph (b) clarifies that a recipient's public funds are not subject to the restrictions in the LSC Act but are subject to those in Section 504. This section also states that ''IOLTA funds'' are to be treated the same as public funds. Because a recipient's private funds are subject to the restrictions in both the LSC Act and Section 504, paragraph (c) clarifies that private funds may be used for the purposes for which they were provided, as long as such use is consistent with the restrictions in the LSC Act and Section 504. Finally, paragraph (d) implements an exception in Section 504 which allows recipients to use non-LSC funds for financially ineligible clients, as long as the funds are used for the specific purpose for which they were received and are not used in a manner that violates the LSC Act or Section 504.

Section 1610.5 Notification

This section incorporates the requirement of Section 504(d)(1) of the appropriations act that recipients may not accept funds from non-LSC sources unless they provide written notice to the funders that their funds may not be used in any manner inconsistent with the LSC Act or Section 504. The requirement applies only to cash contributions; recipients are not required to notify persons or organizations who make non-cash donations or volunteer their time or services to the recipient.

The rule contains a *de minimis* exception which relieves recipients of the notice requirement for individual contributions of less than $250. This exception is keyed to the level which triggers the IRS reporting requirement. It is not intended to incorporate any IRS instructions and guidelines concerning contributions to charities. It simply recognizes that, because recipients must provide acknowledgments for donations of $250 or more for IRS purposes, it does not constitute any significant additional burden to incorporate the required notification into the acknowledgment.

Generally, notification should be provided before the recipient accepts the funds. Thus, notice should be given during the course of soliciting funds or applying for a grant or contract. However, for unsolicited donations where advance notice is not feasible, notice should be given in the recipient's letter acknowledging the contribution. For contracts and grants awarded prior to the enactment of the restriction, notice should be given prior to acceptance by the recipient of any additional payments.

The notice requirement applies to funds received by recipients as grants, contracts or charitable donations from funders other than the Corporation, which are intended to fund the non-profit work of the recipient. It does not include funds received from sources such as court payment to attorneys for their work under court appointments; nor does it include payments to the recipient for rent, bank interest, or sale of goods, such as manuals.

An exception is provided for tribal funds. The notice requirement would apply only when the tribal funds are in fact restricted. Thus, when a recipient receives tribal funds to which the restrictions do not apply, no notice is required to the source of the funds.

Section 1610.6 Applicability

This section addresses two distinct situations. First, paragraph (a) clarifies that the prohibitions on criminal proceedings, actions challenging criminal convictions, aliens or prisoner litigation do not apply to a recipient's or subrecipient's separately funded public defender programs or projects. The authority for this provision is found in Section 1010(c) of the LSC Act and is also based on the scope of certain restrictions in Section 504. The restrictions on representation of aliens and prisoners in Section 504 apply only to civil representation and thus do not prohibit criminal representation in public defender programs. Also, although the LSC Act prohibits LSC recipients from engaging in or using resources for any criminal representation, a narrow exception for separately funded public defender programs or projects is provided in Section 1010(c).

Paragraph (b) provides an exception for criminal or related cases accepted by a recipient or subrecipient pursuant to a court appointment.

Section 1610.7 Transfers of LSC Funds

This section addresses the applicability of the statutory restrictions listed in § 1610.2 (a) and (b) when a recipient transfers LSC funds to another person or entity. The statutory restrictions on a recipient's funds in the LSC Act and the Corporation's current appropriations act do not address the applicability of these provisions when a recipient transfers its LSC funds to another person or entity. However, the Corporation has historically applied such provisions to transfers of a recipient's LSC funds. See 45 CFR parts 1627 and 1632 and Program Letter dated December 11, 1995. This policy reflects the intent of the Corporation that transfers of LSC funds not become a means to circumvent statutory restrictions on those funds.

Paragraph (a) provides that the restrictions listed in § 1610.2 (a) and (b) will apply to any LSC funds transferred to another person or entity as well as to the non-LSC funds of the person or entity receiving such funds. This requirement is based on the

Corporation's interpretation of legislative intent that the statutory conditions on LSC funds attach to a recipient's non-LSC funds and that, in most situations, this should also be the case when LSC funds are transferred by a recipient to another person or entity. Otherwise, recipients would be able to avoid legislative intent by simply transferring their LSC funds to other persons or entities.

Paragraph (b) modifies this requirement in the areas of timekeeping and priorities. The statutory provisions on timekeeping and priorities are administrative requirements more appropriately applicable to a recipient's own use of its funds. The intent is to assure greater accountability for the recipient's use of its funds without imposing unnecessary administrative burdens. Thus, this section applies the administrative requirements on priorities and timekeeping only to the funds transferred and only to the extent to ensure accountability for those funds. The rule requires that entities receiving a transfer of LSC funds must either use the funds consistent with the recipient's priorities or establish their own priorities for the use of the funds. In regard to timekeeping, the language tracks the statutory requirement so that entities that receive a transfer of LSC funds are required to maintain records of time spent on each case or matter undertaken with the funds transferred. However, they are not required to keep time in accordance with the Corporation's timekeeping regulation, 45 CFR part 1635.

Paragraph (c) provides an exception for a transfer of LSC funds to bar associations, *pro bono* programs, private attorneys or law firms, or other entities for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614. For such transfers, the restrictions or requirements would apply only to the LSC funds transferred and not to the other funds of the persons or entities listed in this paragraph.

The December 1996 final rule included provisions on the transfer of non-LSC funds. The interim rule deleted these provisions and included in the rule instead a new § 1610.8 on program integrity. The deleted provisions provided that non-LSC funds transferred by a recipient would be subject to the restrictions of this part, but that any other funds of the entity receiving such funds would not be subject to the restrictions.

Comments on the interim rule generally favored deleting the provisions, but suggested that the Corporation state affirmatively in the rule itself that non-LSC funds that are transferred are not subject to the restrictions. The Board determined that it is not necessary to include an affirmative statement of the effect of taking out the provisions. There is no statutory provision requiring that a transfer of non-LSC funds be subject to LSC restrictions, and the fact that the provision has been deleted speaks for itself.

Section 1610.8 Program Integrity of Recipient

This section provides a standard for program integrity by requiring that recipients maintain objective integrity and independence from any organization that engages in restricted activities. The program integrity test in the interim rule was a 2-step process. Paragraph (a)(2) of § 1610.8 of the interim rule set out the first step by delineating the factors used to determine whether an affiliation existed between the recipient and another organization, such that the recipient would be found to control, be controlled by or be subject to common control by the other organization. The factors to determine control were taken almost verbatim from the Corporation's interrelated organization policy. If such an affiliation were found to exist under paragraph (a), then the recipient was required to comply with step 2, the program integrity test delineated in paragraph (b), so that the restrictions listed in this part would not apply to the affiliate organization. The second step of the program integrity test was fashioned after the program integrity standard found to be constitutional in *Rust* v. *Sullivan* by the Supreme Court, see 500 U.S. 173 (1991).

Most of the comments on the interim rule's first step (the interrelated organization policy) stated that the meaning of several of the factors to determine control was unclear. In addition, although paragraph (a) expressly stated that only one factor would be dispositive of control, the commenters also expressed confusion on this matter and suggested that the determination of control should be based on the totality of the facts and not on the existence of any particular factor.

Based on the Corporation's review of the comments and its research and analysis of the factors of the interrelated organization policy, the Board decided to delete paragraph (a) in its entirety for the following reasons:

The purpose of the policy was to establish whether a relationship existed between the recipient and another organization, such that the recipient and the other organization actually operated as one, rather than two separate organizations. The Board determined that if a program is found to be in compliance with the second step of the program integrity test, there would be a sufficiently separate identity and operational independence from the recipient.

Based on comments from the Corporation's Office of Inspector General (OIG), the Board determined that the interim rule did not provide sufficient guidance regarding any relationship a recipient might have with another independent organization. Under the interim rule, a recipient could have a relationship with another organization in which no formal control of one organization by the other exists, but in which there is substantial sharing of non-LSC funds, office space, equipment and personnel. By deleting paragraph (a) and revising paragraph (b), the rule provides guidance regarding a recipient's relationship with any organization, independent or affiliated, that engages in restricted activities. At the same time, because the standards will allow control at the Board level, recipients will have an avenue through which to engage in restricted activities as long as they comply with the program integrity standards.

Comments on the second step generally stated that the standards created substantial practical problems for recipients. They also said that the standards were unclear as to the strictness of each factor, whether any particular factor would be determinative and whether a determination of compliance with the standards would be based on the totality of the facts.

Having deleted the first step of the analysis on program integrity, the Board revised the second step to stand alone without reference to the interrelated organization factors. In response to comments, this new paragraph (a) was further revised to clarify that a determination of compliance with the program integrity standard would require a case-by-case determination based on the totality of the facts. Paragraph (a) now provides that a recipient must have an objective integrity and independence from any organization that engages in prohibited activities. Whether a recipient will be found to have such objective integrity and independence will be based on three considerations.

First, paragraph (a)(1) provides that the other organization must be a separate legal entity. This factor was implied but not made explicit in the interim rule. This change is necessary to implement Congressional intent that a recipient as a legal entity may not

engage in certain restricted activities, regardless of the source of funds. At the same time, the Corporation has fashioned a rule that does not foreclose a recipient from engaging in restricted activities through another legally distinct organization, as long as the recipient meets this rule's program integrity standards.

Second, paragraph (a)(2) provides that the other organization must not receive any LSC funds and no LSC funds may subsidize restricted activities. In response to comments, the Board deleted the words ''directly or indirectly'' before ''subsidize'' because they elicited objections and provided unclear guidance. ''Subsidize'' includes a payment of LSC funds to support, in whole or in part, a restricted activity conducted by another entity, or payment to another entity to cover overhead, in whole or in part, relating to a restricted activity. A recipient will be considered to be subsidizing the restricted activities of another organization if it provides the use of its LSC-funded resources to the organization without receiving a fair market price for such use. Thus, if a recipient makes an in-kind contribution, such as donated LSC-funded space or telephone services, to another organization, the donation would be a subsidy. However, this example is not intended to mean that a recipient may share resources as long as the recipient receives a fair payment. A recipient must also maintain an actual physical and financial separation as set out in paragraph (a)(3) of this section.

Third, under paragraph (a)(3), the recipient must maintain a physical and financial separation from the other organization. Mere bookkeeping is not enough and a determination of sufficient separation will be based on the totality of the facts. The factors include, but are not limited to, existence of separate personnel, existence of separate accounting and timekeeping records, degree of separation of facilities and extent of the use of facilities for restricted work, and the extent to which indicia, such as signs, distinguish the recipient from the other organization. Whether the recipient meets the program integrity standard by having sufficient separation will be determined on a case-by-case basis, and each case will be determined on the totality of the facts and no one factor is intended to be determinative. [1]

[1] In response to certain comments construing or characterizing the separation-of-personnel factor as dispositive or absolute, the interpretation in this preamble, based on consideration of the totality of the circumstances, supersedes any arguably contrary or inconsistent interpretation provided by any individual LSC official prior to issuance of this final rule.

Several commenters asked the Corporation to clarify whether the ''program integrity'' requirement would automatically fail to be satisfied if a particular factor, such as personnel or facilities, was not completely separate. Because the Corporation is adopting a case-by-case approach based on the totality of the circumstances, LSC does not believe that it would be appropriate or feasible to use this preamble to provide advisory opinions based on limited or incomplete information about a recipient's relationship with an organization involved in restricted activities. However, consistent with the Corporation's longstanding practice regarding compliance issues, individual recipients are welcome to submit all the relevant ''program integrity'' information and request a review by the Corporation of any existing or contemplated relationship with an organization that engages in restricted activities.

Commenters on the practical problems raised by the standards argued for mere bookkeeping and appeared to say that use of LSC-funded facilities and equipment is necessary for a non-LSC organization to function and engage in prohibited activities. Some commenters stated that it is not financially possible to duplicate everything and that programs should be allowed to use a recipient's facilities, equipment or staff, as long as there is appropriate documentation and allocation of funds. The Board determined that such a situation would violate the Congressional requirement that entities it funds not engage in restricted activities. The rule requires ''objective integrity and independence'' which cannot be achieved by mere bookkeeping. Thus, determinations taking into account the physical and financial separation standards must ensure that there is no identification of the recipient with restricted activities and that the other organization is not so closely identified with the recipient that there might be confusion or misunderstanding about the recipient's involvement with or endorsement of prohibited activities.

The interim rule's requirement that the recipient's board approve the recipient's affiliation with another organization has been deleted and replaced by a requirement in paragraph (b) that each recipient's governing body certify to the Corporation within 180 days of the effective date of this rule that it is in compliance with the program integrity standards set out in this section. Thereafter, the governing body must certify on an annual basis that the recipient has maintained such compliance. This requirement is intended to ensure that a recipient's governing body has reviewed any relationships the recipient has with other organizations involved in restricted activities to assure compliance with the program integrity standards. The Corporation will issue guidance regarding the form of certification and the records necessary to support such certification.

Section 1610.9 Accounting

This section sets out the general accounting requirement for recipients for their non-LSC funds. Currently, recipients are directed by the accounting guidance issued by the Corporation.

List of Subjects in 45 CFR Part 1610

Grant programs, Legal services.

For reasons set forth in the preamble, LSC revises 45 CFR Part 1610 to read as follows:

PART 1610—USE OF NON-LSC FUNDS, TRANSFERS OF LSC FUNDS, PROGRAM INTEGRITY

Sec.

1610.1 Purpose.
1610.2 Definitions.
1610.3 Prohibition.
1610.4 Authorized use of non-LSC funds.
1610.5 Notification.
1610.6 Applicability.
1610.7 Transfers of LSC funds.
1610.8 Program integrity of recipient.
1610.9 Accounting.

Authority: 42 U.S.C. 2996i; Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321.

§ 1610.1 Purpose.

This part is designed to implement statutory restrictions on the use of non-LSC funds by LSC recipients and to ensure that no LSC-funded entity shall engage in any restricted activities and that recipients maintain objective integrity and independence from organizations that engage in restricted activities.

§ 1610.2 Definitions.

(a) *Purpose prohibited by the LSC Act* means any activity prohibited by the following sections of the LSC Act and those provisions of the Corporation's regulations that implement such sections of the Act:

(1) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6), and 1007(b)(4) of the LSC Act and 45 CFR part 1608 of the LSC Regulations (Political activities);

(2) Section 1007(a)(10) of the LSC Act (Activities inconsistent with professional responsibilities);

(3) Section 1007(b)(1) of the LSC Act and 45 CFR part 1609 of the LSC regulations (Fee-generating cases);

(4) Section 1007(b)(2) of the LSC Act and 45 CFR part 1613 of the LSC Regulations (Criminal proceedings);

(5) Section 1007(b)(3) of the LSC Act and 45 CFR part 1615 of the LSC Regulations (Actions challenging criminal convictions);

(6) Section 1007(b)(7) of the LSC Act and 45 CFR part 1612 of the LSC Regulations (Organizing activities);

(7) Section 1007(b)(8) of the LSC Act (Abortions);

(8) Section 1007(b)(9) of the LSC Act (School desegregation); and

(9) Section 1007(b)(10) of the LSC Act (Violations of Military Selective Service Act or military desertion).

(b) *Activity prohibited by or inconsistent with Section 504* means any activity prohibited by, or inconsistent with the requirements of, the following sections of 110 Stat. 1321 (1996) and those provisions of the Corporation's regulations that implement those sections:

(1) Section 504(a)(1) and 45 CFR part 1632 of the LSC Regulations (Redistricting);

(2) Sections 504(a) (2) through (6), as modified by Sections 504 (b) and (e), and 45 CFR part 1612 of the LSC Regulations (Legislative and administrative advocacy);

(3) Section 504(a)(7) and 45 CFR part 1617 of the LSC Regulations (Class actions);

(4) Section 504(a)(8) and 45 CFR part 1636 of the LSC Regulations (Client identification and statement of facts);

(5) Section 504(a)(9) and 45 CFR part 1620 of the LSC Regulations (Priorities);

(6) Section 504(a)(10) and 45 CFR part 1635 of the LSC Regulations (Timekeeping);

(7) Section 504(a)(11) and 45 CFR part 1626 of the LSC Regulations (Aliens);

(8) Section 504(a)(12) and 45 CFR part 1612 of the LSC Regulations (Public policy training);

(9) Section 504(a)(13) and 45 CFR part 1642 of the LSC Regulations (Attorneys' fees);

(10) Section 504(a)(14) (Abortion litigation);

(11) Section 504(a)(15) and 45 CFR part 1637 of the LSC Regulations (Prisoner litigation);

(12) Section 504(a)(16), as modified by Section 504(e), and 45 CFR part 1639 of the LSC Regulations (Welfare reform);

(13) Section 504(a)(17) and 45 CFR part 1633 of the LSC Regulations (Drug-related evictions); and

(14) Section 504(a)(18) and 45 CFR part 1638 of the LSC Regulations (In-person solicitation).

(c) *IOLTA funds* means funds derived from programs established by State court rules or legislation that collect and distribute interest on lawyers' trust accounts.

(d) *Non-LSC funds* means funds derived from a source other than the Corporation.

(e) *Private funds* means funds derived from an individual or entity other than a governmental source or LSC.

(f) *Public funds* means non-LSC funds derived from a Federal, State, or local government or instrumentality of a government. For purposes of this part, IOLTA funds shall be treated in the same manner as public funds.

(g) *Transfer* means a payment of LSC funds by a recipient to a person or entity for the purpose of conducting programmatic activities that are normally conducted by the recipient, such as the representation of eligible clients, or that provide direct support to the recipient's legal assistance activities. *Transfer* does not include any payment of LSC funds to vendors, accountants or other providers of goods and services made by the recipient in the normal course of business.

(h) *Tribal funds* means funds received from an Indian tribe or from a private nonprofit foundation or organization for the benefit of Indians or Indian tribes.

§ 1610.3 Prohibition.

A recipient may not use non-LSC funds for any purpose prohibited by the LSC Act or for any activity prohibited by or inconsistent with Section 504, unless such use is authorized by §§ 1610.4, 1610.6 or 1610.7 of this part.

§ 1610.4 Authorized use of non-LSC funds.

(a) A recipient may receive tribal funds and expend them in accordance with the specific purposes for which the tribal funds were provided.

(b) A recipient may receive public or IOLTA funds and use them in accordance with the specific purposes for which they were provided, if the funds are not used for any activity prohibited by or inconsistent with Section 504.

(c) A recipient may receive private funds and use them in accordance with the purposes for which they were provided, provided that the funds are not used for any activity prohibited by the LSC Act or prohibited or inconsistent with Section 504.

(d) A recipient may use non-LSC funds to provide legal assistance to an individual who is not financially eligible for services under part 1611 of this chapter, provided that the funds are used for the specific purposes for which those funds were provided and are not used for any activity prohibited by the LSC Act or prohibited by or inconsistent with Section 504.

§ 1610.5 Notification.

(a) Except as provided in paragraph (b) of this section, no recipient may accept funds from any source other than the Corporation, unless the recipient provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds.

(b) A recipient is not required to provide such notification for receipt of contributions of less than $250.

§ 1610.6 Applicability.

Notwithstanding § 1610.7(a), the prohibitions referred to in §§ 1610.2(a)(4) (Criminal proceedings), (a)(5) (Actions challenging criminal convictions), (b)(7) (Aliens) or (b)(11) (Prisoner litigation) of this part will not apply to:

(a) A recipient's or subrecipient's separately funded public defender program or project; or

(b) Criminal or related cases accepted by a recipient or subrecipient pursuant to a court appointment.

§ 1610.7 Transfers of LSC funds.

(a) If a recipient transfers LSC funds to another person or entity, the prohibitions and requirements referred to in this part, except as modified by paragraphs (b) and (c) of this section, will apply both to the LSC funds transferred and to the non-LSC funds of the person or entity to whom those funds are transferred.

(b)(1) In regard to the requirement in § 1610.2(b)(5) on priorities, persons or entities receiving a transfer of LSC funds shall either:

(i) Use the funds transferred consistent with the recipient's priorities; or

(ii) Establish their own priorities for the use of the funds transferred consistent with 45 CFR part 1620;

(2) In regard to the requirement in § 1610.2(b)(6) on timekeeping, persons or entities receiving a transfer of LSC funds are required to maintain records of time spent on each case or matter undertaken with the funds transferred.

(c) For a transfer of LSC funds to bar associations, *pro bono* programs, private attorneys or law firms, or other entities for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR part 1614, the prohibitions or requirements of this part shall apply only to the funds transferred.

§ 1610.8 Program integrity of recipient.

(a) A recipient must have objective integrity and independence from any organization that engages in restricted activities. A recipient will be found to have objective integrity and independence from such an organization if:

(1) The other organization is a legally separate entity;

(2) The other organization receives no transfer of LSC funds, and LSC funds do not subsidize restricted activities; and

(3) The recipient is physically and financially separate from the other organization. Mere bookkeeping separation of LSC funds from other funds is not sufficient. Whether sufficient physical and financial separation exists will be determined on a case-by-case basis and will be based on the totality of the facts. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include but will not be limited to:

(i) The existence of separate personnel;

(ii) The existence of separate accounting and timekeeping records;

(iii) The degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and

(iv) The extent to which signs and other forms of identification which distinguish the recipient from the organization are present.

(b) Each recipient's governing body must certify to the Corporation within 180 days of the effective date of this part that the recipient is in compliance with the requirements of this section. Thereafter, the recipient's governing body must certify such compliance to the Corporation on an annual basis.

§ 1610.9 Accounting.

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation.

Dated: May 19, 1997.

Victor M. Fortuno,

General Counsel.

[FR Doc. 97–13516 Filed 5–20–97; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–239; RM–8939]

Radio Broadcasting Services; Harrietta, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 229A to Harrietta, Michigan, as that community's first local service in response to a petition filed by Melinda Hancock. *See* 61 FR 64660, December 6, 1996. There is a site restriction 3.6 kilometers (2.3 miles) south of the community at coordinates 44–16–38 and 85–41–55. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective June 30, 1997. The window period for filing applications for Channel 229A at Harrietta, Michigan, will open on June 30, 1997, and close on July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 96–239, adopted May 7, 1997, and released May 16, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Harrietta, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–13293 Filed 5–20–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–175; RM–8850]

Radio Broadcasting Services; Strasburg, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 249C3 to Strasburg, Colorado, as that community's second local aural transmission service, and reserves it for noncommercial educational use, in response to a petition for rule making filed by J.P.I. Radio, Inc. See 61 FR 47471, September 9, 1996. Coordinates used for noncommercial educational Channel 249C3 at Strasburg are 39–43–13 and 104–11–58. See Supplementary Information, infra. With this action, the proceeding is terminated.

EFFECTIVE DATE: June 30, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process for noncommercial educational Channel 249C3 at Strasburg, Colorado, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–175, adopted May 7, 1997, and released May 16, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Channel 272A was allotted to Strasburg, Colorado, in MM Docket No. 89–61. See Report and Order, 4 FCC Rcd 7570 (1989), 54 FR 45735, October 31, 1989. However, Channel 272A at Strasburg, Colorado, does not appear in 47 CFR 73.202(b), the Table of FM Allotments, as revised as of October 1, 1996. Therefore, as announced in the

Notice in this proceeding, we are making an editorial amendment herein to the Table of FM Allotments to reflect that Channel 272A is allotted at Strasburg, Colorado.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Strasburg, Channel *249C3;

3. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 272A at Strasburg.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–13295 Filed 5–20–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–28; RM–8917; RM–9066]

Radio Broadcasting Services; Twin Falls, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 252C1 to Twin Falls, Idaho, as that community's third local FM service, in response to a proposal filed on behalf of AM 1270 Co. (RM–9066), rather than Channel 252A as proposed in the Notice of Proposed Rule Making at the request of Orchalara Broadcasting Company (RM–8917). The allotment of Channel 252C1 to Twin Falls is consistent with the Commission's policy to allot the highest class channel available to a community that meets the technical requirements of the Commission's Rules. *See* 62 FR 4226, January 29, 1997. Coordinates used for Channel 252C1 at Twin Falls, Idaho, are 42–33–42 and 114–28–12. With this action, the proceeding is terminated.

DATES: Effective June 30, 1997. The window period for filing applications for Channel 252C1 at Twin Falls, Idaho, will open on June 30, 1997, and close on July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 252C1 at Twin Falls, Idaho, should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–28, adopted May 7, 1997, and released May 16, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Channel 252C1 at Twin Falls.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–13296 Filed 5–20–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–54; RM–8769, RM–8809]

Radio Broadcasting Services; Cloudcroft and Ruidoso, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kellie K. Brown, allots Channel 268A to Ruidoso, NM, as the commuinity's third aural and second local FM service. *See* 61 FR 14042, March 29, 1996. At the request of MTD, Inc., the Commission allots Channel 244C to Cloudcroft, NM, as the community's first local FM service. Channel 268A can be allotted to Ruidoso in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 33–20–00 North Latitude and 105–40–54 West Longitude. Channel 244C can be allotted to Cloudcroft with a site restriction of 59.9 kilometers (31.6 miles) north, at coordinates 33–24–14; 105–46–56, to avoid a short-spacing to the proposed allotments of Channel 245C at El Porvenir, Chihuahua, and Channel 245B, Las Palomas, Chihuahua, Mexico. Mexican concurrence in the allotments has been received since Cloudcroft and Ruidoso are both located within 320 kilometers (199 miles) of the U.S.-Mexican border. With this action, this proceeding is terminated.

DATES: Effective June 30, 1997. The window period for filing applications for Channel 268A at Ruidoso and Channel 244C at Cloudcroft, will open on June 30, 1997, and close on July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–54, adopted May 7, 1997, and released May 16, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Cloudcroft, Channel 244C, and by adding Channel 268A at Ruidoso.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–13294 Filed 5–20–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–85; RM–9026]

Radio Broadcasting Services; Belgrade, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 256A to Belgrade, Montana, as that community's second FM broadcast service in response to a petition filed by Gallatin Valley Witness, Inc. *See* 62 FR 10011, March 5, 1997. The coordinates for Channel 256A at Belgrade are 45–46–36 and 111–10–36. With this action, this proceeding is terminated.

DATES: Effective June 30, 1997. The window period for filing applications for Channel 256A at Belgrade, Montana, will open on June 30, 1997, and close on July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–85, adopted May 7, 1997, and released May 16, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Channel 256A at Belgrade.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–13300 Filed 5–20–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–74; RM–9011]

Radio Broadcasting Services; Colstrip, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action in this document allots Channel 229A to Colstrip, Montana, as that community's first local broadcast service in response to a petition filed by Windy Valley Broadcasting. *See* 62 FR 9409, March 3, 1997. The coordinates for Channel 229A at Colstrip are 45–53–00 and 106–37–36. With this action this proceeding is terminated.

DATES: Effective June 30, 1997. The window period for filing applications for Channel 229A at Colstrip, Montana, will open on June 30, 1997, and close on July 31, 1997.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–74, adopted May 7, 1997, and released May 16, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Colstrip, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–13299 Filed 5–20–97; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Parts 801 and 837

Production of Records in Legal Proceedings

AGENCY: National Transportation Safety Board.

ACTION: Final rules.

SUMMARY: The Board is adopting new rules so as better to manage its document production workload.

DATES: The new rules are effective June 20, 1997.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 314–6080.

SUPPLEMENTARY INFORMATION: At present, the Board has no specific rules governing release of information demanded of it by litigants in legal proceedings in which the NTSB is not a party. In many cases, parties use our Freedom of Information Act rules at Part 801. Others simply purchase documents from our contractor, or contact our Public Inquiries Branch. But, in recent years, more and more parties in private litigation are using subpoenas to seek documents and other physical material from the agency. These subpoenas are often overbroad, may not reflect the types of records and search systems the Board maintains, and may have very short return dates. Yet, once the subpoena is issued, and in the absence of rules such as these (which are also published by other agencies), we often have no option but to file written objections or to process the request in advance of others submitted earlier, albeit not in subpoena form.

Accordingly, we have determined that administrative efficiency and fairness require that we adopt rules to regulate the manner in which documents are requested and document production

requests are processed. Because these rule changes affect only rules of agency organization, procedures, or practice, notice and comment procedures are not required and are not provided here. 5 U.S.C. 553(b)(B).

List of Subjects

49 CFR Part 801

Freedom of information, Information, Public availability.

49 CFR Part 837

Administrative practice and procedure, Freedom of information, Government employees, Investigations.

The NTSB amends 49 CFR Chapter VIII as follows:

1. The authority citation for part 801 is revised to read as follows:

Authority: 5 U.S.C. 552; 49 U.S.C. 1101 et seq.; 18 U.S.C. 641 and 2071.

§ 801.13 [Removed]

2. Section 801.13 is removed.

3. Part 837 is added to read as follows:

PART 837—PRODUCTION OF RECORDS IN LEGAL PROCEEDINGS

Sec.
837.1 Purpose and scope.
837.2 Applicability.
837.3 Published reports, material contained in the public accident investigation dockets, and accident database data.
837.4 Other material.

Authority: 49 U.S.C. 1101 *et seq.*; 40101 *et seq.*; 5 U.S.C. 301.

§ 837.1 Purpose and scope.

(a) This part sets forth procedures to be followed when requesting material for use in legal proceedings (including administrative proceedings) in which the National Transportation Safety Board (NTSB or Board) is not a party, and procedures to be followed by the employee upon receipt of a subpoena, order, or other demand (collectively referred to here as a demand) by a court or other competent authority or by a private litigant. ''Material,'' as used in this part, means any type of physical or documentary evidence, including but not limited to paper documents, electronic media, videotapes, audiotapes, etc.

(b) The purposes of this part are to:

(1) Conserve the time of employees for conducting official business;

(2) Minimize the possibility of involving the NTSB in controversial issues not related to its mission;

(3) Maintain the impartiality of the Board among private litigants;

(4) Avoid spending the time and money of the United States for private purposes; and

(5) To protect confidential, sensitive information, and the deliberative processes of the Board.

§ 837.2 Applicability.

This part applies to requests to produce material concerning information acquired in the course of performing official duties or because of the employee's official status. Specifically, this part applies to requests for: material contained in NTSB files; and any information or material acquired by an employee of the NTSB in the performance of official duties or as a result of the employee's status. Two sets of procedures are here established, dependent on the type of material sought. Rules governing requests for employee testimony, as opposed to material production, can be found at 49 CFR part 835. Document production shall not accompany employee testimony, absent compliance with this part and General Counsel approval.

§ 837.3 Published reports, material contained in the public accident investigation dockets, and accident database data.

(a) Demands for material contained in the NTSB's official public docket files of its accident investigations, or its computerized accident database(s) shall be submitted, in writing, to the Public Inquiries Branch. Demands for specific published reports and studies should be submitted to the National Technical Information Service. The Board does not maintain stock of these items. Demands for information collected in particular accident investigations and made a part of the public docket should be submitted to the Public Inquiries Branch or, directly, to our contractor. For information regarding the types of documents routinely issued by the Board, see 49 CFR part 801.

(b) No subpoena shall be issued to obtain materials subject to this paragraph, and any subpoena issued shall be required to be withdrawn prior to release of the requested information. Payment of reproduction fees may be required in advance.

§ 837.4 Other material.

(a) *Production prohibited unless approved.* Except in the case of the material referenced in § 837.3, no employee or former employee of NTSB shall, in response to a demand of a private litigant, court, or other authority, produce any material contained in the files of the NTSB (whether or not agency records under 5 U.S.C. 552) or produce any material acquired as part of the performance of the person's official duties or because of the person's official status, without the prior written approval of the General Counsel.

(b) *Procedures to be followed for the production of material under this paragraph.*

(1) All demands for material shall be submitted to the General Counsel at NTSB headquarters, Washington, DC 20594. If an employee receives a demand, he shall forward it immediately to the General Counsel.

(2) Each demand must contain an affidavit by the party seeking the material or his attorney setting forth the material sought and its relevance to the proceeding, and containing a certification, with support, that the information is not available from other sources, including Board materials described in §§ 837.3 and part 801 of this chapter.

(3) In the absence of General Counsel approval of a demand, the employee is not authorized to comply with the demand.

(4) The General Counsel shall advise the requester of approval or denial of the demand, and may attach whatever conditions to approval considered appropriate or necessary to promote the purposes of this part. The General Counsel may also permit exceptions to any requirement in this part when necessary to prevent a miscarriage of justice, or when the exception is in the best interests of the NSTB and/or the United States.

Issued in Washington, DC, May 16, 1997.

Jim Hall,

Chairman.

[FR Doc. 97–13316 Filed 5–20–97; 8:45 am]

BILLING CODE 7533–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 678

[Docket No. 961211348–7106–04; I.D. 041897C]

RIN 0648–AH77

Atlantic Shark Fisheries; Quotas, Bag Limits, Prohibitions, and Requirements

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

ACTION: Final rule; technical amendment.

SUMMARY: NMFS is amending the final regulations governing the Atlantic shark fisheries by combining the recreational bag limits under one paragraph and

reinserting a paragraph that was inadvertently deleted by a recently published final rule, which prohibits a person to whom Federal bag limits apply from combining Federal and state bag or possession limits. When issuing the final regulations, it was not the intent of NMFS to eliminate the prohibition on combining Federal and state bag or possession limits.

DATES: Effective May 21, 1997.

FOR FURTHER INFORMATION CONTACT: C. Michael Bailey, John D. Kelly, or Margo B. Schulze, 301–713–2347, FAX: 301–713–1917.

SUPPLEMENTARY INFORMATION: On April 7, 1997, NMFS published a final rule (62 FR 16648) that modified commercial quotas and recreational bag limits. The final rule inadvertently eliminated the prohibition on combining Federal and state bag and possession limits. This amendment revises the final regulations by reinserting the previously existing prohibition on combining Federal and state bag or possession limits as 50 CFR 678.23(c). To accommodate this amendment, 50 CFR 678.23(b) and (c), as added by the April 7, 1997, final rule, are redesignated as 50 CFR 678.23(b)(1) and (2).

Classification

The Assistant Administrator (AA), NMFS finds good cause, under 5 U.S.C. 553(b)(B), to waive the requirement to provide prior notice and opportunity for public comment as such procedures are unnecessary. This rule merely reinserts previously existing language that was inadvertently omitted.

The unintentional removal of this prohibition could result in higher mortality on the overfished large coastal sharks than allowed under the final regulations. Accordingly, under 5 U.S.C. 553(d)(3), there is good cause to waive the 30 day delay in effective date. However, in order to provide notice, NMFS will delay the effective date of this rule for 5 days.

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 678

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 14, 1997.

Charles Karnella,

Acting Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 678 is amended as follows:

PART 678—ATLANTIC SHARK

1. The authority citation for part 678 continues to read as follows:

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

2. In § 678.23, paragraphs (b) and (c) are redesignated as paragraphs (b)(1) and (2), the heading and introductory text to paragraph (b) and a new paragraph (c) is added to read as follows:

§ 678.23 Bag limits.

* * * * *

(b) *Bag limits.* Bag limits are as follows:

* * * * *

(c) *Combination of bag limits.* A person to whom the bag limits apply may not combine a bag limit specified in paragraph (b) of this section with a bag or possession limit applicable to state waters.

* * * * *

[FR Doc. 97–13158 Filed 5-16-97; 1:32 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 62, No. 98

Wednesday, May 21, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–18]

Establishment of Class E Airspace; Cooperstown, ND, Cooperstown Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Cooperstown, ND. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 13 and a GPS SIAP to Runway 31 have been developed for Cooperstown Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 7, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–18, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–18.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. 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 Cooperstown, ND; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 13 SIAP and GPS Runway 31 at Cooperstown Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for 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. 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 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 proposed 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).

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 part 71 continues to read as follows:

Authority: 40 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 areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Cooperstown, ND [New]

Cooperstown Municipal Airport, ND
(Lat. 47°25′22″ N, long. 98°06′21″ W)
Devils Lake VORTAC
(Lat. 48°06′48″ N, long. 98°54′29″ W)
Grand Forks Air Force Base, ND
(Lat. 47°57′40″ N, long. 97°24′04″ W)
Valley City Barnes County Municipal Airport
(Lat. 46°56′28″ N, long. 98°01′03″ W)
Jamestown VOR/DME
(Lat. 46°55′58″ N, long. 98°40′44″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Cooperstown Municipal Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded on the east by longitude 97°49′30″ W, on the south by the 7.9-mile radius of the Valley City Barnes County Municipal Airport and by V2–510, on the southwest by the 16.5-mile radius of the Jamestown VOR/DME and on the west by V561; and that airspace bounded on the northwest by the 34-mile arc of the Grand Forks Air Force Base, on the east by V561, on the southwest by the 16.5-mile radius of the Jamestown VOR/DME and V170, and on the west by V55; and that airspace bounded on the north by V430, on the east by the 34-mile arc of the Grand Forks Air Force Base, on the south by V55, on the west by V170, and on the northwest by the 22-mile radius of the Devils Lake VORTAC.

* * * * *

Issued in Des Plaines, Illinois on May 7, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–13262 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–19]

Establishment of Class E Airspace; South Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace within the State of South Dakota, west of Winner, SD. This airspace action will allow more flexibility for Part 135 and air ambulance operators and will provide a safer environment for all aircraft flying in the described controlled airspace. Controlled airspace extending upward from 1200 feet above ground level (AGL) is needed to contain aircraft executing instrument flight rules (IFR) operations. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before July 7, 1997.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 97–AGL–19, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AGL–19.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. 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 within the state of South Dakota, west of Winner, SD; this proposal would provide adequate Class E airspace for operators executing IFR operations within the described airspace. Controlled airspace extending upward from 1200 feet AGL is needed to contain aircraft executing IFR operations. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions

from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for 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. 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 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 proposed 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).

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 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 areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL SD E5 South Dakota, SD [New]

That airspace extending upward from 1,200 feet above the surface within an area bounded on the north by latitude 43°40′00″ N, on the east by longitude 100°05′00″ W, on the south by the South Dakota, Nebraska border, an on the west by longitude 102°00′00″ W.

* * * * *

Issued in Des Plaines, Illinois on May 7, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 97–13261 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5828–4]

National Emission Standards for Hazardous Air Pollutants, Proposed Rule for Pharmaceuticals Production

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is announcing the extension of the public comment period on the proposed national emission standards for hazardous air pollutants (NESHAP) for pharmaceuticals production (62 FR 15754), which was published on April 2, 1997.

DATES: Written comments must be received on or before July 2, 1997.

ADDRESSES: Submit comments in duplicate if possible to: Air Docket Section (LE–131), Attention: Docket No. A–96–03, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that separate copies be sent to the appropriate contact person listed below. The docket may be inspected at the above address between 8:00 a.m. and 5:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the NESHAP, contact Mr. Randy McDonald at (919)541–5402, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. For information concerning the effluent limitation guideline pretreatment standards or new source performance standards, contact Dr. Frank Hund at (202) 260–7786, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20406.

SUPPLEMENTARY INFORMATION: In response to a request from the Pharmaceutical Research and Manufacturers of America (PhRMA), EPA is extending the public comment period on the proposed standards from June 2, 1997 to July 2, 1997. The EPA agrees with PhRMA that an extension of the comment period will provide for more meaningful, constructive comments on the proposed rule. Having extended the comment period, EPA nonetheless encourages commenters to submit their comments (or as many of their comments as possible) before July 2; this would assist EPA in its considerations of the issues raised. Because the EPA has continued during the comment period to examine the issues outlined in the solicitation of comments section in the preamble of the proposed rule, EPA does not believe the extension of the comment period will disrupt the Agency's schedule for promulgating this regulation.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 14, 1997.

Richard Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–13322 Filed 5–20–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–5827–8]

Withdrawal From Federal Regulations of the Applicability to Alaska of Arsenic Human Health Criteria

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: In 1992, EPA promulgated federal regulations establishing water quality criteria for toxic pollutants for several states, including Alaska (40 CFR 131.36). In this action, EPA is proposing to withdraw the applicability to Alaska of the federal human health criteria for arsenic. EPA is providing an

opportunity for public comment on withdrawal of the federal criteria because the state's arsenic criteria differ from the federal criteria.

DATES: EPA will accept public comments on its proposed withdrawal of the human health criteria for arsenic applicable to Alaska until July 7, 1997. Comments postmarked after this date may not be considered.

ADDRESSES: An original plus 2 copies, and if possible an electronic version of comments either in WordPerfect or ASCII format, should be addressed to Sally Brough, U.S. EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington, 98101.

The official administrative record for the consideration of this proposal for arsenic is available for public inspection at EPA Region 10, Office of Water, 1200 Sixth Avenue, Seattle, Washington, 98101, between 8:00 a.m. and 4:30 p.m. Copies of the record are also available for public inspection at EPA's Alaska Operations Offices: 222 West 7th Avenue, Anchorage, AK and 410 Willoughby Avenue, Janeau, AK.

FOR FURTHER INFORMATION CONTACT: Fred Leutner at EPA Headquarters, Office of Water (4305), 401 M Street, SW, Washington, DC, 20460 (telephone: 202–260–1542), or Sally Brough in EPA's Region 10 (telephone: 206–553–1295).

SUPPLEMENTARY INFORMATION:

Potentially Affected Entities

Citizens concerned with water quality in Alaska, and with pollution from arsenic in particular, may be interested in this proposed rulemaking. Since criteria are used in determining NPDES permit limits, entities discharging arsenic to waters of the United States in Alaska could be affected by this proposed rulemaking. Potentially affected entities include:

Category	Examples of affected entities
Industry	Industries discharging arsenic to surface waters in Alaska.
Municipalities	Publicly-owned treatment works discharging arsenic to surface waters in Alaska.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility could be affected by this action, you should carefully examine the applicability criteria in § 131.36 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Background

On December 22, 1992, the Environmental Protection Agency (EPA or Agency) promulgated a rule to establish federal water quality criteria for priority toxic pollutants applicable in 14 states. That rule, which is commonly called the National Toxics Rule (NTR), is codified at 40 CFR 131.36. The specific requirements for Alaska are codified at § 131.36(d)(12) and among other criteria, include water quality criteria for the protection of human health from arsenic. EPA promulgated a human health criterion for Alaska of 0.18 µg/L to protect waters designated for water consumption (i.e., sources of drinking water) plus the consumption of aquatic life which includes fish and shellfish such as shrimp, clams, oysters and mussels. This criterion is located in column D1 in the criteria matrix at section 131.36(b)(1). EPA also promulgated a criterion of 1.4 µg/L for waters designated for the human consumption of aquatic life without considering water consumption. This criterion is located in column D2 in the criteria matrix. These concentrations are designed to not exceed an excess lifetime cancer risk of 1 in 100,000 (or 10^{-5}) and reflects Alaska's preference in recent rule adoptions and in correspondence with EPA's Region 10. See 57 FR 60848, 60867.

EPA's criteria for human health protection from arsenic toxicity used in the NTR were based on carcinogenic effects. Alaska had adopted by reference EPA's published Clean Water Act (CWA) section 304(a) criteria for human health into the state's water quality standards. However, EPA's criteria guidance for carcinogens was presented at 3 different cancer risk levels, and the state had never officially adopted a specific cancer risk level. Accordingly, since Alaska did not have human health criteria for arsenic in place, EPA promulgated such criteria for the state in the NTR.

Subsequent to the promulgation of the NTR, a number of issues and uncertainties arose concerning the health effects of arsenic. EPA determined that these issues and uncertainties were sufficiently significant to necessitate a careful evaluation of the risks of arsenic exposure. Accordingly EPA has undertaken a number of activities aimed at reassessing the risks to human health from arsenic. [See Basis and Purpose section below.]

In light of EPA's review of the health effects of arsenic, the State of Alaska has proposed that the Safe Drinking Water Act (SDWA) maximum contaminant level (MCL) for arsenic of 50 µg/L currently in the state's water quality standards be used as meeting the requirements of the Clean Water Act in lieu of the current human health criteria in the NTR. As adopted by Alaska, the MCL for arsenic applies to all fresh waters that have the public water supply designated use. (According to the state, this includes all but 20 fresh-water segments.) For the reasons discussed subsequently, EPA finds that the MCL for arsenic in freshwaters designated for public water supply, in conjunction with Alaska's aquatic life criteria for arsenic, meets the requirements of the CWA, and accordingly proposes to withdraw the applicability to Alaska of the human health criteria for arsenic promulgated in the NTR.

If EPA removes the applicability of the NTR arsenic human health criteria to Alaska, the state has in place a chronic marine aquatic life criterion of 36 µg/L, a chronic freshwater aquatic life criterion of 190 µg/L, and the freshwater criterion of the MCL of 50 µg/L for waters designated for public water supply discussed above. The aquatic life criteria are in place for all of the state's marine and estuarine waters, and in those few cases where the MCL is not applicable in freshwaters.

Basis and Purpose

There are a number of ongoing national activities that may affect and/or necessitate a future change in the arsenic criteria for both ambient and drinking water in Alaska. The National Academy of Sciences (NAS) has initiated a study of the health risks posed by arsenic in water. Results of the study are expected in the Spring of 1998. Moreover, EPA is in the process of re-evaluating the risk assessments for arsenic as part of a pilot program for reconfiguring the Integrated Risk Information System (IRIS). EPA originally planned this re-evaluation to cover aspects of both cancer and non-cancer risks and to include examination of data not previously reviewed. With the initiation of the NAS study, EPA redirected the focus of the IRIS re-evaluation to the application of the proposed revisions to EPA's Guidelines for Cancer Risk Assessment. The IRIS re-evaluation of arsenic is expected in

1997. EPA encourages the state to review its water quality criteria for arsenic as this new information becomes available.

EPA has recognized the use of appropriate MCLs in establishing water quality standards under the CWA. Agency guidance notes the differences between the statutory factors for developing SDWA MCLs and CWA section 304(a) criteria, but provides that where human consumption of drinking water is the principal exposure to a toxic chemical, then an existing MCL may be an appropriate concentration limit. See guidance noticed in 54 FR 346, January 5, 1989. Similarly, the CWA section 304(a) human health guidelines are consistent with this position. See 45 FR 79318, November 28, 1980.

To determine whether the MCL could appropriately be used in lieu of the NTR's human health criteria for arsenic, EPA has prepared an exposure analysis to estimate the significance of human consumption of fish and shellfish containing the amounts of inorganic arsenic indicated as present in representative samples of fish and shellfish, in conjunction with the consumption of water containing concentrations of arsenic currently existing in the Nation's waters. See EPA's ''Arsenic and Fish Consumption Concerns'' in the administrative record for this rulemaking. This analysis first recognizes that the most important toxic form of arsenic is inorganic arsenic. Inorganic arsenic is the principal form in surface waters and almost the exclusive form in ground waters. However, the arsenic in fish and most shellfish is largely present as organic arsenic (mostly arsenobetaine). Available information indicates that arsenobetaine passes through these organisms with minimal retention in the fish and shellfish tissues.

In the NTR, EPA based the promulgated criteria on the human health criteria methodology contained in the 1980 human health guidelines. To estimate the ambient water concentration of a pollutant that does not represent a significant risk to the public (i.e., the criteria levels), the methodology makes certain assumptions about human exposure to pollutants. The methodology assumes that for most people, drinking water intake is 2 liters per day, and that fish consumption is 6.5 grams per day (a little less than one-half pound per month). The methodology incorporates a bioconcentration factor (BCF) to account for a pollutant's concentration in fish and shellfish tissue versus its concentration in the water. The methodology also assumes that all of the water and fish consumed is contaminated at the criteria levels (the ''safe'' levels).

Using these same exposure factors from the methodology, EPA has assessed the effect of using the arsenic MCL. Assuming that the concentration of arsenic in water is at the MCL of 50 μg/L, most people would be exposed to 100 μg of arsenic from their drinking water intake (i.e., 2 L/day $\times$ 50 μg/L = 100 μg/day), and 0.6 μg/day of inorganic arsenic from consuming 6.5 grams of fish and shellfish collected from water at the arsenic MCL concentration and assuming the BCF used in the NTR. (See derivation in EPA's ''Arsenic and Fish Consumption Concerns'' in the record.) The total estimated exposure would be 100.6 μg/day which could consist entirely of inorganic arsenic. EPA considers the small increment of exposure from fish consumption to be insignificant. EPA therefore concludes that when applied to fresh waters in Alaska, use of 50 μg/L generally provides a level of protection equivalent to that provided by the MCL. A full characterization of other exposure scenarios is contained in EPA's exposure analysis described above. This analysis is in the administrative record for this proposal and is currently undergoing external peer review. The results of the peer review will be considered before final action is taken on this rule.

For regions in Alaska where high levels of arsenic in the potable water are accompanied by high levels of fish and shellfish consumption, the State of Alaska should develop site-specific criteria for the surface waters involved considering the arsenic content of the drinking water and fish consumed. In developing site-specific criteria the state should characterize the size and location of the population of concern and determine their fish/shellfish and water intake rates. The fish and shellfish consumption should consider the species and dietary intake on a per species basis. Actual total arsenic and inorganic arsenic values for the species consumed and actual concentrations in drinking water should be used in the exposure calculations whenever possible.

The Agency solicits comment on whether there are any locations in Alaska where the arsenic criteria in the NTR should not be removed. For such locations, EPA solicits data documenting such existing conditions which indicate that fish consumers may be at an unacceptable risk of arsenic toxicity, and whether some other site-specific arsenic human health criteria may be appropriate. EPA solicits any information such as that described above concerning possible site-specific criteria to be developed by the State of Alaska.

Regulatory Procedural Information

This proposed withdrawal of human health criteria for arsenic in Alaska is deregulatory in nature and would impose no additional regulatory requirements or costs. Therefore, it has been determined that this proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Based on the fact that this action is deregulatory in nature and would impose no regulatory requirements or costs, pursuant to section 605(b) of the Regulatory Flexibility Act, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that this action 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 to the private sector in any one year. EPA has also determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of sections 202, 203 and 205 of the UMRA.

This proposed rule does not impose any requirement subject to the Paperwork Reduction Act.

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water quality standards.

Dated: May 14, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 131 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.36 [Amended]

2. In § 131.36(d)(12)(ii) the table is amended under the heading ''Applicable Criteria'', in the entry for ''Column D1'' and three entries for

''Column D2'' by removing the number ''2'' from the list of numbers.

[FR Doc. 97–13325 Filed 5–20–97; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 96–186]

Assessment and Collection of Regulatory Fees For Fiscal Year 1997

May 16, 1997.

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking; availability of documents.

SUMMARY: The Commission has placed several documents in the docket file associated with this proceeding which provide background information used in developing its regulatory fee proposals for FY 1997.

FOR FURTHER INFORMATION CONTACT: Peter W. Herrick, Office of Managing Director at (202) 418–0443, or Terry D. Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION:

Additional Cost of Service Information Related to Establishing Regulatory Fees for Fiscal Year 1997 Available in MD Docket No. 96–186

The Office of the Managing Director, in response to a request by Comsat International Communications, has provided to Comsat additional documents related to the Commission's distribution of costs among services and other information utilized in the development of its annual regulatory fees. *See letter* to Robert A. Mansbach, Esquire from Andrew S. Fishel, Managing Director, dated April 4, 1997. Relevant information provided to Comsat and other information related to the development of the Commission's regulatory fees, including actual FY 1996 payment information, has been placed in the docket file for the Commission's proceeding to establish its regulatory fees for Fiscal Year 1997. These materials are available for public inspection during regular business hours in the Commission's Public Reference Room (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C. *See* notice of proposed rulemaking re assessment and collection of regulatory fees for Fiscal Year 1997, MD Docket No. 96–186, 62 FR 10793, March 10, 1997. Copies of materials contained in the docket file may be purchased from the Commission's copy contractor, International Transcription Services (ITS), in Room 246 or by calling 202–857–3800.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 97–13368 Filed 5–20–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–131, RM–9078]

Radio Broadcasting Services; Twin Falls, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of JTL Communications Corporation requesting the allotment of Channel 294A to Twin Falls, Idaho, as an additional local FM broadcast service at that community. Coordinates used for Channel 294A at Twin Falls are 42–33–42 and 114–28–12.

DATES: Comments must be filed on or before July 7, 1997, and reply comments on or before July 22, 1997.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: J. Frederick Mack and Bradley J. Wiskirchen, Esqs., Holland & Hart, Suite 1400, U.S. Bank Plaza, 101 South Capitol Boulevard, PO Box 2527, Boise, ID 83701.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–131, adopted May 7, 1997, and released May 16, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–13285 Filed 5–20–97; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–130; RM–8751]

Radio Broadcasting Services; Galesburg, IL and Ottumwa, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Northern Broadcast Group proposing the substitution of Channel 224B1 for Channel 224A at Galesburg, Illinois, and the modification of Station WGBQ(FM)'s license accordingly. To accommodate the upgrade, petitioner also requests that the allotment reference coordinates for now vacant and unapplied-for Channel 224C3 at Ottumwa, Iowa, be modified. Channel 224B1 can be allotted to Galesburg, in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.3 miles) northwest at petitioner's requested site. The coordinates for Channel 224B1 at Galesburg are North Latitude 41–02–50 and West Longitude 90–27–30. *See* Supplementary Information, *infra.*

DATES: Comments must be filed on or before July 7, 1997 and reply comments on or before July 22, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the

FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dawn M. Sciarrino, Fisher, Wayland, Cooper, Leader & Zaragoza, L.L.P., 2001 Pennsylvania Ave., NW., Suite 400, Washington, DC 20006–1851 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–130, adopted May 7, 1997, and released May 16, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Additionally, the reference coordinates for vacant Channel 224C3 at Ottumwa, Iowa, can be modified consistent with the Commission's spacing requirements with a site restriction of 12.2 kilometers (7.6 miles) west. The modified coordinates for Channel 224C3 at Ottumwa are North Latitude 41–00–00 and West Longitude 92–33–10. In accordance with Section 1.420(g)(3) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 224B1 at Galesburg, Illinois, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–13291 Filed 5–20–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–132, RM–9081]

Radio Broadcasting Services; Mesquite, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Will Kemp to allot Channel 244C to Mesquite, NV, as the community's second local and first competitive FM service. Channel 244C can be allotted to Mesquite in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.4 miles) north, at coordinates 36–51–15 North Latitude and 114–03–30 West Longitude, to avoid a short-spacing to the outstanding construction permit (BMPH–960607IH) of Station KTVF, Channel 244C2, Williams, AZ, and to a pending application (ARN–950825MB) for Channel 244C2 at Lake Havasu City, AZ.

DATES: Comments must be filed on or before July 7, 1997, and reply comments on or before July 22, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James A. Koerner, Baraff, Koerner & Olender, P.C., Three Bethesda Metro Center, Suite 640, Bethesda, MD 20814–5392 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–132, adopted May 7, 1997, and released May 16, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–13292 Filed 5–20–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–133, RM–9086]

Radio Broadcasting Services; Lake City, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Phoenix Media Group, Inc., proposing the allotment of Channel 235A at Lake City, Minnesota, as that community's second FM broadcast service. The coordinates for Channel 235A at Lake City are 44–22–58 and 92–21–45. There is a site restriction 10.6 kilometers (6.6 miles) southwest of the community.

DATES: Comments must be filed on or before July 7, 1997, and reply comments on or before July 22, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Steven T. Moravec, President, Phoenix Media Group, Inc., 1407 Sumner Street, Suite 200, St. Paul, Minnesota 55116–2645.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–133, adopted May 7, 1997, and released May 16, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room

239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC. 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–13297 Filed 5–20–97; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1515

[FRL–5827–3]

Acquisition Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the EPA Acquisition Regulation (EPAAR) on calculation of profit or fee. This action is the result of an Agency reassessment of its regulatory guidelines for determination of contractor profit or fee. A significant policy change will be for the contracting officer not to consider the profit/fee of any subcontractor in determining the Government's profit/fee objective. In addition, several changes are proposed to update, to streamline and to make the guidelines more closely address acquisitions for professional and technical services.

DATES: Comments should be submitted not later than July 21, 1997.

ADDRESSES: Environmental Protection Agency, Office of Acquisition Management (3802F), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Larry Wyborski, Telephone: (202) 260–6482.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12866

This is not a significant regulatory action under Executive Order 12866; therefore, no review is required at the Office of Information and Regulatory Affairs within OMB.

II. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements for the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

III. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. There are no requirements for contractor compliance under the proposed rule.

IV. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector.

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. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

V. Regulated Entities

EPA contractors are entities potentially regulated by this action.

Category	Regulated entity
Industry	EPA Contractors.

List of Subjects in 48 CFR Part 1515

Government procurement.

For the reasons set forth in the preamble, Chapter 15 of Title 48 Code of Federal Regulations 1515 is proposed to be amended as follows:

1. The authority citation for 1515 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 as amended, 40 U.S.C. 486(c).

2. Subpart 1515.9 is revised to read as follows:

Subpart 1515.9—Profit

1515.900 Scope of subpart.
1515.902 Policy.
1515.903 Cost realism.
1515.905 Profit-analysis factors.
1515.970 EPA structured approach for developing profit or fee objectives.
1515.970–1 General.
1515.970–2 EPA staructured system.

Subpart 1515.9—Profit

1515.900 Scope of subpart.

This subpart implements FAR subpart 15.9, and prescribes the EPA structured approach for determining profit or fee prenegotiation objectives.

1515.902 Policy.

(a) *EPA structured approach.* The purpose of EPA's structured approach is:

(1) To provide a standard method of evaluation;

(2) To ensure consideration of all relevant factors;

(3) To provide a basis for documentation and explanation of the profit or fee negotiation objective;

(4) To allow contractors to earn profits commensurate with the assumption of risk; and

(5) To reward contractors who undertake more difficult work requiring higher risks.

(b) *Other methods.* (1) Contracting officers may use methods other than those prescribed in 1515.970 for establishing profit or fee objectives under the following types of contracts and circumstances:

(i) Architect-engineering contracts;

(ii) Personal service contracts;

(iii) Management contracts, e.g., for maintenance or operation of Government facilities;

(iv) Termination settlements;

(v) Professional/technical services under labor-hour and time and material contracts which provide for payment on an hourly, daily, or monthly basis, and where the contractor's contribution constitutes the furnishing of personnel.

(vi) Construction contracts; and

(vii) Cost-plus-award-fee contracts.

(2) Generally, it is expected that such methods will:

(i) Provide the contracting officer with a technique that will ensure consideration of the relative value of the appropriate profit factors described under ''Profit Factors,'' in 1515.970–2, and

(ii) Serve as a basis for documentation of the profit or fee objective.

(c) Under unusual circumstances, the CCO may specifically waive the

requirement for the use of the guidelines. Such exceptions shall be justified in writing, and authorized only in situations where the guidelines method is unsuitable.

(d) The contracting officer may not consider subcontractor profit/fee as part of the basis for determining the contractor's profit/fee.

1515.903 Cost realism.

The EPA structured approach is not required when the contracting officer is evaluating cost realism in a competitive acquisition.

1515.905 Profit-analysis factors.

Profit-analysis factors prescribed in the EPA structured approach for analyzing profit or fee include those prescribed by FAR 15.905–1, and additional factors authorized by FAR 15.905–2 to foster achievement of program objectives. These profit or fee factors are prescribed in 1515.970–2.

1515.970 EPA structured approach for developing profit or fee objectives.

1515.970–1 General.

(a) The Agency's policy is to utilize profit to attract contractors who possess talents and skills necessary to the accomplishment of the objectives of the Agency, and to stimulate efficient contract performance. In negotiating profit/fee, it is necessary that all relevant factors be considered, and that fair and reasonable amounts be negotiated which give the contractor a profit objective commensurate with the nature of the work to be performed, the contractor's input to the total performance, and the risks assumed by the contractor.

(b) To properly reflect differences among contracts, and to select an appropriate relative profit/fee in consideration of these differences, weightings have been developed for application by the contracting officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.905 and EPAAR 1515.970–2(a)(1). Each profit factor or subfactor, or its components, has been assigned weights relative to their value to the contract's overall effort, and the range of weights to be applied to each profit factor.

1515.970–2 EPA structured system.

(a)(1) *Profit/fee factors.* The factors set forth below, and the weighted ranges listed after each factor, shall be used in all instances where the profit/fee is negotiated.

CONTRACTOR'S INPUT TO TOTAL PERFORMANCE

	Weight range (percent)
Direct material	1 to 4
Professional/technical services	8 to 15
Professional/technical overhead	6 to 9
Subcontractors	1 to 4
Other direct costs	1 to 3
General and administrative expenses.	5 to 8
Contractor's assumption of contract cost risk.	0 to 6

(2) The contracting officer shall first measure the "Contractor's Input to Total Performance" by the assignment of a profit percentage within the designated weight ranges to each element of contract cost. Such costs are multiplied by the specific percentages to arrive at a specific dollar profit or fee.

(3) The amount calculated for facilities capital cost of money (FCCM) shall not be included as part of the cost base for computation of profit or fee (see FAR 15.903(c)). The profit or fee objective shall be reduced by an amount equal to the amount of facilities capital cost of money allowed. A complete discussion of the determination of facilities capital cost of money and its application and administration is set forth in FAR 31.205–10, and appendix B of the FAR (48 CFR 9904.404).

(4) After computing a total dollar profit or fee for the Contractor's Input to Total Performance, the contracting officer shall calculate the specific profit dollars assigned for cost risk and performance. This is accomplished by multiplying the total Government cost objective, exclusive of any FCCM, by the specific weight assigned to cost risk and performance. The contracting officer shall then determine the profit or fee objective by adding the total profit dollars for the Contractor's Input to Total Performance to the specific dollar profits assigned to cost risk and performance. The contracting officer shall use EPA Form 1900–2 to facilitate the calculation of the profit or fee objective.

(5) The weight factors discussed above are designed for arriving at profit or fee objectives for other than nonprofit and not-for-profit organizations. Nonprofit and not-for-profit organizations are addressed as follows:

(i) Nonprofit and not-for-profit organizations are defined as those business entities organized and operated:

(A) Exclusively for charitable, scientific, or educational purposes;

(B) Where no part of the net earnings inure to the benefit of any private shareholder or individual;

(C) Where no substantial part of the activities is for propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office; and

(D) Which are exempt from Federal income taxation under Section 51 of the Internal Revenue Code.

(ii) For contracts with nonprofit and not-for-profit organizations where fees are involved, a special factor of −3 percent shall be assigned in all cases.

(b) Assignment of values to specific factors—

(1) *General.* In making a judgment on the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors, together with considerations for evaluation set forth in this paragraph.

(2) *Contractor's input to total performance.* This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is separate from the contractor's responsibility for contract performance, takes into account what resources are necessary, and the creativity and ingenuity needed for the contractor to perform the statement of work successfully. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value, quantity, and quality, and that the profit or fee objective should reflect the extent and nature of the contractor's contribution to total performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows:

(i) *Direct material (purchased parts and other material).* (A) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required material. This evaluation shall include consideration of the number of orders and suppliers, and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will, for

example, obtain the materials by routine orders or readily available supplies (particularly those of substantial value in relation to the total contract costs), or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design.

(B) Consideration should be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts, and to select subcontractors, including efforts to break out subcontracts from sole sources, through the introduction of competition.

(C) Recognized costs proposed as direct material costs such as scrap charges shall be treated as material for profit evaluation.

(D) If intracompany transfers are accepted at price, in accordance with FAR 31.205–26(e), they should be excluded from the profit or fee computation. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead.

(E) Normally, the lowest weight for direct material is 2 percent. A weighting of less than 2 percent would be appropriate only in unusual circumstances when there is a minimal contribution by the contractor in relation to the total cost of the material.

(ii) *Professional/Technical Services.* Analysis of the professional/technical services should include evaluation of the comparative quality and level of the talents and experience to be employed. In evaluating professional/technical services for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce talent needed, in contrast to journeyman effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance, and the corresponding need for professional/technical supervision and coordination, should also be evaluated.

(iii) *Overhead and general and administrative expenses.*

(A) Where practicable, analysis of these overhead items of cost should include the evaluation of the individual elements of these expenses, and how much they contribute to contract performance. This analysis should include a determination of the amount of labor within these overhead pools, and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit consideration as if they were direct labor. The other elements of indirect cost pools should be evaluated to determine whether they are routine expenses such as utilities, depreciation, and maintenance, and therefore given less profit consideration.

(B) The contractor's accounting system need not break down its overhead expenses within the classification of professional/technical overhead, and general and administrative expenses. A contractor's accounting system which only reflects one overhead rate on all direct labor need not be modified to correspond with all of the above classifications. Where practicable, the contracting officer's evaluation of such an overhead rate should break out the applicable sections of the composite rate which could be classified as professional/technical overhead and general and administrative expenses, and follow the appropriate evaluation technique.

(C) The contracting officer need not make a separate profit evaluation of overhead expenses in connection with each acquisition for substantially the same product with the same contractor. Once an analysis of the profit weight to be assigned the overhead pool has been made, the weight assigned may be used for future acquisitions with the same contractor, until there is a change in the cost composition of the overhead pool or in the contract circumstances.

(iv) *Subcontractors.*

(A) Subcontract costs should be analyzed from the standpoint of the talents and skills of the subcontractors. The analysis should consider if the contractor normally should be expected to have people with comparable expertise employed as full-time staff, or if the contract requires skills not normally available in an employer-employee relationship. Where the contractor is using subcontractors to perform services which would normally be expected to be done in-house, the rating factor should generally be at or near 1 percent. Where exceptional expertise is retained, or the contractor is participating in the mentor-protégé program, the assigned weight should be nearer to the high end of the range.

(B) In accordance with EPAAR 1515.902(d), the contracting officer may not consider subcontractor profit/fee as part of the basis for determining the contractors profit/fee.

(v) *Other direct costs.* Items of costs, such as travel and subsistence, should generally be assigned a rating of 1 to 3 percent. The analysis of these costs should be similar to the analysis of direct material.

(3) *Contractor's assumption of contract cost risk.* (i) The risk of contract costs should be shifted to the fullest extent practicable to contractors, and the Government should assign a rating that reflects the degree of risk assumption. Evaluation of this risk requires a determination of the degree of cost responsibility the contractor assumes, the reliability of the cost estimates in relation to the task assumed, and the chance of the contractor's success or failure. This factor is specifically limited to the risk of contract costs. Thus, such risks of losing potential profits in other fields are not within the scope of this factor.

(ii) The first determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor, depending on selection of contract type. The extremes are a cost-plus-fixed-fee contract requiring only that the contractor use its best efforts to perform a task, and a firm-fixed-price contract for a complex item. A cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility by the contractor, whereas a firm-fixed-price contract would reflect a complete assumption of cost responsibility by the contractor. Therefore, in the first step of determining the value given for the contractor's assumption of contract cost risk, a low rating would be assigned to a proposed cost-plus-fixed-fee best efforts contract, and a higher rating would be assigned to a firm-fixed-price contract.

(iii) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(iv) The third determination is that of the difficulty of the contractor's task. The contractor's task may be difficult or easy, regardless of the type of contract.

(v) Contractors are likely to assume greater cost risks only if the contracting officer objectively analyzes the risk incident to the proposed contract, and is willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract would not justify a reward for risk in excess of 1 percent, nor would a firm-fixed-price contract normally justify a reward of less than 4 percent. Where proper contract type selection has been made, the reward for risk by contract type would usually fall into the following percentage ranges:

Type of contract	Percentage ranges
Cost-plus-fixed-fee	0 to 1
Prospective price determination ...	4 to 5
Firm-fixed-price	4 to 6

(A) These ranges may not be appropriate for all acquisitions. The contracting officer might determine that a basis exists for high confidence in the reasonableness of the estimate, and that little opportunity exists for cost reduction without extraordinary efforts. The contractor's willingness to accept ceilings on their burden rates should be considered as a risk factor for cost-plus-fixed-fee contracts.

(B) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, consideration should be given to the effect on total contract cost risk as a result of partial performance under a letter contract. Under some circumstances, the total amount of cost risk may have been effectively reduced by the existence of a letter contract. Under other circumstances, it may be apparent that the contractor's cost risk remained substantially as great as though a letter contract had not been used. Where a contractor has begun work under an anticipatory cost letter, the risk assumed is greater than normal. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all relevant circumstances, not just to the portion of costs incurred or percentage of work completed prior to definitization.

Dated: May 9, 1997.

Diane M. Balderson,

Acting Director, Office of Acquisition Management.

[FR Doc. 97–13207 Filed 5–20–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–94; Notice 7]

RIN 2137–AB38

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This announces the second meeting of RSPA's Negotiated Rulemaking Committee. The Committee is in the process of developing a proposed rule on qualification of those performing certain safety-related functions on pipelines subject to the pipeline safety regulations. The committee is composed of persons who represent the interests that would be affected by the rule, such as gas pipeline operators, hazardous liquid and carbon dioxide pipeline operators, representatives of state and federal governments, labor organizations, and other interested parties.

DATES: The next Committee meeting will be held from 9 a.m. to 5 p.m. on May 21–22, 1997.

ADDRESSES: The meeting will be held in Room 10234–35 at the U.S. Department of Transportation, Nassif Building, 400 7th Street SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, regarding the subject matter of this notice; or the Dockets Unit, Room 8421, 400 7th Street, SW., Washington, DC, telephone (202) 366–4453, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION: At the initial meeting of the Committee, considerable explanation and training in the Negotiated Rulemaking process was provided by FMCS. The Committee also addressed many procedural issues, such as ground rules for Committee discussion and addressing comments from the audience, development of the new notice of proposed rulemaking, the procedure for keeping a record or ''minutes'' of the meetings), and a schedule for distribution of minutes for review and concurrence prior to placing them in the public docket.

Members of the RSPA Negotiated Rulemaking Committee

1. American Gas Association.
2. American Petroleum Institute.
3. Interstate Natural Gas Association of America.
4. American Public Gas Association.
5. National Propane Gas Association.
6. Association of Texas Intrastate Natural Gas Pipelines.
7. Midwest Gas Association.
8. National Association of Corrosion Engineers.
9. National Association of Pipeline Safety Representatives.
10. National Association of Regulatory Utility Commissioners.
11. National Association of Fire Marshals.
12. International Union of Operating Engineers.
13. International Brotherhood of Electrical Workers.
14. Office of Pipeline Safety.

Conduct of Meeting

The meeting will be held over a two-day period, and may conclude early on the second day depending on the progress of the Committee. These meetings are open to the public, and a time for brief comments from the audience will be on each meeting's agenda.

Issued in Washington, DC, on May 15, 1997.

Cesar De Leon,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 97–13260 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 62, No. 98
Wednesday, May 21, 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

Rural Business-Cooperative Service

Fiscal Year 1997 Funding Opportunity for Cooperative Services

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of $1,700,000 that was allocated from the Fund for Rural America for Fiscal Year 1997 to the Cooperative Services program, which is administered by RBS. RBS hereby requests proposals from Federal, State, or local agencies or other units of government, institutions of higher education, or nonprofit development organizations interested in applying for competitively awarded cooperative agreements pursuant to section 607(b) of the Rural Development Act of 1972. The intent of the program is to assist small and emerging cooperatives.

DATES: Comments regarding the information collection requirements under the Paperwork Reduction Act of 1995 must be received on or before July 21, 1997 to be assured of consideration. Completed proposals must be received no later than July 31, 1997. Proposals received after July 31, 1997, will not be considered for funding.

ADDRESSES: Send Proposals and other required materials to Dr. Randall E. Torgerson, Deputy Administrator for Cooperative Services, Rural Business-Cooperative Service, USDA, Stop 3250, Rm 4016–S, 1400 Independence Avenue, SW, Washington, DC 20250–3250.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Wells, Director, Cooperative Development Division, Rural Business-Cooperative Service, USDA, Stop 3254, 1400 Independence Avenue SW, Washington, DC 20250–3254. Telephone: (202) 720–3350.

SUPPLEMENTARY INFORMATION:

General Information

The Fund for Rural America (The Fund), authorized under section 793 of the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) (7 U.S.C. 2204(f)), is established as an account in the Treasury of the United States, to provide funds for rural development programs and a competitive grant program to support research, education, and extension activities. The Fund will provide $100 million in each of fiscal years 1997, 1998, 1999 for rural development programs and a competitive grant program for research, education, and extension activities. Between one-third and two-thirds will be available for the Department's rural development programs, and the remainder will be allocated for research, education and extension activities. This notice pertains to $1,700,000 designated for Cooperative Services as part of the Rural Development programs. Rural Business-Cooperative Service will administer the program through the use of cooperative agreements. The program is a matching fund program designed to stimulate value-added product development by agricultural cooperative organizations located in rural communities. Cooperative Agreements are to be awarded on the basis of merit, quality, and relevance to advancing the purposes of federally supported rural development programs which increase economic opportunities in farming and rural communities through expanding locally-owned, value-added processing and product development. To obtain program materials, please contact the Cooperative Services Program; USDA/RBS at (202) 720–3350. When calling the Cooperative Services, please indicate you are requesting background information on Cooperative Value-Added Program (CVAP). These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to jwells@rurdev.usda.gov which requests a copy of the materials for Fiscal Year 1997 Cooperative Value-Added Program. The materials will be mailed to you (not e-mailed) as quickly as possible.

Eligible Applicants

Federal, State, or local agencies or other units of government, non-profit development organizations, or institutions of higher education are eligible to apply. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(4)) which engages in lobbying activities, is not eligible to apply.

Use of Funds

Funds may be used to pay up to 75 percent of the costs for carrying out relevant projects. Applicant's contribution may be in cash or in-kind contribution and must be from nonfederal funds. Use of funds should directly benefit proposed or existing cooperative marketing organizations by focusing on, but not limited to, technical assistance in development of market feasibility analysis or market identification opportunities for value-added products.

Funds may not be used to: (a) Pay more than 75 percent of relevant project or administrative costs; (b) pay costs of preparing the application package; (c) fund political activities; or (d) pay costs incurred prior to the effective date of the cooperative agreement.

Funding Availability

$1.7 million in first year funding will be available for Fiscal Year 1997. The actual number of cooperative agreements funded will depend on the quality of proposals received and the amount of funding requested. Out year funding beyond the first year is contingent on the approval of future appropriations and satisfactory project performance.

Selection Criteria

RBS will initially determine whether the organization is eligible and whether the application contains the information required in the applications materials. After this initial screening, RBS will use the following criteria to rate and rank proposals received in response to this notice of funding availability. The criteria and maximum points for each criteria are provided below. The maximum number of points is 100. Zero points on any criteria will disqualify the proposal. Each proposal will be judged

on its own merits using the following criteria:

1. Focuses on an agricultural value-added activity (maximum 25 points);
2. Identifies the beneficiary cooperatives or producer groups and their level of benefit (maximum 20 points);
3. Shows capacity for an immediate positive economic impact (maximum 15 points);
4. Documents the need for the project (maximum 10 points);
5. Outlines an adequate approach to obtaining a practical solution (maximum 10 points);
6. Demonstrates cost effectiveness of the project (maximum 10 points);
7. Identifies qualified resources and personnel (maximum 10 points); and

Selection Process

Applications for funding will be evaluated competitively and points will be awarded as specified in the Evaluation Criteria section described above. After assigning points based upon the criteria, all applications will be listed in rank order. Applications will then be funded in rank order until all available funds have been expended. RBS reserves the right to make selections out of rank order to provide for a geographic distribution of funded projects.

Proposal Preparation

All proposals are to be submitted on standard 8½″×11″ paper with typing on one side of the page only. In addition, margins must be at least 1″, type must be 12 characters per inch (12 pitch or 10 point) or larger, no more than 6 lines per inch, and there should be no page reductions. If applicable, proposals should include original illustrations (photographs, color prints, etc.) in all copies to prevent loss of meaning through poor quality reproduction.

Content of a Proposal

A proposal should contain the following:

1. *Form SF–424* ''Application for Federal Assistance.''
2. *Form SF–424A* ''Budget Information-Non Construction Programs.''
3. *Form SF–424B* ''Assurances-Non Construction Programs.''
4. *Table of Contents:* For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.
5. *Project Summary:* The proposal must contain a project summary of 250 words or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals and relevance of the project. The summary should also contain a listing of all organizations involved in the project. The Project Summary should immediately follow the Table of Contents..
6. *Project Narrative:* The narrative portion of the Project Proposal is limited to 20 pages of text and should contain the following:

a. Introduction. A clear statement of the goals and objectives of the project. The problem should be set in context of the present-day situation. Summarize the body of knowledge which substantiates the need for the proposed project.

b. Rationale and Significance. Substantiate the need for the proposed project. Describe the impact of the project on the end user. Describe the project's specific relationship to the expansion of locally-owned valued-added processing and to the problem addressed.

c. Objectives and Approach. Discuss the specific objectives to be accomplished under the project. A detailed description of the approach must include: (1) Techniques or procedures used to carry out the proposed activities and for accomplishing the objectives;

(2) The results expected.

d. Time Table. Tentative schedule for conducting the major steps of the project.

e. Evaluation. Provide a plan for assessing and evaluating the accomplishments of the stated objectives during the project and describe ways to determine the effectiveness (impact) of the end results upon conclusion of the project. Awardees will be required to submit written project performance reports on a quarterly basis.

f. Coordination and Management Plan. Describe how the project will be coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration.

What To Submit

An original and 1 copy must be submitted. Each copy must be stapled in the upper left-hand corner. (DO NOT BIND). All copies of the proposal must be submitted in one package.

When and Where To Submit

Proposals must be received by close of business on July 31, 1997. Proposals must be sent to the following address: Dr. Randall E. Torgerson, Deputy Administrator for Cooperative Services, Rural Business-Cooperative Service, USDA, Stop 3250, Rm 4016–S, 1400 Independence Avenue, SW, Washington, DC 20250–3250.

Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to proposals considered for review and to cooperative agreements awarded under this program. These include but are not limited to:

7 CFR part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations.

7 CFR part 3016—Uniform Administrative Requirements for Grant Agreements and Cooperative Agreements to State and Local Governments.

7 CFR part 3019—Uniform Administrative Requirements for Grant Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the Agency announces its intention to seek Office of Management and Budget (OMB) approval of new reporting and record keeping requirements. These requirements have been approved by emergency clearance by OMB under OMB Control Number 0570–0019.

Section 793 of the 1996 Act established The Fund to provide funds for rural development programs and a competitive grant program to support research, education, and extension activities. The Fund will provide $100 million in each of fiscal years 1997, 1998, and 1999 for these purposes. Between one-third and two-thirds will be available for the United States Department of Agriculture's rural development programs, and one-third will be allocated for research, education, and extension activities.

The Secretary has allocated $1.7 million to the Rural Business-Cooperative Service's (RBS) Cooperative

Services Program for the funding of programs that will encourage value-added activities to enhance the economic sustainability of rural communities. Use of the funds should directly benefit proposed or existing cooperative marketing organizations by focusing on, but not limited to, technical assistance in the development of market feasibility analyses or market identification opportunities for value-added products. A cooperative is a user-owned and controlled business from which the benefits are derived and distributed equitably on the basis of use. Value-added activities refer to operations in which raw products are processed or otherwise modified and then marketed to provide a greater return to the cooperative members than if the product had been marketed in its raw state.

The funds will be awarded on a competitive basis using specific selection criteria. Funding priority will be given to those applicants whose projects demonstrate the ability to produce immediate results and which contribute the most to the economic conditions of rural areas.

Public Burden in this Notice

At this time, the Agency is requesting OMB clearance of the following burden:

Form SF–424, ''Application for Federal Assistance''

This form is used by applicants as a required face sheet for applications for Federal assistance.

Form SF–424A, ''Budget Information-Non Construction Programs''

This form must be completed by applicants to show the project's budget breakdown, both as to expense categories and the division between Federal and non-Federal sources.

Form SF–424B, ''Assurances-Non Construction Programs''

This form must be completed by the applicant to give the Federal government certain assurances that the applicant has the legal authority to apply for Federal assistance and the financial capability to pay the non-Federal share of project costs. The applicant also gives assurance it will comply with various legal and regulatory requirements as described in the form.

Project Proposal

The applicant must submit a project proposal containing the elements described in the notice and in the format prescribed. The elements of the proposal are: (1) Table of Contents providing page numbers for each component of the proposal; (2) A Project Summary of no more than 250 words on a separate page that includes the title of the project, primary contacts, a description of the goals and relevance of the project, and other organizations involved in the project; (3) A Project Narrative of no more than 20 pages of text that discusses the rationale and significance of the project, its objectives and the approach to be used, a time table for the major steps, how the project's accomplishments will be evaluated, and how the project will be coordinated among various participants.

Reporting Requirements

Awardees will be required to submit written project performance reports on a quarterly basis. The project performance report shall include, but need not be limited to: (1) A comparison of actual accomplishments to the objectives; (2) Reasons why established objectives were not met; (3) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives; (4) Objectives established for the next reporting period; and (5) Status of compliance with any special conditions on the use of awarded funds.

Estimate of Burden: Public reporting burden for this collection is estimated to range from 15 minutes to 16 hours per response.

Respondents: Federal Government; State, Local, or Tribal Government; and not-for-profit institutions.

Estimated Number of Respondents: 75.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1578 hours.

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden to collect the required information, including the validity of the methodology and assumptions used; (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 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.

All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, and to Sam Spencer, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Housing Service, Stop 0743, Rm. 6345–S, 1400 Independence Avenue SW., Washington, D.C. 20250–0743. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this Notice.

Dated: May 14, 1997.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 97–13310 Filed 5–20–97; 8:45 am]

BILLING CODE 3410–XY–O

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Logbook Family of Forms.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0271.

Type of Request: Extension of a currently approved collection.

Burden: 1,796 hours.

Avg. Hours Per Response: Ranges between approximately 1 and 30 minutes depending on the requirement.

Number of Respondents: 86 respondents (6,816 responses).

Needs and Uses: This data collection requires the preparation and submission of logbooks and reports by processing vessels larger than 125 feet in length and from catcher vessels that deliver to them in the Pacific Coast Groundfish Fishery. The information is necessary to monitor catch, effort, and production in the fishery and to analyze the impact of fishery management actions.

Affected Public: Businesses or other for-profit organizations; state, local and tribal government.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Brett Hauber (202) 395–6466.

Copies of the above information collection proposal can be obtained by

calling or writing Linda Engelmeir, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brett Hauber, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20230.

Dated: May 15, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–13254 Filed 5–20–97; 8:45 am]

BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Title: 1997 Company Organization Survey

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 July 21, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dennis Wagner, Bureau of the Census, Room 2546, Federal Building 3, Washington, DC 20233–6100, telephone (301) 457–2580.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the annual Company Organization Survey (COS) in order to update and maintain a central, multipurpose business register, known as the Standard Statistical Establishment List (SSEL). In particular, the COS supplies critical information to the SSEL concerning the establishment composition, organizational structure, and operating characteristics of multi establishment enterprises.

The SSEL serves two fundamental purposes:

—First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the SSEL's ability to identify all known United States business establishments and their parent enterprises. Further, the SSEL must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, measures of size and economic activity, ownership characteristics, and contact information (for example, name and address).

—Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, states, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

II. Method of Collection

The Census Bureau will conduct the 1997 COS in conjunction with the 1997 Economic Census and will coordinate these collections so as to minimize response burden. The consolidated COS/census mail canvass will direct inquiries to the entire SSEL universe of multi establishment enterprises, which comprises some 180,000 parent companies and more than 1.5 million establishments. The primary collection medium for the COS and census is paper questionnaire; however, several larger enterprises, which account for about 30 percent of covered establishments, will submit automated/electronic COS reports (many more enterprises will submit automated/electronic census reports). COS data content is identical for all reporting modes.

Primary COS inquiries to each of the 180,000 multi establishment enterprises will include questions on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates. Additional COS inquiries will apply to approximately 5,000 enterprises that operate some 25,000 establishments classified in industries that are out-of-scope to the economic census. The additional inquiries will list an inventory of those out-of-scope establishments and request updates to the inventory, including additions; deletions; and changes to Federal employer identification number, name and address, and industrial classification. Further, the additional inquiries will collect the following basic operating data for each listed establishment: End-of-year operating status, mid-March employment, first quarter payroll, and annual payroll. The economic census will collect data for all other establishments of multi establishment enterprises, including those items listed above. In addition, the COS will include inquiries to approximately 1,000 large single establishment enterprises on ownership or control and industry classification.

III. Data

OMB Number: 0607–0444.

Form Number: NC–9901.

Type of Review: Regular Submission.

Affected Public: Businesses or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 181,000 enterprises.

Estimated Time Per Response: .30 hour.

Estimated Total Annual Burden Hours: 90,500.

Estimated Total Annual Cost: Included in the total annual cost of the SSEL, which is estimated to be $7.6 million for fiscal year 1997.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. sections 131 and 182.

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.

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 15, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

(FR Doc. 97–13249 Filed 5–20–97; 8:45 am)

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Trade Events Application and Participation Agreement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (2)(A)).

DATES: Written comments must be submitted on or before July 21, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: John Klingelhut, U.S. & Foreign Commercial Service, Export Promotion Services, Room 2810, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–4403, and fax number: (202) 482–0872.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Trade Event Application and Participation Agreement form is the vehicle by which individual firms apply, and if accepted agree, to participate in the Department of Commerce's (DOC) trade promotion events program, identify the products or services they intend to sell or promote, and record their required participation fees. It is being revised to: (1) Collect additional information about the products/services that a company wishes to export; (2) modify several questions based on comments received from DOC trade event managers and participants; and (3) change the name of the form to ''Trade Event/Mission Application and Participation Agreement.'' In its use as a Participation Agreement, it is a contract between an individual firm and the Department of Commerce. The information is collected for several purposes, including to: (1) Identify firms which have first applied, and if accepted have agreed to participate in specific overseas trade promotion events; (2) establish the participation fees which the individual firms will make and keep track of their payments; (3) facilitate the shipment of exhibition goods using private freight forwarding companies; (4) collect certain participant profile information such as export experience and company size for evaluative purposes; (5) collect certifications from companies interested in participating in certain missions, (6) obtain additional information needed to judge the eligibility and suitability of companies to participate in Department of Commerce-sponsored trade events; and (7) make it clear that participation involves an application process.

II. Method of Collection

Applicants submit Form ITA–4008P.

III. Data

OMB Number: 0625–0147.

Form Number: ITA–4008P and ITA–4008P–A.

Type of Review: Revision-Regular Submission.

Affected Public: Companies applying to participate in Commerce Department trade promotion events.

Estimated Number of Respondents: 7,500.

Estimated Time Per Response: 45 minutes.

Estimated Total Annual Burden Hours: 5,625 hours.

Estimated Total Annual Costs: Respondents will not be required to purchase equipment or materials to respond to this survey.

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 costs) 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 forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–13255 Filed 5–20–97; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: May 21, 1997.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 C.F.R. 353.22(a) and 355.22(a)(1994), for administrative reviews of various antidumping and countervailing duty orders and findings with April anniversary dates.

Initiation of Reviews

In accordance with sections 19 C.F.R. 353.22(c) and 355.22(c), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. The Department is not initiating an administrative review of any exporters and/or producers who were not named in a review request because such

exporters and/or producers were not specified as required under section 353.22(a) (19 CFR 353.22(a)). We intend to issue the final results of these reviews not later than April 30, 1998.

	Period to be reviewed
Antidumping Duty Proceedings	
Japan:	
Roller Chain, A–588–028	
Daido Kogyo Company, Ltd., Enuma Chain Mfg. Company, Hitachi Metals Techno, Ltd., Izumi Chain Mfg. Co., Ltd., Kaga Kogyo/Kaga Industries/APC, Oriental Chain Company/OCM, Pulton Chain Co., Inc., RK Excel (Takasago), Sugiyama/SY, Alloy Tool Steel Inc., (ATSI), Daido Tsusho Co., Ltd./Daido Corporation, Hitachi Metals Techno, Ltd./ Hitachi Maxco, Ltd., Nissho Iwai Corporation, Peer Chain Co., Tsubakimoto Chain Co./U.S. Tsubaki	4/1/96–3/31/97
Mexico:	
Fresh Cut Flowers, A–201–601	
Rancho Del Pacifico	4/1/96–3/31/97
Steel Wire Rope, A–201–806	
Aceros Camesa, S.A. de C.V.*	3/1/96–2/28/97
Norway:	
Salmon, A–403–801	
Nordic Group A/L	4/1/96–3/31/97
Taiwan:	
Televisions, A–583–009	
Proton Electronic Industrial Co.	4/1/96–3/31/97
Countervailing Duty Proceedings	
None.	

* Inadvertently omitted from previous initation notice.

If requested within 30 days of the date of publication of this notice, the Department will determine whether antidumping duties have been absorbed by an exporter or producer subject to any of these reviews if the subject merchandise is sold in the United States through an importer which is affiliated with such exporter or producer.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 C.F.R. 353.34(b) and 355.34(b).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1).

Dated: May 13, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–13333 Filed 5–20–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–614–801]

Fresh Kiwifruit From New Zealand; Amended Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of amended final results of Antidumping Duty Administrative review.

SUMMARY: On October 4, 1996, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on fresh kiwifruit from New Zealand. The review covers one exporter, the New Zealand Kiwifruit Marketing Board (NZKMB), and the period of review (POR) from June 1, 1993 through May 31, 1994. In order to clarify the cash deposit instructions in those final results, we are amending the final results.

EFFECTIVE DATE: May 21, 1997.

FOR FURTHER INFORMATION CONTACT: Paul M. Stolz or Thomas F. Futtner, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4474 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 1996, the Department published the final results (61 FR 46438) of its administrative review of the antidumping duty order on fresh kiwifruit from New Zealand (57 FR 23203 (June 2, 1992)) for the POR covering June 1, 1994 through May 31, 1995. The review covered one exporter, the NZKMB. On October 4, 1996 the Department published the final results for the POR covering May 31, 1993 through June 1, 1994. The Department has now amended the final results of the 1993–1994 administrative review in accordance with 19 CFR 353.28(c).

Applicable Regulations

Unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Scope of the Review

The product covered by the order under review is fresh kiwifruit. Processed kiwifruit, including fruit jams, jellies, pastes, purees, mineral waters, or juices made from or containing kiwifruit, are not covered under the scope of the order. The subject merchandise is currently classifiable under subheading 0810.90.20.60 of the Harmonized Tariff Schedule (HTS). Although the HTS number is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Clarification of Cash Deposit Instructions

Insofar as the final results for the more current review period, June 1, 1994 through May 31, 1995, were published prior to the final results in the 1993–1994 review period, the Department must amend the

instructions on antidumping duty cash deposits. Accordingly, the following cash deposit information supersedes the cash deposit instructions contained in the October 4, 1996 final results for the review covering May 31, 1993 through June 1, 1994.

Since final results for a more current review period, June 1, 1994 through May 31, 1995, were published on September 3, 1996, the cash deposit instructions contained in that notice will apply to all shipments to the United States of subject merchandise entered, or withdrawn from warehouse, for consumption on or after September 3, 1996. The dumping margins established for the June 1, 1993 through May 31, 1994 POR will have no effect on the cash deposit rate for any firm. The margin results will apply for liquidation of shipments entered, or withdrawn from warehouse, for consumption during the June 1, 1993 through May 31, 1994 POR only.

This notice is in accordance with 19 CFR 353.28.

Dated: May 13, 1997.

Jeffrey P. Bialos,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–13334 Filed 5–20–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–035. *Applicant:* University of Illinois at Chicago, Purchase Order Payables MC 545, 809 S. Marshfield Avenue, Chicago, IL 60612–7272. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The article is intended to be used for the study of the microstructure of metals, metal alloys, ceramics, high-temperature superconductors, semiconductors, polymers, clays, dental implants, soot emissions and proteins. In addition, the instrument will be used on a one-to-one basis for training faculty, staff and graduate students. *Application accepted by Commissioner of Customs:* April 25, 1997.

Docket Number: 97–036. *Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, 207 Henry Administration Building, Urbana, IL 61801. *Instrument:* Thermal Analysis Mass Spectrometer, Model STA 409. *Manufacturer:* Netzsch, Germany. *Intended Use:* The instrument will be used for simultaneous thermal characterization of materials from room temperature up to 2000°C by thermogravimetry, differential thermal analysis or differential scanning calorimetry and evolved gas analysis by mass spectrometry. *Application accepted by Commissioner of Customs:* April 30, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–13335 Filed 5–20–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Report (BDR)

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites other Federal agencies and the general public to take this opportunity to comment on proposed 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 July 21, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Juanita Berry, Minority Business Development Agency (MBDA), Room 5084, Washington, DC 20230, or call (202) 482–0404.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Business Development Report identifies minority business clients receiving Agency-sponsored management and technical assistance and the kind of assistance each receives. MBDA requires this information to monitor, evaluate, and plan Agency programs to enhance the development of minority business.

II. Method of Collection

Electronic transfer of performance data.

III. Data

OMB Number: 0640–0005.

Agency Form Number: N/A.

Type of Review: Renewal of a currently approved collection.

Affected Public: State or local governments, Federal agencies, and profit and non-profit institutions.

Estimated Number of Responses: 19,200 (approximately 80 respondents with numerous responses).

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 4,800.

Estimated Total Annual Cost: $0 (software package is provided by MBDA).

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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 13, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–13253 Filed 5–20–97; 8:45 am]

BILLING CODE: 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Application for Authorized Chart Agent

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 July 21, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Pauline Coleman, N/ACC320, Room 100, 6501 Lafayette Avenue, Riverdale, MD 20737–1157 (301–436–8301).

SUPPLEMENTARY INFORMATION:

I. Abstract

Nautical and aeronautical charts and publications produced by the National Oceanic and Atmospheric Administration (NOAA) are made available to the public through businesses designated as authorized chart agents. An application form is necessary for NOAA to identify applicants and to determine whether those applicants are financially reliable and can meet minimal sales standards.

II. Method of Collection

Applicants submit a form with supporting documentation on their financial condition.

III. Data

OMB Number: 0648–0164.

Form Number: NOAA Form 49–74.

Type of Review: Regular Submission.

Affected Public: Businesses.

Estimated Number of Respondents: 600.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 150 hours.

Estimated Total Annual Cost to Public: $0—Respondents will not be required to purchase equipment or materials to respond to this survey.

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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 14, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–13250 Filed 5–20–97; 8:45 a.m.]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Foreign Fishing Reporting Requirements

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 July 21, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bob Dickinson, Office of Sustainable Fisheries, International Fisheries Division, 1315 East West Highway, Silver Spring, Maryland 20910, (301) 713–2337.

SUPPLEMENTARY INFORMATION:

I. Abstract

Foreign fishing activities can be authorized under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Collection of information from permitted foreign vessels is necessary to monitor their activities and whereabouts in U.S. waters. Reports are also necessary to monitor the amounts of fish, if any, such vessels receive from U.S. vessels in joint venture operations (wherein U.S. vessels catch and transfer at-sea to permitted foreign vessels certain species for which U.S. demand is low relative to the abundance of the species) or otherwise receive for transfer outside U.S. waters.

II. Method of Collection

Information is collected by radio report.

III. Data

OMB Number: 0648–0075.

Form Number: None.

Type of Review: Regular Submission.

Affected Public: Foreign fishing companies.

Estimated Number of Respondents: 110.

Estimated Time Per Response: 6 minutes.

Estimated Total Annual Burden Hours: 330.

Estimated Total Annual Cost to Public: $0—Respondents will not be required to purchase equipment or materials to respond to this survey.

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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 14, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–13252 Filed 5–20–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051297B]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, May 28, 1997, at 10 a.m. and on Thursday, May 29, 1997, at 8:30 a.m.

ADDRESSES: The meeting will take place at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1036; telephone: (617) 231-0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (617) 231-0422.

SUPPLEMENTARY INFORMATION:

May 28, 1997

The May 28 session will begin with reports from the Council's oversight committees. The Interspecies Committee will discuss coordinating vessel replacement and upgrading measures with the Mid-Atlantic Fishery Management Council and protocols for opening areas now closed to most fishing activities.

Representatives from Canada's Department of Fisheries and Oceans will present an overview of their management measures for Georges Bank and reopening of the Atlantic Canada cod fisheries. The Council's Herring Committee will review the status of the resource, management issues, and research recommendations, in addition to identifying scoping issues associated with the development of a fishery management plan for herring. The Responsible Fishing Committee will recommend a code of conduct for New England fishermen and discuss licensing for all fishermen. The Monkfish Committee will brief the Council on its efforts to develop management measures for inclusion in an amendment to the Multispecies FMP.

May 29, 1997

The May 29 session will begin with the Council's Groundfish Committee's proposed actions on two framework adjustments to the Northeast Multispecies FMP. Initial action concerning the bag limit for recreational anglers under the framework for abbreviated rulemaking procedure contained in 50 CFR 648.82 will be considered. The action would make rules for bag limits consistent for all recreational fishermen. The Groundfish Committee also intends to propose final action on a framework adjustment to the Multispecies FMP that would exempt gillnet vessels in the trip boat category from bringing their monkfish gillnets to port when fishing under a days-at-sea allocation. The Groundfish Committee also will discuss issues associated with implementation of a cod trip limit. A report from the Scallop Committee will follow. There will be a presentation on the effectiveness of the sea scallop management program, a report on the development of a fishing effort consolidation program and discussion of reopening the Georges Bank closed areas to scalloping. The Large Pelagics Committee will report on the recent NMFS Shark Operations Team meeting. The Habitat Committee will provide an update on the development of Council comments on the Essential Fish Habitat proposed rule concerning requirements for fishery management plans. The Gear Conflict Committee will brief the Council on several problems in the Gulf of Maine. The Council meeting will conclude with reports from the Council Chairman; Executive Director; Regional Administrator, Northeast Region, NMFS; representatives from the Northeast Fisheries Science Center, Atlantic States Marine Fisheries Commission, U.S. Coast Guard and the Mid-Atlantic Council.

Announcement of an Experimental Fishery Application

There will be a discussion and opportunity to comment on a proposal for an experimental fishery to be conducted by the Virginia Institute of Marine Science to evaluate the selectivity and efficiency of 6–inch (15.24–cm) mesh scallop trawls.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: May 15, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–13245 Filed 5-20-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050697A]

Marine Mammals

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

ACTION: Issuance of scientific research permit no. 850–1342 (File No. 850–1342)

SUMMARY: Notice is hereby given that Ms. Lucy W. Keith, Boston University Marine Program, Broderick House/MBL, Woods Hole, Massachusetts 02543, has been issued a permit to ''take'' by Level A and Level B harassment, Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Protected Species Program Manager, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

SUPPLEMENTARY INFORMATION: On March 20, 1997, notice was published in the **Federal Register** (62 FR 13367) that the above-named applicant had submitted a request for a scientific research permit to ''take'' Hawaiian monk seals for purposes of scientific research. The research will be conducted over a 1-year period and will involve the capture, physical restraint, radio tagging, monitoring, and possible recapture (for tag removal) of immature Hawaiian monk seals of either gender, as well as the inadvertent harassment of additional seals of any age and gender during the course of the research activities. The objective of the research is to describe haul-out patterns of juvenile Hawaiian monk seals at Midway Islands. An evaluation will be made of the possible impacts of human disturbance on the seals. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222).

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 8, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–13364 Filed 5–20–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050697B]

Marine Mammals

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

ACTION: Issuance of scientific research permit no. 782–1349.

SUMMARY: Notice is hereby given that Dr. Howard W. Braham, Director, National Marine Mammal Laboratory, Alaska Fisheries Science Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070, is hereby authorized to take Dall's porpoise (*Phocoenoides dalli*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Building 1, Seattle, WA 98115–0070 (206/526–6150).

SUPPLEMENTARY INFORMATION: On March 25, 1997, notice was published in the **Federal Register** (62 FR 14115) that the above-named applicant had submitted a request for a scientific research permit to capture, tag, release, and unintentionally harass Dall's porpoise for the purpose of scientific research in Washington and Oregon waters, over a 5-year period. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Dated: May 8, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–13365 Filed 5–20–97; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, May 29, 1997, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Part Open to the Public; Part Closed.

MATTERS TO BE CONSIDERED:

Open to the Public

1. *CPSC Vice Chairman*

The Commission will elect a Vice Chairman.

Closed to the Public

2. *Compliance Status Report*

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

DATE: May 19, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–13536 Filed 5–19–97; 3:33 pm]

BILLING CODE 6355–01–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, May 28, 1997. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in the West Dining Room of the Eddy Farm Hotel, Eddy Farm Road, Sparrow Bush, New York.

In addition to the subjects listed below which are scheduled for public hearing at the business meeting, the Commission will address the following matters: Minutes of the April 30, 1997 business meeting; announcements; General Counsel's report; report on Basin hydrologic conditions; a resolution concerning a New Jersey grant agreement to determine the impact of aquatic vegetation on the water quality of the Delaware Estuary; and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Hazleton City Authority D–91–65 CP RENEWAL.* An application for the renewal of a ground water withdrawal project with no increase and to continue supplying up to 3.6 million gallons (mg)/30 days of water to the applicant's Drifton-Buck Mountain distribution system located outside the Delaware River Basin, from Buck Mountain Well No. 1. Commission approval on January 22, 1992 was limited to five years. The project is located in Lausanne Township, Carbon County, Pennsylvania.

2. *East Stroudsburg Area School District D–96–56 CP.* A project to

construct a 51,500 gallons per day (gpd) sewage treatment plant (STP) to serve the applicant's new regional school complex consisting of two elementary schools, a middle school and a high school in Lehman Township, Pike County, Pennsylvania. The proposed STP will provide secondary biological treatment utilizing the extended aeration activated sludge process. After final clarification and chlorine disinfection, the treated effluent will be discharged to two storage lagoons from where it will be pumped to a wooded spray irrigation field of approximately 16 acres. The STP will be located just off Bushkill Road approximately six miles north of the Village of Bushkill, Pike County, Pennsylvania.

3. *Sunnybrook Golf Club D–97–7.* An application for approval of a ground water withdrawal project to supply up to 4.5 mg/30 days of water for irrigation of the applicant's golf course from new Well No. 2, and to limit the existing withdrawal from all wells to 4.5 mg/30 days. The project is located in Whitemarsh Township, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Township of Worcester D–97–9 CP.* A discharge expansion project to increase the average monthly capacity of the applicant's 0.09 mgd Valley Green STP to 0.22 million gallons per day (mgd) by the addition of a 0.13 mgd package extended aeration treatment unit. The completed facility will continue to serve the Township of Worcester, Montgomery County, Pennsylvania. The project is situated just south of the intersection of Valley Forge and Defford Roads in Worcester Township, and the treated effluent will continue to discharge to Zacharias Creek located just to the west side of the site.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: May 13, 1997.

Susan M. Weisman,

Secretary.

[FR Doc. 97–13307 Filed 5–20–97; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Director, Information Resources Management Group, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 20, 1997.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Wendy Taylor, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m, Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Group publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 15, 1997.

Gloria Parker,

Director, Information Resources Management Group.

Office of Vocational and Adult Education

Type of Review: New.
Title: School-to-Work Progress Measures.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Burden:
Responses: 1,025
Burden Hours: 6,800
Abstract: The Progress Measures Survey focuses on four elements of Title IV, Section 402 of the School-to-Work Opportunities Act: student participation in school-to-work; institutional and employer participation; leveraging of funds; and outcomes. The participation measures are designed to track elaboration of local partnership School-to-Work (STW) systems; the leveraging measures are intended to capture efforts to develop sources of funding that will enable STW to be self-sustaining after sunset of the legislation; and the outcomes measures are indicators of achievement of the Act's primary goals. These data, collected on a regular basis, will provide important evidence of state and local partnership commitments to the legislative mandate.

[FR Doc. 97–13233 Filed 5–20–97; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:
Name: Secretary of Energy Advisory Board—Electric System Reliability Task Force;
Dates and Times: Tuesday, June 3, 1997, 8:30 AM–4:00 PM;
Place: Valley Forge Hilton, Rittenhouse Ballroom, 251 West Dekalb Pike, King of Prussia, Pennsylvania 19406.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Background

The electric power industry is in the midst of a complex transition to competition, which will induce many far-reaching changes in the structure of the industry and the institutions which regulate it. This transition raises many reliability issues, as new entities emerge in the power markets and as generation becomes less integrated with transmission.

Purpose of the Task Force

The purpose of the Electric System Reliability Task Force is to provide advice and recommendations to the Secretary of Energy Advisory Board regarding the critical institutional, technical, and policy issues that need to be addressed in order to maintain the reliability of the nation's bulk electric system in the context of a more competitive industry.

Tentative Agenda

8:30–8:45 *Opening Remarks & Objectives;* Philip Sharp, Chairman, Electric System Reliability Task Force
8:45–9:15 *Presentation and Discussion:* Legal Issues Regarding FERC as a ''Backstop''
9:15–10:15 *Discussion:* Role of the FERC
10:15–10:30 *Break*
10:30–11:45 *Discussion:* Role of the National Reliability Organization (NERC and RRCs)
11:45–12:00 Public Comment
12:00–1:00 Lunch
1:00–2:15 *Discussion:* Role of the Regional Independent System Operator
2:15–2:30 Break
2:30–3:45 *Discussion:* Role of States and Regional Regulatory Agencies
3:45–4:00 *Closing remarks:* Philip Sharp, Chairman, Electric System Reliability Task Force
4:00 Adjourn.

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation

The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C. the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to David Cheney, Acting Executive Director, Secretary of Energy Advisory Board, AB–1, 1000 Independence Avenue, SW, Washington, DC 20585.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays.

Issued at Washington, DC, on May 16, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–13329 Filed 5–20–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of HEAT–N–GLO Fireplace Products, Inc., From the Department of Energy Vented Home Heating Equipment Test Procedure (Case No. DH–012)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice grants an Interim Waiver to HEAT–N–GLO Fireplace Products, Inc. (HEAT–N–GLO), from the Department of Energy (DOE or Department) test procedure for vented home heating equipment. The Interim Waiver concerns pilot light energy consumption for HEAT–N–GLO's models BAYFYRE-TRS and 6000XLT vented heaters.

Today's notice also publishes a ''Petition for Waiver'' from HEAT–N–GLO. HEAT–N–GLO's Petition for Waiver requests the Department to grant relief from the DOE vented home heating equipment test procedure relating to the use of pilot light energy consumption in calculating the Annual Fuel Utilization Efficiency (AFUE). Specifically, HEAT–N–GLO seeks to delete the required pilot light measurement (Q_p) in the calculation of AFUE when the pilot is off. The Department solicits comments, data, and information respecting the Petition for Waiver.

DATES: The Department will accept comments, data, and information not later than June 20, 1997.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. DH–012, Mail Stop EE–43, Room 1J–018, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7140, Facsimile: (202) 586–4617.

FOR FURTHER INFORMATION CONTACT: Bill Hui, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Stop EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121. Telephone: (202) 586–9145, Facsimile: (202) 586–4617, E-Mail: william.hui@hq.doe.gov or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Stop GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103. Telephone: (202) 586–9507, Facsimile: (202) 586–4116, E-Mail: eugene.margolis@hq.doe.gov

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act, as amended (EPCA), which requires the Department to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including vented home heating equipment. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making informed purchasing decisions, and will determine whether a product complies with the applicable energy conservation standard. These test procedures appear at Title 10 CFR part 430, subpart B.

The Department amended the test procedure rules to provide for a waiver process by adding § 430.27 to Title 10 CFR Part 430. 45 FR 64108, September 26, 1980. Subsequently, the Department amended the waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim

Waiver from test procedure requirements to manufacturers that have petitioned the Department for a waiver of such prescribed test procedures. Title 10 CFR part 430, § 430.27(a)(2).

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

An Interim Waiver will be granted if it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. Title 10 CFR Part 430, § 430.27(g). An Interim Waiver remains in effect for a period of 180 days or until the Department issues a determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On April 10, 1997, HEAT–N–GLO filed an Application for Interim Waiver and a Petition for Waiver regarding pilot light energy consumption.

HEAT–N–GLO seeks an Interim Waiver from the DOE test provisions in § 3.5 of Title 10 CFR Part 430, Subpart B, Appendix O, which requires measurement of energy input rate of the pilot light (Q_P), and in § 4.2.6, which requires the use of this data for the calculation of AFUE, where:

$AFUE = [4400\eta_{SS}\eta_u Q_{in-max}] / [4400\eta_{SS}Q_{in-max}+2.5(4600)\eta_u Q_P]$

Instead, HEAT–N–GLO requests that it be allowed to delete Q_P and accordingly, the $[2.5(4600)\eta_u Q_P]$ term in the calculation of AFUE. HEAT–N–GLO states that instructions to turn off the transient pilot by the user when the heater is not in use are in the User Instruction Manual and on a label adjacent to the gas control valve. Since the current DOE test procedure does not address energy savings from the pilot light, HEAT–N–GLO asks that the Interim Waiver be granted.

Previous Petitions for Waiver to exclude the pilot light energy input term in the calculation of AFUE for vented heaters with a manual transient pilot control have been granted by the Department to Appalachian Stove and Fabricators, Inc., 56 FR 51711, October 15, 1991; Valor Incorporated, 56 FR 51714, October 15, 1991; CFM International Inc., 61 FR 17287, April 19, 1996; Vermont Castings, Inc., 61 FR 17290, April 19, 1996; Superior Fireplace Company, 61 FR 17885, April 23, 1996; Vermont Castings, Inc., 61 FR 57857, November 8, 1996; HEAT–N–GLO Fireplace Products, Inc., 61 FR 64519, December 5, 1996; CFM Majestic Inc., 62 FR 10547, March 7, 1997; Hunter Energy and Technology Inc., 62 FR 14408, March 26, 1997; and Wolf Steel Ltd., 62 FR 14409, March 26, 1997.

Thus, it appears likely that HEAT–N–GLO's Petition for Waiver concerning pilot light energy consumption for vented heaters will be granted. In those instances where the likely success of the Petition for Waiver has been demonstrated based upon the Department having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above information, the Department is granting HEAT–N–GLO an Interim Waiver for its models BAYFYRE–TRS and 6000XLT vented heaters. HEAT–N–GLO shall be permitted to test these models of its vented heaters on the basis of the test procedures specified in Title 10 CFR part 430, subpart B, Appendix O, with the following modifications:

(i) Delete paragraph 3.5 of Appendix O.

(ii) Delete paragraph 4.2.6 of Appendix O and replace with the following paragraph:

4.2.6 Annual Fuel Utilization Efficiency. For manually controlled vented heaters, calculate the Annual Fuel Utilization Efficiency (AFUE) as a percent and defined as:

$AFUE = \eta_u$

Where η_u is defined in § 4.2.5 of this Appendix.

(iii) With the exception of the modification set forth above, HEAT–N–GLO shall comply in all respects with the procedures specified in Appendix O of Title 10 CFR Part 430, Subpart B.

This Interim Waiver is based upon the presumed validity of all statements and allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the Application is incorrect.

This Interim Waiver is effective on the date of issuance by the Assistant Secretary for Energy Efficiency and Renewable Energy. The Interim Waiver shall remain in effect for a period of 180 days or until the Department acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

HEAT–N–GLO's Petition for Waiver requests the Department to grant relief from the portion of the DOE test procedure for vented home heating equipment that relates to measurement of energy consumption by the pilot light. Specifically, HEAT–N–GLO seeks to exclude the pilot light energy consumption from the calculation of AFUE. Pursuant to paragraph (b) of Title 10 CFR part 430.27, the Department is hereby publishing the ''Petition for Waiver'' in its entirety. The petition contains no confidential information. The Department solicits comments, data, and information respecting the Petition.

Issued in Washington, DC, on May 14, 1997.

Joseph J. Romm,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

Heat-N-Glo

Quality Fireplace Products Since 1975

April 10, 1997.

The Honorable Chistine Ervin,

Assistant Secretary of Energy, Efficiency and Renewable Energy, United States Department of Energy, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585

Subject: Petition for Waiver to Title 10 Code of Federal Regulations 430.27

Dear Secretary Ervin: This is a Petition for Waiver from test procedures appearing in 10 CFR, Part 430, Subpart B, Appendix 0—Uniform Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment. The sections for which this waiver is requested are detailed in section 3.5—Pilot Light Measurement; and section 4.2.6—Annual Fuel Utilization Efficiency (AFUE). These sections require the measurement of energy input to the pilot light and the inclusion of this data in the calculation of AFUE for the appliance even when the pilot light is turned off and not consuming any energy.

We are requesting this Waiver for our appliance models: BAYFYRE–TRS and 6000XLT.

The combination gas control valves used on these appliances can be manually turned off when the heater is not in use. In the ''OFF'' position, both the main burner and the pilot light are extinguished. When the gas control is set to the ''ON'' position, the main burner and the pilot light are operating. The appliance Instruction Manual and a label adjacent to the gas control valve will require the user to turn the gas control valve to the ''OFF'' position when the heater is not in use.

Requiring the inclusion of pilot energy input in the AFUE calculations does not

allow for the additional energy savings realized when the pilot light is turned off. We request that the requirement of including the term involving the pilot energy consumption be waived from the AFUE calculation for our heaters noted above. These models meet the conditions described in the previous paragraph.

Please contact us with any questions, comments, and requirements for additional information we can provide. Thank you for your help in this matter.

Sincerely,

Chuck Hansen,

Tech. Services—Engineering.

Gregg Achman,

Manager, Design Engineering.

[FR Doc. 97–13309 Filed 5–20–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2769–000]

American Electric Power Service Corporation; Notice of Filing

May 14, 1997.

Take notice that on April 30, 1997, the American Electric Power Service Corporation (AEPSC) tendered for filing executed service agreements with certain cities and towns in Indiana and Michigan under the Indian Michigan Power Company (I&M) Tariffs MRS, designated as I&M FERC Electric Tariff Original Volume No. 7 and I&M FERC Electric Tariff Original Volume No 5, respectively. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after April 1, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana and Michigan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before May 28, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13240 Filed 5–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–290–000]

Colorado Interstate Gas Company; Notice of Technical Conference

May 15, 1997.

In the Commission's order issued on April 11, 1997, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened.

The conference to address the issues has been scheduled for Wednesday, May 21, 1997 at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13238 Filed 5–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–345–003]

Indeck Pepperell Power Associates, Inc.; Notice of Filing

May 15, 1997.

Take notice that on April 15, 1997, Indeck Pepperell Power Associates, Inc. (Indeck Pepperell) submitted for filing a Revised Statement of Policy and Standards of Conduct with Respect to the Relationship between Miami Valley Leasing, Inc. and Indeck Pepperell Power Associates, Inc., (Revised Standards of Conduct) to comply with Commission requirements concerning standards of conduct between affiliates in the context of market-based rate filings. The filing supplements its October 25, 1996, filing of the original Standards of Conduct, which filing supplemented its October 17, 1996, Notice of Change of Ownership.

Indeck Pepperell states that its supplemental filing of Revised Standards of Conduct is in accordance with Part 35 of the Commission's Regulations. Indeck Pepperell renews its request for a waiver of the Commission's notice requirements so that its Revised Standards of Conduct may become effective October 18, 1996.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before May 27, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13237 Filed 5–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–512–000]

National Fuel Gas Supply Corporation; Notice of Application

May 15, 1997.

Take notice that on May 7, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP97–512–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a firm transportation service with Transcontinental Energy Marketing Company (Transco), which was authorized in Docket No. CP88–171, *et al.,* all as more fully set forth in the application on file with the Commission and open to public inspection.

National Fuel proposes to abandon a firm transportation service with Transco in connection with the conversion of this service from Rate Schedule X–57 to service under National Fuel's FT Rate Schedule, provided under Part 284 of the Commission's regulations. National Fuel states that Transco's current maximum daily volume under Rate Schedule X–57 is 75,000 Mcf.

Any person desiring to be heard or to make protest with reference to said

application should on or before June 5, 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 provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13236 Filed 5–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–366–000]

Wisconsin Distributor Group v. ANR Pipeline Company; Notice of Complaint

May 15, 1997.

Take notice that on May 7, 1997, in Docket No. RP94–347–000, Wisconsin Distributor Group (WDG) filed a ''Motion For Immediate Refunds With Interest Or, At A Minimum, Request For An Audit And Then Refunds With Interest'' requesting the Commission to take certain action concerning ANR Pipeline Company (ANR). The motion has been redocketed as a complaint in the above captioned docket.

WDG requests refunds with interest of certain escrow dollar amounts held by ANR associated with collections by ANR from ratepayers of costs regarding ANR's purchases of coal gas from Dakota Gasification Company (Dakota) that ANR has indicated were in excess of the amounts it paid to Dakota. WDG states that on information and belief, the amount of escrow monies held by ANR since the approximate 1992–1993 time frame in which the excess collections occurred is $77.68 million. WDG asserts that ANR collected all but $7.9 million of the $77.68 million prior to November 1, 1993, exclusively from sales customers and firm transportation customers who were direct billed such costs.

WDG argues that ANR owes its former sales customers and its firm transportation who were direct billed such costs, $69.79 million plus interest for pre-November 1, 1993 collections from ratepayers in excess of amounts ANR paid to Dakota. WDG also claims that, in addition, ANR owes its firm shippers subject to its Dakota-related GSR surcharges $7.9 million plus interest for post-November 1, 1993 collections from ratepayers in excess of amounts ANR paid to Dakota.

For amounts collected for the period November 1, 1992 through October 31, 1993, WDG requests that the Commission order ANR to make the refunds plus interest to its firm customers in accordance with the fixed direct bill percentage according to which they paid such excess dollar amounts.

WDG states that it has served the foregoing pleading to all parties designated on the service listed established in this proceeding.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before June 13, 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. Answers to this complaint shall be due on or before June 13, 1997.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13239 Filed 5–20–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF97–3021–000, et al.]

Southeastern Power Administration, et al.; Electric Rate and Corporate Regulation Filings

May 14, 1997.

Take notice that the following filings have been made with the Commission:

1. Southeastern Power Administration

[Docket No. EF97–3021–000]

Take notice that on May 5, 1997, the Deputy Secretary of the Department of Energy confirmed and approved Rate Schedules SJ–1 for power from Southeastern Power Administration's (Southeastern) Cumberland System. The approval extends through June 30, 1999.

The Deputy Secretary states that the Commission, by order issued December 14, 1994, in Docket No. EF94–3021–000, confirmed and approved Rate Schedules CBR–1–C, CSI–1C, CK–1–C, CC–1–D, CM–1–C, CEK–1–C, and CTV–1–C.

Southeastern proposes in the instant filing to amend this filing to include the Stonewall Jackson Project in the Cumberland System.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. EL97–36–000]

Take notice that on May 5, 1997, Southern California Edison Company tendered for filing a Petition for Declaratory Order and Request for Expedited Consideration in the above-referenced docket.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Central Illinois Public Service Company

[Docket No. EL97–37–000]

Take notice that on May 7, 1997, Central Illinois Public Service Company (CIPS) tendered for filing a petition for waiver of the Commission's fuel adjustment clause (FAC) regulations to the extent necessary to permit the recovery through the wholesale FAC of the costs associated with restructuring

of CIPS' existing coal supply agreement with AMAX Coal Sales Company (AMAX).

CIPS seeks an effective date of May 1, 1997 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on AMAX, the Village of Greenup, Illinois, the City of Newton, Illinois, Norris Electric Cooperative, Mount Carmel Public Utility Company and the Illinois Commerce Commission.

Comment date: June 3, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. MidAmerican Energy Company

[Docket No. ER97–2563–000]

Take notice that on May 1, 1997, MidAmerican Energy Company tendered for filing an amendment to its proposed change in Rate Schedule for Power Sales, FERC Electric Rate Schedule, Original Volume No. 5. The amendment consists of the following:

1. Substitute Fifth Revised Sheet No. 16, superseding Fifth Revised Sheet No. 16;
2. Substitute Third Revised Sheet Nos. 17 and 18, superseding Third Revised Sheet Nos. 17 and 18;
3. Substitute Second Revised Sheet Nos. 19 and 20, superseding Second Revised Sheet Nos. 19 and 20; and
4. Substitute First Revised Sheet No. 21, superseding First Revised Sheet No. 21.

MidAmerican states that it is submitting these tariff sheets for the purpose of complying with the requirements set forth in *Southern Company Services, Inc.,* 75 FERC ¶ 61,130 (1996), relating to quarterly filings by public utilities of summaries of short-term market-based power transactions. The tariff sheets contain summaries of such transactions under the Rate Schedule for Power Sales for the period January 1, 1997 through March 31, 1997.

MidAmerican proposes an effective date of January 1, 1997 for the rate schedule change. Accordingly, MidAmerican requests a waiver of the 60-day notice requirement for this filing. MidAmerican states that this date is consistent with the requirements of the *Southern Company Services, Inc.* order and the effective date authorized in Docket No. ER96–2459–000.

Copies of the filing were served upon MidAmerican's customers under the Rate Schedule for Power Sales and the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Advantage Energy, Inc.

[Docket No. ER97–2758–000]

Take notice that on April 29, 1997, Advantage Energy, Inc. (Advantage), P.O. Box 100, 8850 W. Route 20, Westfield, New York 14787, petitioned the commission for acceptance of Advantage Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Yadkin, Inc.

[Docket No. ER97–2759–000]

Take notice that on April 29, 1997, Yadkin, Inc., tendered for filing a summary of activity for the quarter ending March 31, 1997.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Pool

[Docket No. ER97–2760–000]

Take notice that on April 29, 1997, the New England Power Pool Executive Committee filed a signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by Northeast Energy Services, Inc. (NORESCO). The New England Power Pool Agreement, as amended, has been designated NEPOOL FPC No. 2.

The Executive Committee states that acceptance of the signature page would permit NORESCO to join the over 100 Participants that already participate in the Pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make NORESCO a Participant in the Pool. NEPOOL requests an effective date on or before June 1, 1997, or as soon as possible thereafter for commencement of participation in the Pool by NORESCO.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Dayton Power and Light Company

[Docket No. ER97–2761–000]

Take notice that on April 30, 1997, The Dayton Power and Light Company (Dayton), tendered for filing an amendment to the above referenced docket.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Logan Generating Company

[Docket No. ER97–2763–000]

Take notice that on April 30, 1997, Logan Generating Company tendered for filing copies of its quarterly report transactions entered into during the quarter ending March 31, 1997.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Southern Company Services, Inc.

[Docket No. ER97–2764–000]

Take notice that on April 30, 1997, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed one (1) agreement for firm point-to-point transmission service between SCS, as agent for Southern Companies, and Federal Power Sales, Inc. and one (1) agreement for non-firm transmission service between SCS, as agent for Southern Companies, and Sonat Power Marketing, L.P., under Part II of the Open Access Transmission Tariff of Southern Companies.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Illinois Power Company

[Docket No. ER97–2765–000]

Take notice that on April 30, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which PacifiCorp Power Marketing, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 11, 1997.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Illinois Power Company

[Docket No. ER97–2767–000]

Take notice that on April 30, 1997, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Delhi Energy Services, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of April 11, 1997.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Union Electric Company

[Docket No. ER97–2768–000]

Take notice that on April 30, 1997, Union Electric Company (UE), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between UE and Citizens Lehman Power Sales and Entergy Services, Inc. as agent for Entergy. Entergy defined as Entergy Services, Inc., Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans Inc. UE asserts that the purpose of the Agreements is to permit UE to provide transmission service to the parties pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Energy 2000

[Docket No. ER97–2771–000]

Take notice that on April 30, 1997, Energy 2000 (Energy 2000), tendered for filing Electric Service Rate Schedule No. 1, together with a petition for waivers and blanket approvals of various Commission regulations necessary for such Rate Schedule to become effective 60 days after [the date of filing.]

Energy 2000 states that it intends to engage in electric power and energy transactions as a marketer and a broker, and that it proposes to make sales under rates, terms and conditions to be mutually agreed to with the purchasing party. Energy 2000 further states that it does not own any generation or transmission facilities.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. The United Illuminating Company

[Docket No. ER97–2772–000]

Take notice that on April 30, 1997, The United Illuminating Company (UI), tendered for filing a Notice of Cancellation of the System Power Agreement between UI and New England Power Company (NEP). The Agreement is designated as UI Rate Schedule FERC No. 41, and it became effective September 11, 1983.

UI requests an effective date for the cancellation of May 30, 1997. Copies of the filing were served upon NEP and upon the Connecticut Department of Public Utility Control.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Great Bay Power Corporation

[Docket No. ER97–2773–000]

Take notice that on April 30, 1997, Great Bay Power Corporation (Great Bay), tendered for filing a service agreement between Reading Municipal Light Department and Great Bay for service under Great Bay's revised Tariff for Short Term Sales. This Tariff was accepted for filing by the Commission on May 17, 1996, in Docket No. ER96–726–000. The service agreement is proposed to be effective April 24, 1997.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. The Cincinnati Gas & Electric Company, PSI Energy, Inc.

[Docket No. ER97–2775–000]

Take notice that on April 30, 1997, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy Operating Companies), tendered for filing their quarterly transaction report for the calendar quarter ending March 31, 1997.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. A. Thomas Young

[Docket No. ID–3034–000]

Take notice that on May 6, 1997, A. Thomas Young (Applicant) tendered for filing an application under Section 305(b) of the Federal Power Act to hold the following positions:

Director—Potomac Electric Power Company
Director—Salomon Inc.

Comment date: May 28, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 97–13241 Filed 5–20–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–133]

Grand River Dam Authority; Notice of Availability of Draft Environmental Assessment

May 15, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed an application for approval of a marina expansion. Grand River Dam Authority proposes to permit Mr. Terry Frost, d/b/a Cherokee Yacht Club, to expand an existing marina on Grand Lake's Duck Creek. Cherokee Yacht Club requests permission to add two covered docks containing 53 boat slips to an existing marina consisting of 134 slips and 2 gas docks. The proposal would bring the total number of slips to 187. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottowa Counties, Oklahoma.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. In the DEA, staff concludes that approval of the licensee's proposal would not constitute a major federal action significantly affecting the quality of the human environment.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to: Ms. Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please affix Project No. 1494–133 to all comments. For further information,

please contact the project manager, John K. Hannula, at (202) 219–0116.

Lois D. Cashell,

Secretary.

[FR Doc. 97–13321 Filed 5–20–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–00212; FRL–5718–9]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL); Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL) will be held on June 9-11, 1997, in Washington, DC. At this meeting, the committee will conduct deliberations as time permits on various aspects of the acute toxicology and development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: allylamine, ammonia, carbon tetrachloride, chlorine trifluoride, chloroformates, diborane, ethylene imine, hydrogen chloride, and toluene 2,6-and 2,4-diisocyanate isomers . In addition, the committee plans to review dimethyldichlorosilane and hydrogen cyanide prior to publication of the proposed AEGLs in the **Federal Register**.

DATES: A meeting of the NAC/AEGL will be held from 10 a.m. to 5 p.m. on Monday, June 9; from 8:30 a.m. to 5 p.m. on June 10; and from 8:30 a.m. to 12 noon on June 11, 1997.

ADDRESSES: The meeting will be held in the Green Room on the third floor of the Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington DC. (entrance on 12th St. near the Federal Triangle Metro stop).

FOR FURTHER INFORMATION CONTACT: Paul S. Tobin, Office of Prevention, Pesticides, and Toxic Substances (7406), 401 M St., SW., Washington, DC. 20460, 202–260–1736, e-mail: tobin.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information on the scheduled meeting, the activities of the committee or the submission of information on chemicals to be discussed at the meeting, contact Paul S. Tobin, the Designated Federal Officer (DFO) under ''FOR FURTHER INFORMATION CONTACT''.

The meeting of the NAC/AEGL will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Since seating for outside observers may be limited, those wishing to attend the meeting as observers should contact the NAC/AEGL DFO at the earliest possible date to insure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical specific information should also be directed to the DFO.

Another meeting of the NAC/AEGL is expected to be held in Washington, DC. in September, 1997. It is anticipated that chemicals to be addressed at this meeting will include, but not necessarily be limited to the following: acryl chloride, allyl alcohol, arsenous trichloride, bromine, chloromethyl methyl ether, phosgene, propylene oxide, sulfur dioxide, and sulfur trioxide. Inquiries regarding the submission of data, written statements, or chemical-specific information on these chemicals should be directed to the DFO at the earliest date possible to allow for consideration of this information in the preparation of committee materials.

List of Subjects

Environmental protection.

Dated: May 14, 1997.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 97–13326 Filed 5–20–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–41047;FRL–5713–7]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; List of Priority Chemicals for Guideline Development

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of list of priority chemicals.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL), established by EPA under the Federal Advisory Committee Act (FACA), develops AEGLs on an ongoing basis to assist with Federal, State, and other organization needs for short-term hazardous chemical exposure information. An initial listing of 85 priority chemicals is provided in this notice to facilitate participation by the public in the AEGL process. Sixteen (16) of these priority chemicals have already been addressed by the NAC/AEGL (as noted in the table) and it is anticipated that proposed AEGL values and accompanying rationale for approximately 13 chemicals will be published in the **Federal Register** for comment within the next several months. NAC/AEGL encourages the submission of acute toxicology data or other pertinent information on these chemicals and all other chemicals on the list to the Designated Federal Officer, see ''FOR FURTHER INFORMATION CONTACT''.

ADDRESSES: Submit three copies of the data or other pertinent information identified by the docket control number [OPPTS–41047] to: TSCA Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Room ET–G99, 401 M St., SW., Washington, DC 20460 and one copy to the Designated Federal Officer in ''FOR FURTHER INFORMATION CONTACT''.

A public version of this record, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in TSCA Dockets, Room NEB-607, Environmental Protection Agency, 401 M St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul S. Tobin, Designated Federal Officer, Office of Prevention, Pesticides, and Toxic Substances (7406), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Location, phone number, and e-mail address: Room 349A, East Tower, Environmental Protection Agency, 401 M St., SW., Washington, DC, 202-260-1736, e-mail: tobin.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The list of 85 priority chemicals is a composite of numerous priority lists of acutely toxic chemicals and represents the selection of chemicals for AEGL development by the NAC/AEGL during the next 2 to 3 years. The list has been assembled from the individual lists of chemicals nominated by NAC/AEGL member organizations for AEGL development. Although this priority list of chemicals, published in this notice, is subject to modification as priorities of the NAC/AEGL committee or the NAC/AEGL member organizations change, it is anticipated that most of the chemicals on the priority list will remain as high priority for AEGL development during the next several years. The NAC/AEGL intends to address at least 30 chemicals

per year in the AEGL development process and, therefore, this list of chemicals will be expanded as the NAC/AEGL continues to focus on chemicals of interest to its member organizations. Any suggested additions to this initial priority list and the rationale for their addition may be addressed to the Designated Federal Officer.

It is believed that publication of this initial list of chemicals will provide individuals and organizations with ample time to gather existing data and information and, where appropriate, to develop new data and information on the acute toxicity of the chemicals listed herein, for the consideration of the NAC/AEGL. Parties possessing such data and information or those anticipating the future conduct of toxicity studies on any of these chemicals should contact the Designated Federal Officer.

CAS No.	Chemical name
56-23-5	Carbon tetrachloride
57-14-7	Dimethyl hydrazine[1]
60-34-4	Methyl hydrazine[1]
62-53-3	Aniline[1]
67-66-3	Chloroform
68-12-2	Dimethylformamide
71-43-2	Benzene
74-90-8	Hydrogen cyanide[1]
74-93-1	Methyl mercaptan[1]
75-09-2	Methylene chloride
75-21-8	Ethylene oxide[1]
75-44-5	Phosgene
75-55-8	Propyleneimine
75-56-9	Propylene oxide
75-74-1	Tetramethyllead
75-77-4	Trimethychlorosilane
75-78-5	Dimethyldichlorosilane[1]
75-79-6	Methyltrichlorosilane
78-82-0	Isobutyronitrile
79-01-6	Trichloroethylene
79-21-0	Peracetic acid
79-22-1	Methy chloroformate
91-08-7	Toluene 2,6-diisocyanate
106-89-8	Epichlorohydrin
107-02-8	Acrolein
107-11-9	Allyl amine
107-12-0	Propionitrile
107-15-3	Ethylenediamine
107-18-6	Allyl alcohol
107-30-2	Chloromethyl methyl ether
108-23-6	Isopropyl chloroformate
108-88-3	Toluene
108-91-8	Cyclohexylamine
109-61-5	Propyl chloroformate
110-00-9	Furan
110-89-4	Piperidine
123-73-9	Crotonaldehyde, (E)
126-98-7	Methacrylonitrile
127-18-4	Tetrachloroethylene
151-56-4	Ethyleneimine
302-01-2	Hydrazine[1]
353-42-4	Boron triflouride compound with methyl ether (1:1)
506-77-7	Cyanogen chloride[1]
509-14-8	Tetranitromethane
540-59-0	1,2-Dichloroethylene[1]
584-84-9	Toluene 2,4-diisocyanate
594-42-3	Perchloromethylmercaptan
624-83-9	Methyl isocyanate
811-97-2	HFC 134A (1,1,1,2-Tetrafluoroethane)
814-68-6	Acrylyl chloride
1330-20-7	Xylenes (mixed)
1717-00-6	HCFC 141b (1,1-dichloro-1-fluoroethane)
4170-30-3	Crotonaldehyde
6423-43-4	Propylene glycol dinitrate
7446-09-5	Sulfur dioxide
7446-11-9	Sulfur trioxide
7647-01-0	Hydrogen chloride
7647-01-0	Hydrochloric acid
7664-39-3	Hydrogen fluoride[1]
7664-41-7	Ammonia
7664-93-9	Sulfuric acid
7697-37-2	Nitric acid[1]
7719-12-2	Phosphorus trichloride
7726-95-6	Bromine
7782-41-4	Fluorine[1]
7782-50-5	Chlorine[1]
7783-06-4	Hydrogen sulfide
7783-60-0	Sulfur tetrafluoride
7783-81-5	Uranium hexafluoride
7784-34-1	Arsenous trichloride
7784-42-1	Arsine[1]
7790-91-2	Chlorine trifluoride
7803-51-2	Phosphine[1]
8014-95-7	Oleum
10025-87-3	Phosphorus oxychloride
10049-04-4	Chlorine dioxide
10102-43-9	Nitric oxide
10294-34-5	Boron trichloride
13463-39-3	Nickel carbonyl
13463-40-6	Iron, pentacarbonyl-
19287-45-7	Diborane
25323-89-1	Trichloroethane
163702-07-6	Methyl nonafluorobutyl ether (HFE 7100 component)
163702-08-7	Methyl nonafluoroisobutyl ether (HFE 7100 component)
MIXTURE	Otto Fuel II (Propylene glycol dinitrate major component)

[1]Already addressed by NAC/AEGL.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: May 14, 1997.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 97–13327 Filed 5–20–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

May 16, 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 June 20, 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 Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain_t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0025.

Title: Application for Restricted RadioTelephone Operator Permit—Limited Use.

Form No.: 755.

Type of Review: Revision of an existing collection.

Respondents: Individuals or households.

Number of Respondents: 1,000.

Estimate Hour Per Response: 20 minutes.

Total Annual Burden: 330 hours.

Needs and Uses: The data is used to identify the individuals to whom the license is issued and to confirm that the individual posses the required qualifications for the license.

Applicants using this form are not eligible for employment in the United States but need an operator permit because they hold an Aircraft Pilot Certificate which is valid in the U.S. and need to operate aircraft radio stations or they hold an FCC radio station license and will use the permit for operation of that particular station. The number of respondents has been increased from 800 to 1,000, attributed to a re-evaluation of receipts. The form is being revised to add a space for the applicant to provide an Internet address. This will provide an additional option of reaching the applicant should the FCC have any questions concerning the application. The drug certification is being incorporated into the certification text prior to applicant signature and the requirement to check a ''yes/no'' block eliminated. The request for applicant's mailing address ''state'' is being changed to ''state/country'' to accomodate foreign mailing addresses. The Commission will redact the applicant birthdate from information available for public view.

Federal Communications Commission

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 97–13369 Filed 5–20–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 15, 1997.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0738.

Expiration Date: 04/30/2000.

Title: Implementation of the Telecommunications Act of 1996: Electronic Publishing and Alarm Monitoring Services—CC Docket No. 96–152.

Form No.: N/A.

Estimated Annual Burden: 7 respondents; 3000 hours per response (avg.); 21,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In the First Report and Order issued in CC Docket 96–152, the Commission implements the non-accounting requirements prescribed by Congress in sections 260 and 274 of the Telecommunications Act of 1996 (the Act) which respectively govern the provision of telemessaging and electronic publishing services. The Commission imposes this third-party disclosure requirement on Bell Operating Companies (BOCs) in order to implement the nondiscrimination requirement of section 274(c)(2)(A) of the Act, as amended. The Commission requires that to the extent a BOC refers a customer to a separated affiliate, electronic publishing joint venture of affiliate during the normal course of its telemarketing operations, it must refer that customer to all unaffiliated electronic publishers requesting the referral service. In particular, the BOC must provide the customer the names of all unaffiliated electronic publishers, in random order. Compliance is mandatory.

OMB Control No.: 3060–0755.

Expiration Date: 05/31/2000.

Title: Infrastructure Sharing—CC Docket 96–237.

Form No.: N/A.

Estimated Annual Burden: 1425 respondents; 1.63 hours per response (avg.); 2325 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In the Report and Order, Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996, CC Docket No. 96–237, the Commission adopts rules to implement Section 259 of the Communications Act of 1934, as amended. Section 259 requires incumbent local exchange carriers (LECs) to file any arrangements showing the conditions under which they share infrastructure per section 259. Section 259 also requires incumbent LECs to provide information on deployments of new services and equipment to qualifying carriers. The Commission also requires incumbent LECs to provide 60 days notice prior to terminating section 259 agreements. The information collected under the requirement that incumbent LECs file any tariffs, contracts or other arrangements for infrastructure sharing would be made available for public inspection. The information collected under the requirement that incumbent LECs provide timely information on planned deployments of new services and equipment would be provided to third parties (qualifying carriers). The information collected under the requirement that providing incumbent LECs furnish sixty days notice prior to termination of a section 259 sharing agreement would be provided to third parties, i.e., qualifying carriers, to protect customers from sudden changes in service. Compliance is mandatory.

Title: Written Contracts Filed with the Commission and Made Publicly Available—Section 274(b)(3)(B), CC Docket No. 96–152 (FNPRM).

Form No.: N/A.

Estimated Annual Burden: 4200 respondents; 1.33 hours per response (avg.); 3150 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: The Commission issued a Further Notice of Proposed Rulemaking in CC Docket No. 96–152, to implement section 274 of the Communications Act, as amended which governs BOC provision of electronic publishing services. Section 274(b)(3)(B) of the Act requires a separated affiliate or electronic publishing joint venture established pursuant to section 274(a) and the Bell Operating Company (BOC) with which it is affiliated to ''carry out transactions * * * pursuant to written contracts or tariffs that are filed with the Commission and made publicly available.'' The Further Notice notes that the phrases ''filed with the Commission'' and ''made publicly available'' in section 274(b)(3)(B) each can be read to apply to both contracts and tariffs, or only tariffs. In seeking comment on the proper interpretation of these phrases, the Further Notice proposed the following new collections of information: (1) The filing of both written contracts and tariffs with the Commission; and/or (2) the making of those contracts ''publicly available.'' OMB approved the proposed collections. If the collections are adopted, compliance would be mandatory.

OMB Control No.: 3060–0704

Expiration Date: 08/31/1997

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace: Implementation of Section 254(g) of the Communications Act of 1934, as amended—CC Docket No. 96–61.

Form No.: N/A.

Estimated Annual Burden: 519 respondents; 266.2 hours per response (avg.); 138,175 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $435,000.

Frequency of Response: On occasion.

Description: CC Docket 96–61 eliminates the requirement that nondominant interexchange carriers file tariffs for interstate, domestic, interexchange telecommunications services. In order to facilitate enforcement of such carriers' statutory obligation to geographically average and integrate their rates, and to make it easier for customers to compare carriers' service offerings, the Commission requires affected carriers to maintain, and to make available to the public in at least one location, information concerning their rates, terms and conditions for all of their interstate domestic, interexchange services. The information collected under the tariff cancellation requirement must be disclosed to the Commission, and will be used to implement the Commission's detariffing policy. The information collected under the recordkeeping and certification requirements will be used by the Commission to ensure that affected interexchange carriers fulfill their obligations under the Communications Act, as amended. The information in the disclosure requirement must be provided to third parties, and will be used to ensure that such parties have adequate information to bring to the Commission's attention any violations of geographic rate averaging and rate integration requirements of Section 254(g) of the Communications Act, as amended. Compliance is mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 97–13370 Filed 5–20–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–932]

Commission Adjusts its Annual Revenue Threshold to Account for Inflation for 1996 in Accordance With Section 402 of the 1996 Telecommunications Act

May 2, 1997.

Pursuant to Section 402(c) of the Telecommunications Act of 1996 and the interim procedures established in Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications, Order and Notice of Proposed Rulemaking, CC Docket No. 96–193, 11 FCC Recd 11716 (1996), the Commission hereby adjusts the annual revenue threshold pursuant to part 32 of its regulations (47 CFR part 43) and § 64.903 of its regulations (47 CFR 64.903) to account for inflation for 1996 by creating a ratio between the 1996 Gross Domestic Product Chain-type Price Index (GDP–CPI) and the GDP–CPI as of October 19, 1992.

The estimated value of the GDP–CPI on October 19, 1992 is 100.69. This estimate was obtained by linearly interpolating the seasonally adjusted third quarter 1992 GDP–CPI value of 100.2 (as of the mid-point of the third quarter, August 15, 1992) and the seasonally adjusted fourth quarter 1992 GDP–CPI value of 100.9 (as of the mid-point of the fourth quarter, November 15, 1992).

Accordingly, the inflation-adjusted revenue threshold for 1996 is calculated as follows:

[A] GDP–CPI (October 19, 1992), 100.69
[B] GDP–CPI (Annual) (1996), 109.9
[C] Ratio: GDP–CPI (Annual) (1996)/ GDP–CPI (October 19, 1992), 1.0915 [1]
[D] Original Revenue Threshold, $100 million
[E] Inflation-Adjusted Threshold, $109 million [2]

Accordingly, the inflation-adjusted revenue threshold for 1996 is $109 million.

For further information, contact Maureen Peratino, Office of Public Affairs, at (202) 418–0500, or Warren Firschein, Accounting and Audits Division, Common Carrier Bureau, at (202) 418–0844.

Source: National Data Tables, Survey of Current Business, Mar. 1997, tbl. 7.1 at D–17.

[1] Calculated by dividing line B by line A.

[2] Calculated by multiplying line D by line C. This figure has been rounded to the nearest million.

Federal Communications Commission.

LaVera Marshall,

Acting Secretary.

[FR Doc. 97–13367 Filed 5–20–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011507–002.

Title: Di Gregorio/Tricon Agreement.

Parties: Di Gregorio Navegacao Ltda., DSR-Senator Lines (''DSL''), Cho Yang Shipping Co., Ltd.

Synopsis: The proposed amendment specifies that nothing in the Agreement precludes DSL from engaging in any activity authorized by the Hanjin/DSR-Senator Cooperative Management Agreement, FMC–203–011570.

Dated: May 16, 1997.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–13366 Filed 5–20–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

American Canadian Caribbean Line, Inc., 461 Water Street, Warren, RI 02885

Vessel: GRANDE CARIBE

Costa Cruise Lines N.V., Costa Crociere S.p.A., Prestige Cruises N.V. and

Interocean Italia S.r.1., World Trade Center, 80 S.W. 8th Street, Miami, FL 33130–3097

Vessel: COSTA ROMANTICA

Costa Cruise Lines N.V., Costa Crociere S.p.A., and Prestige Cruises N.V., World Trade Center, 80 S.W. 8th Street, Miami, FL 33130–3097

Vessel: COSTA VICTORIA

Hanseatic Tours Reisedienst GmbH and Hapag-Lloyd Cruiseship Management GmbH, c/o Radisson Seven Seas Cruises, 600 Corporate Drive, Suite 410, Fort Lauderdale, FL 33334

Vessel: HANSEATIC

Hapag-Lloyd (America) Inc., Hapag-Lloyd Kreuzfahrten GmbH and Kommanditgesellschaft MS ''Europa'' der Breschag Bremer Schiffsvercharterungs Aktiengesellschaft Und Co. K.G., Gustav-Deetjen-Allee 2–6, D–28215 Bremen, Germany

Vessel: EUROPA

New SeaEscape Cruises, Inc., Cruise Charter Ltd. and Maritime Management Ltd., 140 S. Federal Highway, Dania, FL 33004

Vessel: UKRAINA

Norwegian Cruise Line Limited (d/b/a Norwegian Cruise Line), 7665 Corporate Center Drive, Miami, FL 33126

Vessel: NORWEGIAN STAR

Radisson Seven Seas Cruises, Inc. and Services et Transports Tahiti, 600 Corporate Drive, Suite 410, Fort Lauderdale, FL 33334

Vessel: PAUL GAUGUIN

Radisson Seven Seas Cruises, Inc. and Radisson Worldwide Inc., 600 Corporate Drive, Suite 410, Fort Lauderdale, FL 33334

Vessel: RADISSON DIAMOND

Royal Caribbean Cruises Ltd., 1050 Caribbean Way, Miami, FL 33132–2096

Vessel: VISION OF THE SEAS

Saga International Holidays, Ltd., Saga Holidays Limited and Saga Shipping Company Limited, Middleburg Square, Folkestone, Kent CT20 1AZ, England

Vessel: SAGA ROSE

Dated: May 15, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–13247 Filed 5–20–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 C.F.R. Part 540, as amended:

Cape Canaveral Cruise Line, Inc., Ulysses Cruises Inc. and The Kosmas Shipping Group, Inc., 101 George King Blvd., Suite 6, Cape Canaveral, FL 32920

Vessel: DOLPHIN IV

Costa Cruise Lines N.V., Costa Crociere S.p.A., Prestige Cruises N.V. and Interocean Italia S.r.1., 80 S.W. 8th Street, Miami, FL 33130–3097

Vessel: COSTA ROMANTICA

Glacier Bay Park Concessions, Inc. (d/b/a Glacier Bay Tours and Cruises), Glacier Bay Marine Services, Inc. and Goldbelt, Inc., 520 Pike Street, Suite 1400, Seattle, WA 98101

Vessel: WILDERNESS ADVENTURER

Hanseatic Tours Reisedienst GmbH, Hapag-Lloyd Cruiseship Management GmbH, Hapag-Lloyd (Bahamas) Ltd. and Bunnys Adventure and Cruise Shipping Company Limited, c/o Radisson Seven Seas Cruises, 600 Corporate Drive, Suite 410, Fort Lauderdale, FL 33334

Vessel: HANSEATIC

New SeaEscape Cruises, Inc., Cruise Charter Ltd., Maritime Management Ltd., Primexpress Cruise Company, Inc., Encino Ltd. and Firm Globus, 140 S. Federal Highway, Dania, FL 33004

Vessel: UKRAINA

Norwegian Cruise Line Limited (d/b/a Norwegian Cruise Line) and Actinor Cruise A S, 7665 Corporate Center Drive, Miami, FL 33126

Vessel: NORWEGIAN STAR

Princess Cruises, Inc., Princess Cruise Lines, Inc., The Peninsular and Oriental Steam Navigation Company and Fairline Shipping Corporation, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067

Vessel: DAWN PRINCESS

Radisson Seven Seas Cruises, Inc., Services et Transports Tahiti and Copropriete Du Navire Paul Gauguin, 600 Corporate Drive, Suite 410, Fort Lauderdale, FL 33334

Vessel: PAUL GAUGUIN

Radisson Seven Seas Cruises, Inc., Radisson Worldwide Inc. and Diamond Cruise Ltd., 600 Corporate Drive, Suite 410, Fort Lauderdale, FL 33334

Vessel: RADISSON DIAMOND

Royal Caribbean Cruises Ltd. and Enchantment of the Seas Inc., 1050 Caribbean Way, Miami, FL 33132–2096

Vessel: ENCHANTMENT OF THE SEAS

Royal Caribbean Cruises Ltd. and Rhapsody of the Seas Inc., 1050 Caribbean Way, Miami, FL 33132–2096

Vessel: RHAPSODY OF THE SEAS

Royal Caribbean Cruises Ltd. and Vision of the Seas Inc., 1050 Caribbean Way, Miami, FL 33132–2096

Vessel: VISION OF THE SEAS

West Travel, Inc. (d/b/a Alaska Sightseeing/Cruise West), 2401 Fourth Avenue, Suite 700, Seattle, WA 98121

Vessel: SPIRIT OF ENDEAVOUR

Dated: May 15, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–13298 Filed 5–20–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

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. 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 June 16, 1997.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Village Bancshares, Inc., Springfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Village Bank, Springfield, Missouri (a *de novo* state charted bank).

Board of Governors of the Federal Reserve System, May 16, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–13287 Filed 5–20–97; 8:45 am]

BILLING CODE 6210–01–F

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 June 5, 1997.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Jeffery T. Valcourt, Arlington, Virginia; to acquire an additional 15.25 percent, for a total of 24.99 percent, of the voting shares of United Financial Banking Companies, Inc., Vienna, Virginia, and thereby indirectly acquire The Business Bank, Vienna, Virginia.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Thomas A. Arrendale, III, Gainesville, Georgia, Cynthia A. Bussey, Atlanta, Georgia, and Nelle Arrendale, Clarkesville, Georgia, as partners in the Arrendale Undiversified Family Limited Partnership, Baldwin, Georgia; to collectively acquire 12.48 percent of the voting shares of Habersham Bancorp, Cornelia, Georgia, and thereby indirectly acquire Habersham Bank, Clarkesville, Georgia.

Board of Governors of the Federal Reserve System, May 16, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–13288 Filed 5–20–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–CB–93.652–97–04]

Adoption Opportunities Program; Announcement of Availability of Financial Assistance and Request for Applications

AGENCY: Administration on Children, Youth and Families ACF, DHHS.

ACTION: Announcement of the Availability of Financial Assistance and Request for Applications to Conduct Demonstration Projects Funded Under the Adoption Opportunities Program in the Children's Bureau, Administration on Children, Youth and Families.

SUMMARY: The Children's Bureau (CB) within the Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) announces the availability of fiscal year (FY) 1997 funds from the Adoption Opportunities Program for demonstration grants to State child welfare agencies, public or private nonprofit child welfare and adoption parents' groups for projects aimed at: (a) Developing effective collaborations for timely adoptions; (b) increasing adoptive placements for children in foster care; (c) developing innovative practices for increasing adoptions of minority children; (d) developing innovations in post-legal adoption services; (e) increasing practice options to secure permanency for children; (f) allowing leaders in the adoption field to propose innovative endeavors; and (g) developing strategies for increasing kinship care adoption.

CLOSING DATE: The closing time and date for the receipt of applications under this announcement is 4:30 p.m. (Eastern Standard Time) August 19, 1997. Applications received after 4:30 p.m. will be classified as late.

ADDRESSES: Mail applications to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC. 20447, ATTN: ______ (Reference announcement number and priority area.)

Hand delivered, Courier or Overnight applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m. EST, Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC. 20024, ATTN: ______ (reference number and priority area). Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

FOR FURTHER INFORMATION CONTACT: The ACYF Operations Center Technical Assistance Team at 1–800–351–2293 is available to answer questions regarding application requirements and to refer you to the appropriate contact person in the Children's Bureau for programmatic questions. You may also locate frequently asked questions about this program announcement on the ACYF Website at http://www.acf.dhhs.gov/programs/cb.

INTENT TO APPLY: If you are going to submit an application, send a post card or call in the following information: The name, address, and telephone number of the contact person; the name of the organization; and the priority area(s) in which you may submit an application, within two weeks of the receipt of this announcement to: Administration on Children, Youth and Families, Operations Center, 3030 Clarendon Boulevard, Suite 240, Arlington, VA 22201. The telephone number is 1–800–351–2293. This information will be used to determine the number of expert reviewers needed and to update the mailing list of persons to whom the program announcement is sent.

SUPPLEMENTARY INFORMATION: This program announcement consists of three parts. Part I provides information on the Children's Bureau and general information on the application procedures. Part II describes the review process, additional requirements for the grant applications, the criteria for the review and evaluation of applications, and the programmatic priorities for which applications are being solicited. Part III provides information and instructions for the development and submission of applications.

The forms to be used for submitting an application are included in Appendix A. Please copy as single-sided

forms and use in submitting an application under this announcement. No additional application forms are needed to submit an application.

Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds.

Outline of Announcement

Part I: General Information

A. Background
B. Statutory Authority Covering This Announcement
C. Availability and Allocation of Funds

Part II: The Review Process and Priority Areas

A. Eligible Applicants
B. Review Process and Funding Decisions
C. Evaluation Criteria
D. Structure of Priority Area Descriptions
E. Available Funds
F. Grantee Share of Project Costs
G. Priority Areas Included in This Announcement
H. Priority Area Descriptions and Requirements

Part III: Information and Instructions for the Development and Submission of Applications

A. Paperwork Reduction Act of 1995
B. Availability of Forms
C. Required Notification of the State Single Point of Contact
D. Deadline for Submission of Applications
E. Instructions for Preparing the Application and Completing Application Forms
1. SF424, page 1, Application Cover Sheet
2. SF424A, Budget Information-Non-Construction Programs
3. Project Summary Description
4. Program Narrative Statement
5. Organizational Capability Statement
6. Part IV—Assurances/Certifications
F. Checklist for a Complete Application
G. The Application Package

Part I. General Information

A. Background

The Administration on Children, Youth and Families (ACYF) administers national programs for children and youth, works with States and local communities to develop services which support and strengthen family life, seeks joint ventures with the private sector to enhance the lives of children and their families, and provides information and other assistance to parents.

The concerns of ACYF extend to all children from birth through adolescence. Many of the programs administered by the agency focus on children from low-income families; children and youth in need of foster care, adoption or other child welfare services; preschool children; children with disabilities; abused and neglected children; runaway and homeless youth; and children from American Indian and migrant families.

Within ACYF, the Children's Bureau plans, manages, coordinates and supports child welfare services programs. It administers the Foster Care and Adoption Assistance Program, the Child Welfare Services State Grants Program, the Child Welfare Services Research, Demonstration and Training Programs, the Independent Living Initiatives Program, the Adoption Opportunities Program, the Temporary Child Care for Children with Disabilities and Crisis Nurseries Program, the Abandoned Infants Assistance Program, and the Family Preservation and Support Services Program.

The Federal statutory, regulatory, policy and program framework for adoption has emphasized overcoming numerous complexities in order to facilitate the completion of adoptions, creating financial incentives for the adoption of certain children for whom it would be difficult to secure an adoptive placement, requiring each State to establish a pool of adoptive families reflecting the ethnic and racial diversity of children for whom adoptive homes are needed, promoting a vision of and guidance for permanence, and stimulating communication and collaboration among foster care, adoption and court professionals.

The Adoption Opportunities Program, originally enacted in title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Public Law 95–266, and most recently amended by the Child Abuse Prevention and Treatment Act Amendments of 1996, Public Law 104–235, works to eliminate barriers to adoption and provide permanent homes for children who would benefit from adoption. The Adoption Opportunities Program facilitates the elimination of barriers to adoption by: (1) Promoting adoption legislation and procedures in the States and territories of the United States in order to eliminate jurisdictional and legal obstacles to adoption; (2) promoting quality standards for adoption services, pre-placement, post-placement, and post-legal adoption counseling, and standards to protect the rights of the children in need of adoption; and (3) demonstrating expeditious ways to free children for adoption for whom it has been determined that adoption is the appropriate plan. This discretionary program awards grants and contracts to public and private non-profit agencies.

The passage of the Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96–272, resulted in the establishment of the title IV–E adoption assistance program. This entitlement provides funds to States to assist in paying costs associated with the adoption of children who have special needs, such as being older or disabled. The adoption assistance program encourages and supports permanence for children with special needs in adoptive homes, thereby preventing their inappropriate and excessive stays in foster care. To receive adoption assistance, a child must also be a recipient of or be eligible for Aid to Families with Dependent Children (AFDC), as in effect in the State on June 1, 1995, or Supplemental Security Income (SSI) benefits.

Another major legislative initiative in the area of adoptions, the Multiethnic Placement Act (MEPA), was passed in 1994 and amended in 1996 by the Small Business Job Protection Act, Public Law 104–188. The purposes of MEPA are to decrease the length of time that children wait to be adopted and to prevent discrimination in the placement of children on the basis of race, color, or national origin.

On August 20, 1996, President Clinton signed the Small Business Job Protection Act of 1996 which amended the Multiethnic Placement Act of 1994 (MEPA). Section 1808 of the Small Business Job Protection Act of 1996 is entitled ''Removal of Barriers to Interethnic Adoption.'' The section affirms and strengthens the prohibition against discrimination in adoption or foster care placements. It does this by adding to title IV-E of the Social Security Act a State Plan requirement and penalties which apply both to States and to adoption agencies. In addition, it repeals section 553 of the Multiethnic Placement Act (MEPA), which has the effect of removing from the statute the language which read ''Permissible Consideration—An agency or entity (which receives federal assistance) may consider the cultural, ethnic, or racial background of the child and the capacity of the prospective foster or adoptive parents to meet the needs of a child of such background as one of a number of factors used to determine the best interests of a child.''

The Interethnic Adoption provisions maintain a prohibition against delaying or denying the placement of a child for adoption or foster care on the basis of race, color, or national origin of the adoptive or foster parent, or the child involved as a civil rights issue, and further add a title IV-E State Plan requirement which also prohibits delaying and denying foster and adoptive placements on the basis of race, color or national origin.

The provisions also subject States and entities receiving Federal funding which are not in compliance with these title

IV-E State plan requirements to specific graduated financial penalties (in cases in which a corrective action plan fails to correct the problem).

The Congress has retained section 554 of MEPA, which requires that child welfare services programs provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed. This is the section that requires States to include a provision for diligent recruitment in their title IV-B State Plans.

Set forth below is the language of the new provision. Key terms contained in MEPA that have been eliminated are shown in brackets.

A person or government that is involved in adoption or foster care placements may not—(a) [categorically] deny to any individual the opportunity to become an adoptive or a foster parent, [soley] on the basis of the race, color, or national origin of the individual, or of the child involved; or (b) delay or deny the placement of a child for adoption or into foster care [or otherwise discriminate in making a placement decision, solely] on the basis of race, color, or national origin of the adoptive or foster parent, or the child, involved.

On December 14, 1996 President Clinton directed the Secretary of Health and Human Services to conduct wide consultations and report to him with specific recommendations for strategies to move children more quickly from foster care to permanent homes and to meet the goal of at least doubling adoptions and other permanent placement over the next five years. The Department developed *Adoption 2002* as a blueprint for bipartisan Federal leadership in adoption and other permanency planning for children in the public child welfare system. To prepare this report, the Department consulted with child welfare professionals, policy experts, advocates, and foster and adoptive parents at the national, State and local levels. *Adoption 2002* outlines an agenda to overcome barriers to permanence and to accelerate the path to permanency for all waiting children in the public child welfare system. To this end, the Department commits to providing expanded technical assistance, rewarding States for incremental increases in adoption levels with per-child financial bonuses, and otherwise recognizing successful performance.

B. Statutory Authority Covering This Announcement

Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Public Law 95–266, as amended.

C. Availability and Allocation of Funds

The Administration on Children, Youth and Families proposes to award appropriately 25 new grants in fiscal year 1997 in varying amounts. The total combined funding for the Priority Areas 1.01, 1.02, 1.03, 1.04, 1.05, 1.06 and 1.07 for fiscal year 1997 competitive grants is approximately $6 million.

Part II. The Review Process and Priority Areas

A. Eligible Applicants

Each priority area description contains information about the types of agencies and organizations which are eligible to apply under that priority area. Because eligibility varies depending on statutory provisions, it is critical that the ''Eligible Applicants'' section of each priority area be reviewed carefully.

Before review, each application will be screened for applicant organization eligibility as specified under the selected priority area. Applications from ineligible organizations will not be considered or reviewed in the competition, and the applicants will be so informed.

Only agencies and organizations, not individuals, are eligible to apply under this Announcement. All applications developed jointly by more than one agency or organization, must identify only one lead organization and official applicant. Participating agencies and organizations can be included as co-participants, subgrantees or subcontractors. For-profit organizations are eligible to participate as subgrantees or subcontractors with eligible non-profit organizations under all priority areas.

Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

B. Review Process and Funding Decisions

The closing time and date for the receipt of the applications is 4:30 p.m. (Eastern Time Zone) on August 19, 1997. Applications received after 4:30 p.m. will be classified as late. Timely applications received by the deadline date which are from eligible applicants will be reviewed and scored competitively. Experts in the field, generally persons outside the Federal government, will use the appropriate evaluation criteria listed later in this section to review and score the applications. The results of this review are a primary factor in making funding decisions.

The ACYF reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is in the best interest of the Federal government or the applicants. ACYF may also solicit comments from ACF Regional Office staff, other Federal agencies, interested foundations, national organizations, specialists, experts, States and the general public. These comments, along with those of the expert reviewers, will be considered by ACYF in making funding decisions.

In making decisions on awards, ACYF may give preference to applications which focus on or feature: Overrepresented populations of children in the Child Welfare system waiting to be adopted; a substantially innovative strategy with the potential to improve theory or practice in the field of human services; a model practice or set of procedures that holds the potential for replication by organizations that administer or deliver human services; substantial involvement of volunteers; substantial involvement (either financial or programmatic) of the private sector; a favorable balance between Federal and non-Federal funds available for the proposed project; the potential for high benefit for low Federal investment; a programmatic focus on those most in need; and/or substantial involvement in the proposed project by national or community foundations.

To the greatest extent possible, efforts will be made to ensure that funding decisions reflect an equitable distribution of assistance among the States and geographical regions of the country, rural and urban areas, and ethnic populations. In making these decisions, ACYF may also take into account the need to avoid unnecessary duplication of effort.

C. Evaluation Criteria

A panel of reviewers (primarily experts from outside the Federal government) will review applications. To facilitate this review, applicants should ensure that they address each

minimum requirement in the priority area description under the appropriate section of the Program Narrative Statement.

The reviewers will determine the strengths and weaknesses of each application using the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight.

All applications will be evaluated against the following criteria:

(1) Objective and Need for Assistance (20 points). The extent to which the application pinpoints any relevant physical, economic, social, financial, institutional or other problems requiring a solution; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant; and includes and/or footnotes relevant data based on the results of planning studies. The application must identify the precise location of the project and area to be served by the proposed project. Maps and other graphic aids may be attached.

(2) Approach (35 points). The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project, and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections for the accomplishments to be achieved. The Approach section should include a listing of the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

The extent to which, when appropriate, the application identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and successes of the project. The extent to which the application describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution.

(3) Results or Benefits Expected (20 points). The extent to which the application identifies the results and benefits to be derived, the extent to which they are consistent with the objectives of the application, and the extent to which the application indicates the anticipated contributions to policy, practice, theory and/or research. The extent to which the proposed project costs are reasonable in view of the expected results.

(4) Staff Background and Organization Experience (25 points). The application identifies the background of the project director/principal investigator and key project staff (including name, address, training, educational background and other qualifying experience) and the experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer the project. The application describes the relationships between the proposed project and other work planned, anticipated or underway by the applicant with Federal assistance.

D. Structure of Priority Area Descriptions

Each priority area description is composed of the following sections:

Eligible Applicants: This section specifies the type of organization eligible to apply under the particular priority area. Specific restrictions are also noted, where applicable.

Purpose: This section presents the basic focus and/or broad goal(s) of the priority area.

Background Information: This section briefly discusses the legislative background as well as the current state-of-the-art and/or current state-of-practice that supports the need for the particular priority area activity. Relevant information on projects previously funded by ACYF and/or others, and State models are noted, where applicable.

Minimum Requirements for Project Design: This section presents the basic set of issues that must be addressed in the application. Typically, they relate to project design, evaluation, and community involvement. This section also asks for specific information on the proposed project. Inclusion and discussion of these items is important, since they will be used by the reviewers in evaluating the applications against the evaluation criteria. Project products, continuation of the project effort after the Federal support ceases, and dissemination/utilization activities, if appropriate, are also addressed.

Project Duration: This section specifies the maximum allowable length of time for the project period and refers to the amount of time for which Federal funding is available.

Federal Share of Project Cost: This section specifies the maximum amount of Federal support for the project for the first budget period.

Matching Requirements: This section specifies the minimum non-Federal contribution, either through cash or in-kind match, required in relation to the maximum Federal funds requested for the project. Grantees must provide at least 10 percent of the total cost of the project. The total cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet the match requirements through cash contributions. Therefore, a project requesting $150,000 in Federal funds (based on an award of $150,000 per budget period) must include a match of at least $16,667 (10 percent of total project cost).

Anticipated Number of Projects To Be Funded: This section specifies the number of projects that ACYF anticipates it will fund under the priority area.

Catalog of Federal Domestic Assistance Number (CFDA): This section specifies the CFDA Number for the program.

Please note that applications that do not comply with the specific priority area requirements in the section on ''Eligible Applicants'' will not be reviewed. Applicants should also note that non-responsiveness to the section ''Minimum Requirements for the Project Design'' will result in a low evaluation score by the reviewers. Applicants must clearly identify the specific priority area under which they wish to have their applications considered, and tailor their applications accordingly. Previous experience has shown that an application which is broader and more general in concept than outlined in the priority area description scores lower than one more clearly focused on, and directly responsive to, that specific priority area.

E. Available Funds

The ACYF intends to award new grants resulting from this announcement during the fourth quarter of fiscal year 1997, subject to the availability of funds.

Each priority area description includes information on the maximum Federal share of the project costs and the anticipated number of projects to be funded.

The term ''budget period'' refers to the interval of time (usually 12 months) into which a multi-year period of assistance

(project period) is divided for budgetary and funding purposes. The term ''project period'' refers to the total time a project is approved for support, including any extensions.

Where appropriate, applicants may propose project periods which are shorter than the maximums specified in the various priority areas. Non-Federal share contributions may exceed the minimums specified in the various priority areas when the applicant is able to do so. However, if the proposed match exceeds the minimum requirement, the grantee must maintain its proposed level of match support throughout the entire project period. Applicants should propose only that non-Federal share they can realistically provide, since any unmatched Federal funds will be disallowed by ACF.

For multi-year projects, continued Federal funding beyond the first budget period is dependent upon satisfactory performance by the grantee, availability of funds from future appropriations and a determination that continued funding is in the best interest of the Government.

F. Grantee Share of Project Costs

Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $150,000 in Federal funds (based on an award of $150,000 per budget period) must include a match of at least $16,667 (10 percent of the total project cost). If approved for funding the grantee will be held accountable for commitments of non-Federal resources, and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

G. Priority Areas Included in This Announcement

1.01 Effective Collaborations for Timely Adoptions
1.02 Achieving Increased Adoptive Placement of Children in Foster Care
1.03 Innovations to Increase Adoptive Placements of Minority Children
1.04 Post-Legal Adoption Services
1.05 Expanding Options for Permanency
1.06 Field Initiated Applications Advancing the State-of-the-Art in the Adoption Field
1.07 Kinship Care Adoption

H. Priority Area Descriptions and Requirements

1.01 Effective Collaboratives for Timely Adoptions

Eligible Applicants: States, local government entities, courts, federally recognized Indian Tribes and Indian Tribal Organizations.

Purpose: To develop a system reform project that functions as an extension of the State's Court Improvement activities through which collaborative partnerships are formed between child welfare agencies and the courts to reduce the time that children waiting for an adoptive home remain in foster care by reducing delays in terminating parental rights and finalizing adoptions.

Background Information: The Adoption Assistance and Child Welfare Act of 1980, Public Law 96–272, charges child welfare agencies with the responsibility of securing a safe, permanent home for every child who comes into their care. This goal is often delayed by procedures for terminating the parental rights of birth parents for those children for whom adoption has been identified as the most appropriate permanent plan.

Delays in completing terminations of parental rights (TPRs) can often be attributed to a lack of understanding, communication and coordination between the two systems involved with child protection: Child welfare and courts. Social workers often have difficulty gathering and presenting the necessary legal evidence to facilitate a TPR. Lawyers are not experts in social work practice and the clinical issues associated with a significant life-event like TPR and the subsequent execution of a plan for permanency.

In recent years, ACF has awarded grants that focus on reforming child welfare agency practices and the courts. Currently, six grantees are testing the efficacy of non-adversarial approaches to TPR, and 48 States are participating in the Court Improvement project. The non-adversarial approaches being tested include mediation, concurrent planning and voluntary relinquishment. The Court Improvement project provides funding to the highest State court for the purpose of studying State laws and practices that impede the timely execution of child welfare services and permanent plans. Child welfare agencies and the courts are encouraged to collaborate with each other in both grant programs; however, the projects tend to focus primarily on their respective systems and do not require this type of collaboration.

ACF intends to test the efficacy of facilitating collaborations between child welfare agencies and the courts to reduce the amount of time between initial agency involvement, the execution of a TPR where appropriate, and finalizing an adoption. This project must coordinate with the State's current court improvement efforts, targeted specifically to facilitate timely adoptions.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Demonstrate knowledge of current issues in adoption and permanency for children in the public child welfare field.
- Describe experience with reform approaches, the current status of those initiatives, and how this initiative will build on and complement current reform initiatives.
- Describe specifically how this project integrates with the State's court improvement activities.
- Describe the collaboration including participants, activities, and roles and responsibilities.
- Provide documentation, such as memoranda of understanding, that demonstrates that all parties in the collaboration have committed to their respective roles and responsibilities.
- Describe how this project's reform approaches will be institutionalized.
- Describe the process that will be used to identify children and families in need of these services.
- Provide assurances that project staff know and understand policies, Federal regulations, laws and cultural issues that have impact on permanency for children.
- Describe the training/staff development components of the project.
- Describe an evaluation plan that will focus on the reform approaches and is capable of identifying the successes and failures of the approaches. The evaluation plan should be outcome-oriented and include the collection and analysis of data to ascertain the effectiveness of the collaboration. The evaluation should also include descriptive information on the processes and procedures used in implementing the project.
- Discuss strategies for disseminating information on the effective reform approaches of the project. Identify audiences who will benefit from receiving the information, and specify mechanisms and forums that will be used to convey the information, and support replication by other interested agencies.
- Provide assurances that at least one key person from the project will attend an annual three to five day Child

Welfare Conference in the Washington, DC metropolitan area hosted by the Children's Bureau. The Conference brings together child welfare professionals including Adoption Opportunities and other Children's Bureau discretionary program grantees to exchange information and address current child welfare issues.

• Provide assurances and document that the project will be staffed and implemented within 90 days of the notification of the grant award.

• Provide assurance that 90 days after the project end date, the grantee will submit a copy of the final report, evaluation report, and any program products to the National Adoption Information Clearinghouse, PO Box 1182, Washington, DC 20013. This is in addition to the standard requirement that the final program report and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $250,000 per 12-month budget period.

Matching or Cost Sharing Requirements: Grantees must provide at least 10 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $250,000 in Federal funds (based on an award of $250,000 per budget period) must include a match of at least $27,778 (10 percent of the total project cost of $277,778). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that 5 projects will be funded.

CFDA: 93.652 Adoption Opportunities Grants: Title II of the Child Abuse Prevention and Treatment Adoption Reform Act of 1978, Public Law 95–266, as amended.

1.02 Achieving Increased Adoptive Placement of Children in Foster Care

Eligible Applicants: Eligibility is limited to State social service agencies.

Purpose: To develop demonstration projects to increase the placement of children who are in foster care and are legally free for adoption with adoptive families.

Background Information: The President announced a new directive to members of his Cabinet to take new actions to move children more rapidly from foster care to safe, permanent homes. The goal of the President's ambitious new initiative is to double, by the year 2002, the number of children in foster care who are adopted or permanently placed each year. The directive focuses on securing homes for the tens of thousands of children in foster care who cannot return safely to their homes and for whom adoption is a goal.

Children in foster care who are free for adoption, especially older children and those with special needs, often have difficulty attaining permanence through placement with an adoptive family. There are multiple reasons for this. Increasingly, children entering foster care have more complex needs, which require more intensive services. Permanent families must be continuously recruited and prepared to parent the growing population of children who cannot return to their birth families. Supportive services must be added or improved so that the children in foster care who are legally free for adoption can move into an adoptive placement in a timely manner. This requires collaborative efforts with the court system to terminate parental rights. In addition, agencies must commit resources for the ongoing support of adoptive families from recruitment through the post-legal phase.

The Adoption Opportunities Program has provided demonstration grants to States to improve adoption services for the placement of children with special needs who are legally free for adoption. States have received awards to make systemic changes in their adoption programs in areas such as: acquiring computer hardware and software and becoming members in the National Adoption Exchange's Network; developing a consortium of nine States with large numbers of children in care in order to share knowledge to improve and enhance their special needs adoption programs; and forming a seven State national consortium on post-legal adoption services to develop and share model programs and promising practices of post-legal adoption services for the adoption community.

These projects have demonstrated that improvements in placing children with adoptive families are achieved when permanent plans are made and carried out very early in the placement; when there are sufficiently trained and experienced staff; and when there are available resources and administrative commitments to adoption and to coordinated community-based efforts.

Even though more than half of the States have received grants to improve adoption services, only a small number have been able to sustain these efforts because of limited funds and staffing problems and because adoption services are often not viewed as a priority.

This priority area is designed to provide incentives for States to craft innovative initiatives to secure and sustain permanence for children who are free for adoption. A recent legislative change authorizes projects in this priority area to be approved for 36 months.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

• Identify and verify the number of children in foster care to be served by the project who are legally free and waiting for adoptive placement.

• Provide and verify the proportion of placement of children in foster care placed in adoption in the year preceding the application (the proportion of placement is the number of children placed divided by the number of children waiting for adoption).

• Describe the measurable improvements to be achieved during the period of the grant and the methods to be employed to increase the proportion of placement of legally-free children in foster care with adoptive families. Improvements should be specified as goals and objectives which are measurable and represent an increase over previous years.

• Describe how the proposed improvements, if successful, would be continued beyond the period of Federal support under this grant as part of the agency's ongoing program and describe the specific steps which would be taken to accomplish this.

• Propose and describe an evaluation plan which will focus on the innovations used to improve the placement of children who are legally free for adoption and which is capable of identifying the successes and failures of the initiative. The evaluation plan should include the collection and analysis of data to determine placement rates and the types of clients served (e.g., waiting children, prospective adoptive families). Statistics should be collected to determine the availability of adoptive families during the program period. The evaluation should also include descriptive information on the processes and procedures used in implementing the project.

• Discuss plans for disseminating information on the strategies utilized and the outcomes achieved. Identify audiences who will benefit from

receiving the information and specify mechanisms and forums which will be used to convey the information and support replication by other interested agencies.

- Provide assurances and document that the project will be staffed and implemented within 90 days of the notification of the grant award.
- Describe how project will deal with non-minority applicants who may respond to the project.
- Provide assurance that 90 days after the project end date, the Grantee will submit a copy of the final report, the evaluation report, and any program products to the National Adoption Information Clearinghouse, PO Box 1182, Washington, DC 20013. This is in addition to the standard requirement that the final program report and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.
- Provide assurances that at least one key person from the project will attend an annual three to five day Child Welfare Conference in the Washington, DC metropolitan area hosted by the Children's Bureau. The Conference brings together child welfare professionals, including Adoption Opportunities and other Children's Bureau discretionary program grantees, to exchange information and address current child welfare issues.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $150,000 per 12-month budget period.

Matching or Cost Sharing Requirement: Grantees must provide at least 10 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $150,000 in Federal funds (based upon an award of $150,000 per budget period) must include a match of at least $16,667 (10 percent of the total project cost of $166,667). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded.

CFDA: 93.652 Adoption Opportunities Grants: title II of the Child Abuse Prevention and Treatment Adoption Reform Act of 1978 Pub. L. 95–266, as amended.

1.03 Innovations to Increase Adoptive Placements of Minority Children

Eligible Applicants: States, local government entities, eligible Indian Tribes and Indian Tribal Organizations, public or private non-profit licensed child welfare or adoption agencies, and adoption exchanges with experience in working with minority populations.

Purpose: To implement innovative programs designed to increase the adoptive placement of minority children who are in foster care and have the goal of adoption, with an emphasis on the recruitment, retention and utilization of minority families and adoptive placements for minority children who are over the age of *ten* and/or a part of *sibling groups.*

Background Information: According to the Voluntary Cooperative Information System administered by the American Public Welfare Association (VCIS/APWA), in 1994 an estimated 700 children in the U.S. were separated from their biological parents every day and placed in an unfamiliar setting. VCIS also estimated the number of children with a permanency goal of adoption at the end of 1994 as 60,000 and this includes 27,000 legally free or ''waiting'' children for whom adoptive families are actively being sought. These are children for whom it is difficult to find an adoptive placement because they are not the young people families often seek to adopt. It is estimated that more than 40 percent of the 27,000 children seeking an adoptive placement are 10 years old and older, and more than 58 percent are members of a minority group.

There continues to be an insufficient pool of adoptive families, especially for older minority children and sibling groups for whom adoption has been deemed the preferred means of accomplishing permanence. The purpose of the Adoption Opportunities Program is to facilitate the elimination of barriers to adoption and to provide permanent homes for children with special needs who are older, disabled, of minority heritage, or in sibling groups who should be placed together. In addition, the Multiethnic Placement Act (MEPA) passed in 1994 was, in part, designed to facilitate the identification and recruitment of foster and adoptive parents who can meet the needs of the children waiting for an adoptive family. State agencies to engage in diligent recruitment efforts to develop a pool of families that reflect the racial, ethnic or national origin of the children in care, and/or who can meet the needs of these children.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

- Identify and describe existing barriers to minority adoption of children over 10 and children who are a part of a sibling group in the locale where the project would be implemented; the number of families who would be recruited; and the number of children over age 10 and the number of sibling groups who would be placed.
- Describe the innovative methods that would be employed to recruit, retain and prepare minority families for adoption of children with special needs, especially older children and sibling groups, making sure to include individuals who are single.
- Provide assurances that the project would not require the payment of fees by families for the adoption process.
- If the applicant is not a child-placing agency, describe the relationship with the child placing agencies and document the contract.
- Describe how training in cultural competence would be provided to all relevant staff to increase their effectiveness in serving minority children and families.
- Present an evaluation plan for assessing the project's effectiveness in achieving its stated goals and objectives, and its ability to provide services to prospective adoptive families through the completion of the adoption.
- Document how the project would be continued beyond Federal funding as part of the agency's ongoing program and describe the specific steps which would be taken to accomplish this.
- If the applicant is a private non-profit adoption agency, it must provide evidence of licensure by submitting a copy of its license with the application.
- Discuss plans for disseminating information on the innovations utilized. Identify audiences who will benefit from receiving the information and specify mechanisms and forums which will be used to convey the information and support replication by other interested agencies.
- Provide assurances that at least one key person from the project will attend an annual three to five day Child Welfare Conference in the Washington, D.C. metropolitan area hosted by the Children's Bureau. The Conference brings together child welfare professionals, including Adoption Opportunities and other Children's Bureau discretionary program grantees, to exchange information and address current child welfare issues.

• Provide assurance that 90 days after project end date, the Grantee will submit a copy of the final report, the evaluation report, and any program products to the National Adoption Information Clearinghouse, P.O. Box 1182, Washington, D.C. 20013. This is in addition to the standard requirement that the final program report and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.
• Provide assurances and document that the project will be staffed and implemented within 90 days of the notification of the grant award.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $200,000 per 12-month budget period.

Matching or Cost Sharing Requirement: Grantees must provide at least 10 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $200,000 in Federal funds (based on an award of $200,000 per budget period) must include a match of at least $22,223 (10 percent of the total project cost of $222,223). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded.

CFDA: 93.652 Adoption Opportunities Grants: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Public Law 95–266, as amended.

1.04 Post-Legal Adoption Services

Eligible Applicants: States, local government entities, and public or private nonprofit licensed child welfare or adoption agencies. Given limited funds, and in order to generate and financially support the widest possible variety of issues and approaches, priority will be given to applicants that have not been funded under this priority area in previous fiscal years. However, previously funded applicants under this priority area will not be precluded from receiving a grant.

Purpose: To develop or replicate post-legal adoption projects, which will provide services to strengthen and preserve families who have adopted children with special needs. The services provided shall supplement, not supplant, services supported by any other funds available to the applicant for the same general services.

Background Information: The Adoption Opportunities legislation, as amended by Public Law 100–294, authorizes funds for increased post-legal adoption services. Recognition of special issues in adoption in the past decade has led adoption professionals to reconsider the concept that agency services to adoptive families end with the legal consummation of the adoption. Historically, once the adoption was legally consummated, the newly-formed family was to be considered the same as any other family. Adoption is a life-long process and service providers need to understand the unique interpersonal dynamics of adoption in order to provide effective post legal adoption services (those provided after the legalization of the adoption) to families with special needs children who seek assistance.

Project A.S.K. (Adoption Services Knowledge): A Synthesis of Post-Legal Adoption Projects endeavors to bring adoption professionals and child welfare policy makers abreast of current knowledge on post-legal adoption services. Approximately 70 Adoption Opportunities grants were reviewed in order to synthesize the knowledge gained from these efforts and to develop a list of resources which are available as a result of thse projects. A final report describing the types of activities and services developed through the grant projects will be available by July 1997. This report covers services in the following categories: Education and support for adoptive families, training for mental health and other professionals, therapeutic intervention services, respite care, resource development and networking, and addressing the needs of special populations. The final report and a resource directory will be widely disseminated including distribution to adoption specialists in each state, agencies whose grants have been reviewed, the National Resource Center for Special Needs Adoption, and the National Adoption Information Clearinghouse.

ACYF has funded over 100 programs across the country including a synthesis, to provide post-legal adoption services for families who have adopted children with special needs as well as a synthesis of these programs. Information on these projects can be obtained from the National Adoption Information Clearinghouse, PO Box 1182, Washington, DC 20013–1182, telephone: (703) 246–9095.

Funds awarded under this priority area in fiscal year 1998 will support ongoing post-legal adoption services in communities where such services already exist and will support the development of such services in communities where they do not yet exist. Services funded under this priority area shall be provided to families who have adopted children with special needs.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

• Propose to provide services such as individual, group and/or family counseling; case management; training of mental health professionals and staff of public agencies and of private, nonprofit child welfare and adoption agencies licensed by the State to provide adoption services; and provide assistance to adoptive parents, adopted children and siblings of adopted children.
• Describe the models that would be developed or replicated and the services that would be provided.
• Describe the existing post-legal adoption services, if any; the need for new services; and plans for the development, implementation, and institutionalization of such services.
• Describe how the proposed project would build upon the existing literature and knowledge base related to post legal adoption services.
• Provide specific written commitments from collaborating or cooperating agencies, if any.
• Document how the program would be continued beyond Federal funding.
• Provide assurances that the project will be staffed and implemented within 90 days of the notification of the grant award.
• Provide assurance that 90 days after project end date, the Grantee will submit a copy of the final report, the evaluation report, and any program products to the National Adoption Information Clearinghouse, PO Box 1182, Washington, DC 20013. This is in addition to the standard requirement that the final program report and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.
• Specify a plan to carry out an independent evaluation of the effectiveness of the demonstration. It is suggested that the applicant should identify a qualified person from a university or research organization who will be involved in the design of the effort and provide ongoing consultation to the project. This would include criteria for case identification, outcomes to be measured, methodology for data

collection, and determining an adequate sample size at each stage of the demonstration, as well as analysis of data and writing of the final report.

• Provide assurances that at least one key person from the project will attend an annual three to five day Child Welfare Conference in Washington, D.C. metropolitan area hosted by the Children's Bureau. The Conference brings together child welfare professionals, including Adoption Opportunities and other Children's Bureau discretionary program grantees, to exchange information and address current child welfare issues.

• If the applicant is a private non-profit adoption agency, it must provide evidence of licensure by submitting a copy of its license application.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share is not to exceed $200,000 per 12-month budget period.

Matching or Cost Sharing Requirements: Grantees must provide at least 10 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. Therefore, a project requesting $200,000 in Federal funds must include a match of at least $22,223 (10 percent of the total project cost of $222,223). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that three projects will be funded.

CFDA: 93.652 Adoption Opportunities Grants: Title II of the Child Abuse Prevention and Treatment Act of 1978, Public Law 95–266, as amended.

1.05 Expanding Options for Permanency

Eligible Applicants: States, local government entities, eligible Indian Tribes and Indian Tribal Organizations, public or private non-profit licensed child welfare or adoption agencies that currently serve children in the public welfare child system.

Purpose: To develop a reform project that incorporates or strengthens the practice of one or more of the following non-adversarial options for permanency: Voluntary relinquishment, concurrent planning and/or mediation.

Background Information: The Adoption Assistance and Child Welfare Act of 1980, Public Law 96–272, mandates securing a safe, permanent home for every child. The child welfare system continues to struggle with meeting this goal in a timely fashion. The practice base for achieving permanency for children is too often based on adversarial or involuntary methods. The major practice is to seek involuntary termination of parental rights (TPR) for children for whom adoption is considered the best permanency plan. Involuntary termination of parental rights can be a lengthy and expensive process which may involve court appeals. The procedure can also be emotionally stressful for birth, foster and prospective adoptive parents and the child. Frequently this practice is insensitive to the need of some children to maintain connections with their birth families. Although necessary in some cases, TPR and other practices of a similar tone, have failed to significantly reduce the large number of children in the foster care system waiting to be freed for adoption, to be adopted, or for other permanent arrangements.

Alternatively, the child welfare system is encouraged to focus on approaches that set a different tone and emphasize non-adversarial front-end practices and procedures and strengthen the agency's capacity to achieve earlier and better outcomes for children and their families. Expanding options for permanency which encourage cooperative processes and early decision making among all parties involved and will promote achieving child, family, and system well-being.

The demonstration projects funded under this priority area should be designed to inform the field about the efficacy of these non-adversarial approaches in achieving permanency earlier, more quickly and more sensitively for these children. Permanency is broadly conceptualized to include adoption, guardianship to a relative or non-relative and parental consent to relative or non-relative adoption. One or a combination of the following approaches can be included in the demonstration: Mediation, concurrent planning or voluntary relinquishment.

Mediation is the voluntary, non-coercive process of negotiation with the assistance of a neutral, impartial third party. The aim of mediation in child welfare and permanency is to encourage birth parents, extended relatives and foster and/or adoptive parents to cooperate in making decisions that reflect the best interest of the child and reinforce family responsibility.

Concurrent Planning is the process of workers developing alternative permanent plans for children during their initial contact with the child welfare system. Concurrent planning involves enacting a plan for family preservation or reunification with the child's birth family, while simultaneously engaging in planning for alternative permanency placements such as adoption and kinship care for children where return home is unlikely.

Relinquishment is a voluntary process of transferring parental rights to an authorized child welfare agency. It is often used at the request of the parent and can be provided at any point along the child welfare service continuum. In recent years it has been used by child welfare workers, and the professional skill associated with counseling parents on the issues of voluntary relinquishment have eroded.

This priority area encourages child welfare system reform by incorporating and/or strengthening non-adversarial approaches into practice to achieve permanency for children in the child welfare system.

Minimum Requirements for Project Design: In order to successfully compete under this priority area, the applicant should:

• Demonstrate knowledge of current issues in adoption and permanency for children in the public child welfare field.

• Describe the project and explain why a particular system reform approach or set of approaches is being selected. Demonstrate knowledge and understanding of the reform approach or approaches selected. If more than one approach is selected, describe how they are linked.

• Describe how the approach(es) to be used in this demonstration differ from current agency practice and how this project's reform approaches will be institutionalized.

• Describe the measurable goals and objectives of the project to be used to determine if the approach selected led to an increase in achieving permanency earlier.

• Describe the process and criteria that will be used to identify children and families in need of these services.

• Describe how the birth families and extended families will be involved in the permanency planning process.

• Provide assurances that project staff are knowledgeable of policies, Federal regulations, laws and cultural issues that impact on permanency for children.

• Provide assurances and document that the project would be staffed and implemented within 90 days of the notification of the grant award.

• Describe the training/staff development components of the project.

• If the project involves coordination with other agencies, present a plan clarifying how these agencies will work

with the applicant to accomplish project goals and objectives.

• Describe an evaluation plan which will focus on the reform approaches and which is capable of identifying the successes and failures of the approaches.

The evaluation plan should be outcome oriented and include the collection and analysis of data to ascertain the effectiveness of the non-adversarial options for permanency. The evaluation should also include descriptive information on the processes and procedures used in implementing the project.

• Discuss strategies for disseminating information on the reform approaches utilized. Identify audiences who will benefit from receiving the information and specify mechanisms and forums which will be used to convey the information and support replication by other interested agencies.

• If the applicant is a non-profit private agency, it must provide assurance that the children to be served through this demonstration are public agency children.

• Provide assurance that 90 days after project end date, the Grantee will submit a copy of the final report, the evaluation report, and any program products to the National Adoption Information Clearinghouse, PO Box 1182, Washington, DC 20013. This is in addition to the standard requirement that the final program report and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.

• Provide assurances that at least one key person from the project will attend an annual three to five day Child Welfare Conference in the Washington, D.C. metropolitan area hosted by the Children's Bureau. The Conference brings together child welfare professionals, including Adoption Opportunities and other Children's Bureau discretionary program grantees to exchange information and address current child welfare issues.

Project Duration: The length of the project must not exceed 36 months.

Project Share of Project Costs: The maximum Federal share of the project is not to exceed $200,000 per 12-month budget period.

Matching Requirement: Grantees must provide at least 10 percent of the total approved cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $200,000 in Federal funds (based upon an award of $200,000 per budget period) must include a match of at least $22,223 (10 percent of the total project cost of $222,223). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that four projects will be funded.

CFDA: 93.652 Adoption Opportunities Grants: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Pub. L. 95–266, as amended.

1.06 Field Initiated Applications Advancing the State-of-the-Art in the Adoption Field

Eligible Applicants: State, regional or local public child welfare or adoption agencies and voluntary child welfare or adoption agencies or organizations. Voluntary agencies that apply should coordinate their applications with relevant public agencies.

Purpose: To improve adoption services to children with special needs through activities which are not addressed elsewhere in this announcement. This priority area provides public and voluntary agencies and organizations involved in the adoption process with an opportunity to present innovative ideas for improving child welfare and adoption systems that are consistent with the President's Directive on Adoption.

Background Information: Public child welfare workers who provide adoption services are often overburdened because of a shortage of staff and an increasing child welfare caseload. In many public agencies, the adoption staff are expected to provide services not only to children with special needs and their potential adoptive families, but also to families requesting independent, intercountry and other types of adoption services. There is also a rising need to provide post legal adoption services to prevent the disruption and/or dissolution of adoptive placements and preserve adoptive families. Furthermore, agencies are also faced with an increasing responsibility for search and reunion services. This places substantial burdens on the limited adoption agency resources which are needed to serve the children with special needs.

President Clinton has initiated and is committed to efforts to increase the number of children who achieve permanency from the public child welfare system. In December 1996, the President issued a directive on adoption to bring the Federal government into a partership with States and communities to increase the number of children securing permanency goals in the public child welfare system. The Department has submitted a report that includes policy and programmatic proposals to double the number of children who achieve permanency over the next five years.

At any given time, approximately 27,000 children are legally free for adoption. Minority children continue to languish in foster care. Older children and sibling groups also continue to present unique challenges. Other sub-populations, such as drug exposed infants and medically fragile infants, will be or are currently testing the capacity of adoption programs. Innovative efforts, such as those embodying the spirit of public-private partnerships, are needed to provide permanent adoptive homes to all waiting children.

There are so many complex and challenging issues that face the public sector in providing permanent homes for children who have special needs. Therefore, ACYF is requesting field initiated proposals with a preference given to those that address areas outlined in the Directive in serving children with special needs for whom adoption is the plan. These proposals must be innovative and cannot be a replication of a previous project or be responsive to other priority areas in this announcement.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

• Describe the agency's current adoption program and the specific problem(s) that would be addressed.

• Describe the approach that would be used to alleviate the problem(s).

• Provide specific written commitments from cooperating or collaborating agencies, if any.

• Provide for an evaluation of the project and include a discussion of the proposed evaluation design. The evaluation should focus on child and family outcome measures (e.g. number of families recruited, number of children placed, disruption rates, etc).

• Describe how the agency would incorporate successful results of the project into its ongoing program.

• Provide assurances that at least one person from the project would attend an annual three to five day Child Welfare Conference in Washington, DC metropolitan area hosted by the Children's Bureau. The Conference brings together child welfare professionals, including Adoption Opportunities and other Children's Bureau discretionary program grantees to exchange information and address current child welfare issues.

- Provide assurance that 90 days after project end date, the Grantee will submit a copy of the final report, the evaluation report, and any program products to the National Adoption Information Clearinghouse, PO Box 1182, Washington, DC 20013. This is in addition to the standard requirement that the final program report and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.
- Describe the reports and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $200,000 per 12-month budget period.

Matching or Cost Sharing Requirements: Grantees must provide at least 10 percent of the total cost of the project. The total approved cost of the project is the sum of the ACYF share and the non-Federal share. Therefore, a project requesting $200,000 in Federal funds (based upon an award of $200,000 per budget period) must include a match of at least $22,223 (10 percent of the total project cost of $222,223). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that six projects will be funded.

CDFA: 93.652 Adoption Opportunities Grants: Title II of the Child Abuse Prevention and Treatment Act of 1978, Pub. L. 95–266, as amended.

1.07 Kinship Care Adoption

Eligible Applicants: Public child welfare agencies in cooperation with private foster care and adoption agencies and/or university and social service organizations in cooperation with public and private foster care and adoption agencies.

Purpose: To increase the adoption of children in relative foster care and to remove the barriers to such adoptions within the child welfare system.

Background Information: Relative foster care, also called kinship foster care, has become increasingly common. Although we are learning more about these types of placements, information about these placements is sparse. There is general agreement that children placed with relatives are not returned to their parents or placed in permanent homes as quickly as children in non-relative homes. Some argue that relative placements are more stable than non-related placements. In addition to the limited use of adoption for relatives, agencies are concerned about the appropriate level of supervision, the appropriate certification standards for the relative's home, the permanency goals for the children, and the disparity between cash assistance support payments available to relatives and those allowed under foster care and adoption assistance.

Minimum Requirements for Project Design: In order to compete successfully under this priority area, the applicant should:

- Demonstrate access to an adequate number of children (more than 100) who have already been placed with relatives for more than one year.
- Provide letters of commitment in the application from both foster care and adoption agencies or divisions of these agencies indicating that they would actively participate in the review of cases and assist in the development of criteria for the selection of demonstration cases.
- Specify a plan for the review of cases and the criteria that would be employed in determining the appropriateness of moving to adoption, including the requirement that children selected must be those for whom reunification with birth parents is not possible.
- Propose to develop and test effective methods for moving the case toward an alternative permanent goal, e.g. adoption by relatives currently acting as foster parents; adoption within the kinship group, that is, by other appropriate family members; non-federally subsidized legal guardianship to a relative; or adoption by non-relatives.
- Identify existing barriers within the system which prevent or inhibit the increase of adoptions, or other permanent arrangements as specified above. Barriers may include, but are not limited to, agency and court practices; regulations and policies at the State and Federal level; lack of appropriate knowledge concerning the orientation of relatives to the values of legal adoption; and attitudes, beliefs and values of agency staff, as well as the values, economic status and other circumstances of relatives which may inhibit or delay the movemnent of children into permanent adoptive homes or other permanent arrangements.
- Specify a plan to carry out an independent evaluation of the effectiveness of the demonstration. It is suggested that the applicant should identify a qualified person who will provide ongoing consultation to the project. The evaluation plan should be outcome oriented and include the collection of and analysis of data to ascertain the barriers to relative adoptions.
- Provide assurances that at least one key person from the project will attend an annual three to five day Child Welfare Conference in the Washington, DC metropolitan area hosted by the Children's Bureau. The Conference brings together child welfare professionals, including Adoption Opportunities and other Children's Bureau discretionary program grantees to exchange information and address current child welfare issues.
- Describe the reports and/or other products that would be developed under the project, including the types of information that would be presented and the steps that would be undertaken to disseminate and promote the utilization of project products and findings.
- Provide assurance that 90 days after project end date, the Grantee will submit a copy of the final report, the evaluation report, and any program products to the National Adoption Information Clearinghouse, PO Box 1182, Washington, DC 20013. This is in addition to the standard requirement that the final program report and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.
- Provide assurances that the project would be staffed and implemented within 90 days of the notification of the grant award.

Project Duration: The length of the project must not exceed 36 months.

Federal Share of Project Costs: The maximum Federal share of the project is not to exceed $200,000 per 12-month budget period.

Matching or Cost Sharing Requirements: Grantees must provide at least 10 percent of the total cost of the project. The total approved cost of the project is the sum of the ACF share and the non-Federal share. Therefore, a project requesting $200,000 in Federal funds (based on an award of $200,000 per budget period) must include a

match of at least $22,223 (10 percent of the total project cost of $222,223). The non-Federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions.

Anticipated Number of Projects to be Funded: It is anticipated that four projects will be funded.

CFDA: 93.652 Adoption Opportunities Grants: Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, Pub. L. 95–266, as amended.

Part III. Instructions for the Development and Submission of Applications

This part contains information and instructions for submitting applications in response to this announcement. Application forms are provided, along with a checklist, for assembling an application package. Please copy and use these forms in submitting an application.

Potential applicants should read this section carefully in conjunction with the information contained within the specific priority area under which the application is to be submitted. The priority area descriptions are in Part II.

A. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Department is required to submit to OMB for review and approval any reporting and record keeping requirements or program announcements. This program announcement meets all information collection requirements approved for ACF grant applications under OMB Control Number 0970–0139. An agency 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.

B. Availability of Forms

Eligible applicants interested in applying for funds must submit a complete application including the required forms at the end of this program announcement in Appendix A. In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 (approved by the Office of Management and Budget under Control Number 0348–0043). A copy has been provided. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs'' (approved by the Office of Management and Budget under control number 0348–0040). Applicants must sign and return the Standard Form 424B with their application. Applicants must provide a certification regarding lobbying (approved by the Office of Management and Budget under Control Number 0348–0046). Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants will be held accountable for the smoking prohibition included within Public Law 103–227, Part C Environmental Tobacco Smoke (also known as the Pro-Children's Act of 1994). A copy of the **Federal Register** notice which implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

All applicants for research projects must provide a Protection of Human Subjects Assurance as specified in Appendix A. If there is a question regarding the applicability of this assurance, contact the Office of Protection from Research Risks of the National Institutes of Health at (301) 496–7041. Those applying for or currently conducting research projects are further advised of the availability of a Certificate of Confidentiality through the National Institute of Mental Health of the Department of Health and Human Services. To obtain more information and to apply for a Certificate of Confidentiality, contact the Division of Extramural Activities of the National Institute of Mental Health at (301) 443–4673.

C. Required Notification of the State Single Point of Contact

The Adoption Opportunities Program is not covered under Executive Order 12372, Intergovernmental Review of Federal Programs. Therefore, notification of the State Single Point of Contact is unnecessary.

D. Deadline for Submission of Applications

The closing time and date for the receipt of applications under this announcement is 4:30 p.m. (Eastern Time Zone) on August 19, 1997. Applications received after 4:30 p.m. will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade SW, Mail Stop 6C–462, Washington, DC 20447 (Reference Announcement Number and Priority Area). Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date. Applications hand-carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m. at the U.S. Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal Holidays). Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications faxed to ACF will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails.

However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

E. Instructions for Preparing the Application and Completing Application Forms

Applicants are required to use the Standard Forms, Certifications, Disclosures and Assurances provided under Appendix A.

The SF 424, 424A (approved by OMB under Control Number 0348–0044), 424B, and certifications are included in Appendix A. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies. Please do not use forms directly from the **Federal Register** announcement, as they are printed on both sides of the page.

Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet. Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Enter the single priority area number under which the application is being submitted under only one priority area.

Item 1. Type of submission—Preprinted on the form.

Item 2. Date Submitted and Applicant Identifier—Date application is submitted to ACYF and applicant's own internal control number, if applicable.

Item 3. Date Received By State—State use only (if applicable).

Item 4. Date Received by Federal Agency—Leave blank.

Item 5. Applicant Information Legal Name—Enter the legal name of the applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

Organizational Unit—Enter the name of the primary unit within the applicant organization which will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

Address—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. box number unless both must be used in mailing.

Name and telephone number of the person to be contacted on matters involving this application (give area code)—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. Employer Identification Number (EIN)—Enter the employer identification number of the applicant organization, only provide the prefix and suffix assigned by the DHHS Central Registry System.

Item 7. Type of Applicant—Self-explanatory.

Item 8. Type of Application—Preprinted on the form.

Item 9. Name of Federal Agency—Preprinted on the form.

Item 10. Catalog of Federal Domestic Assistance Number and Title—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title, as indicated in the relevant priority area description.

Item 11. Descriptive Title of Applicant's Project—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title. Place the priority area number in parenthesis after the main program title.

Item 12. Areas Affected by Project—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. Proposed Project—Enter the desired start date for the project and projected completion date.

Item 14. Congressional District of Applicant/Project—Enter the number of the Congressional District where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If statewide, a multi-State effort, or nationwide, enter 00.

Items 15. Estimated Funding Levels: In completing 15a through 15f, the dollar amounts entered should reflect, for a 12 month budget period, the total amount requested. If the proposed project period exceeds 17 months, enter only those dollar amounts needed for the first 12 months of the proposed project.

Item 15a. Enter the amount of ACF funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Item 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b–e are considered cost-sharing or matching funds. The value of third party in-kind contributions should be included on appropriate lines as applicable.

Items 15f. Enter the estimated amount of income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. Is Application Subject to Review By State Executive Order 12372 Process? This item does not apply to this Announcement and no entry is to be made in this box.

Item 16b. Is Application Subject to Review By State Executive Order 12372 process? No.—Place a check in this box.

Item 17. Is the Applicant Delinquent on any Federal Debt?— Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. Typed Name of Authorized Representative, Title, Telephone Number—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. Signature of Authorized Representative—Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. Date Signed—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs. This is a form used by many Federal agencies. For this application, Sections A, B, C, E

and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering the first year budget period.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs, including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project, covers the first year budget period if the proposed project period exceeds 12 months. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal) by object class category.

A separate itemized budget justification for each line item is required. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project.

Applicants should refer to the Budget and Budget Justification information in the Program Narrative section in Appendix A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants, which should be included on line 6h, Other.

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total cost of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, Other.

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. Equipment means an article as non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its subgrantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) Procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, other.

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or all of the program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements. Applicants who anticipate procurement that will exceed $5,000 (non-governmental entities) or $25,000 (governmental entities) and are requesting an award without competition should include a sole source justification in the proposal which at a minimum should include the basis for contractor's selection, justification for lack of competition when competitive bids or offers are not obtained and basis for award cost or price.

(**Note:** Previous or past experience with a contractor is not sufficient justification for sole source.)

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as miscellaneous and honoraria are not allowable.

Justification: Specify the costs included.

Total Direct Charge—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter none. Generally, this line should be used when the applicant has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with DHHS requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

Justification: Enclose a copy of the indirect cost rate agreement.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12, entitled ''Totals''. In-kind contributions are defined in 45 CFR, part 74 and 45 CFR part 92.

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs, Not applicable.

Section E—Budget Estimate of Federal Funds Needed For Balance of the Project. This section should only be completed if the total project period exceeds 12 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column (b) ''First''. If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under (c) ''Second''. Columns (d) would be used in the case of a 48 month project period. Column (e) would not apply.

Section F—Other Budget Information.

Direct Charges—Line 21, Not applicable.

Indirect Charges—Line 22, Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Remarks—Line 23. If the total project period exceeds 12 months, you must enter your proposed non-Federal share of the project budget for each of the remaining years of the project.

3. Project Summary Description. Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the application. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project abstract. It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

At the bottom of the page, following the summary description, type up to 10 key words which best describe the proposed project, the service(s) involved and the target population(s) to be covered. These key words will be used for computerized information retrieval for specific types of funded projects. Applicants should refer to the instructions in Appendix A—under the Program Narrative Section regarding the project summary.

4. Program Narrative Statement. The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part II.

The narrative should provide information concerning how the application meets the evaluation criteria using the following headings:

(a) Objective and Need for Assistance;
(b) Results and Benefits Expected;
(c) Approach; and
(d) Staff Background and Organization's Experience.

The narrative should be typed double-spaced on a single-side of an 8½″ x 11″ plain white paper, with 1″ margins on all sides, using standard type sizes or fonts (e.g. Times Roman 12 or Courier 10). Applicants should not submit reproductions of larger size paper reduced to meet the size requirement. Applicants are requested not to send pamphlets, brochures, or other printed material along with their application as they pose copying difficulties. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with ''Objective and Need for Assistance'', as page number one.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. Anything over the page limit will not be reproduced and distributed to reviewers. Applicants should understand that the first 60 pages of the application will be reviewed. A page is a single side of an 8½″ X 11″ sheet of paper. Applicants are requested not to send pamphlets, brochures or other printed material along with their application as these pose xeroxing difficulties. These materials, if submitted, will not be included in the review process if they exceed the page limit criteria. Each page of the application will be counted to determine the total length.

Applicants should respond to the Program Narrative instructions in Appendix A, under the Project Description.

A.2. Objectives and Need for Assistance—This information is addressed under the Objective and Need for Assistance section (Part II.C.) of this announcement.

A.3. Results and Benefits Expected—This information is addressed in the Results and Benefits section (Part II.C.) of this announcement.

A.4. Approach—This information is addressed under the Approach section (Part II.C) of this announcement.

A.5. Evaluation—This information is addressed in the Approach section (Part II.C) of this announcement.

A.6. Geographic Location—This information is addressed in the Objective and Need for Assistance section (Part II.C) of this announcement.

A.7. Additional Information—This information is addressed in the Staff Background and Organization Experience section (Part II.C) of this announcement.

Note: Item B. Noncompeting Continuation Applications and Item C. Supplemental Requests do not apply to this announcement.

5. Organizational Capability Statement. The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Part IV—Assurances/Certifications. Applicants are required to file an SF 424B, Assurances—Non-Construction Programs and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; (2) Debarment and Other Responsibilities; and (3) Pro-Children Act of 1994. Copies of the assurances/certifications are reprinted in Appendix A and should be reproduced as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free

Workplace Requirements, Debarment and Other Responsibilities and the Pro-Children Act. A signature on the application constitutes an assurance that the applicant will comply with the pertinent Departmental regulations contained in 45 CFR part 74 or part 92.

F. Checklist for a Complete Application

The checklist below is for your use to ensure that your application package has been properly prepared.

—One original, signed and dated application, plus two complete copies. Applications for different priority areas are packaged separately;
—Application is from an organization which is eligible under the eligibility requirements defined in the priority area description (screening requirement);
—Application length does not exceed 60 pages. A complete application consists of the following items in order:
—Application for Federal Assistance (SF 424, REV 4–92);
—Budget Information-Non-Construction Programs (SF 424A, REV 4–88);
—Budget justification for Section B-Budget Categories;
—Table of Contents
—Letter from the Internal Revenue Service to prove non-profit status, if necessary;
—Copy of the applicant's approved indirect cost rate agreement, if appropriate;
—Project summary description and listing of key words;
—Program Narrative Statement (See Part III, Section C);
—Organizational capability statement, including an organization chart;
—Any appendices/attachments;
—Assurances-Non-Construction Programs (Standard Form 424B,); and
—Certification Regarding Lobbying.

G. The Application Package

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgment of receipt of your application is not received within eight weeks after the deadlines date, please notify the ACYF Operations Center by telephone at 1–800–351–2293.

Dated: May 1, 1997.

James A. Harrell,

Acting Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184–01–P

APPLICATION FOR FEDERAL ASSISTANCE

Appendix A

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application: ☐ Construction ☐ Non-Construction Preapplication: ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ - ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify)____________

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ - ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE ____________________

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (REV 4-92)
Prescribed by OMB Circular A-102

BILLING CODE 4184–01–C

Instructions for the SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State, if applicable,) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

— ''New'' means a new assistance award.
— ''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.
— ''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit allowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES					
6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Previous Edition Usable

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Standard Form 424A (Rev. 4-92)
Prescribed by OMB Circular A-102

SECTION C — NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E — BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL (sum of lines 16 - 19)	$	$	$	$

SECTION F — OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 4-92) Page 2

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Instructions for the SF 424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple function or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number of each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the total for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k, should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals in Columns (b), (c), and (d).

Line 12—Enter the total for each of columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing

the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A–133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Program Narrative

This program narrative section was designed for use by many and varied programs. Consequently, it is not possible to provide specific guidance for developing a program narrative statement that would be appropriate in all cases. Applicants must refer the relevant program announcement for information on specific program requirements and any additional guidelines for preparing the program narrative statement. The following are general guidelines for preparing a program narrative statement.

The program narrative provides a major means by which the application is evaluated and ranked to compete with other applications for available assistance. It should be concise and complete and should address the activity for which Federal funds are requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other

information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those which will not be used in support of the specific project for which funds are requested.

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Narratives are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities which will not be directly funded by the grant or information which does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered for easy reference.

Prepare the program narrative statement in accordance with the following instructions:

- Applicants submitting new applications or competing continuation applications should respond to Items A and D.
- Applicants submitting noncompeting continuation applications should respond to Item B.
- Applicants requesting supplemental assistance should respond to Item C.

A. Project Description—Components

1. Project Summary/Abstract

A summary of the project description (usually a page or less) with reference to the funding request should be placed directly behind the table of contents or SF–424.

2. Objectives and Need for Assistance

Applicants must clearly identify the physical, economic, social, financial, institutional, or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation such as letters of support and testimonials from concerned interests other than the applicant may be included. Any relevant data based on planning studies should be included or referenced in the endnotes/ footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the narrative, the applicant may volunteer or be requested to provide information on the total range of projects currently conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

3. Results or Benefits Expected

Identify results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

4. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking this approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. (Note that clearance from the U.S. Office of Management and Budget might be needed prior to an information collection.) List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

5. Evaluation

Provide a narrative addressing how you will evaluate 1) the results of your project and 2) the conduct of your program. In addressing the evaluation of results, state how you will determine the extent to which the program has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the program. Discuss the criteria to be used to evaluate results; explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of your program, define the procedures you will employ to determine whether the program, define the procedures you will employ to determine whether the program is being conducted in a manner consistent with the work plan you presented and discuss the impact of the program's various activities upon the program's effectiveness.

6. Geographic Location

Give the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

7. Additional Information (Include If Applicable)

Additional information may be provided in the body of the program narrative or in the appendix. Refer to the program announcement and ''General Information and Instructions'' for guidance on placement of application materials.

Staff and Position Data—Provide a biographical sketch for key personnel appointed and a job description for each vacant key position. Some programs require both for all positions. Refer to the program announcement for guidance on presenting this information. Generally, a biographical sketch is required for original staff and new members as appointed.

Plan for Project Continuance beyond Grant Support—A plan for securing resources and continuing project activities after Federal assistance has ceased.

Business Plan—When federal grant funds will be used to make an equity investment, provide a business plan. Refer to the program announcement for guidance on presenting this information.

Organization Profiles—Information on applicant organizations and their cooperating partners such as organization charts, financial statements, audit reports or statements from CPA/Licensed Public Accountant, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with federal/state/local government standards, documentation of experience in program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Dissemination Plan—A plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Third-Party Agreements—Written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements may detail scope of work, work schedules, remuneration,and other terms and conditions that structure or define the relationship.

Waiver Request—A statement of program requirements for which waivers will be needed to permit the proposed project to be conducted.

Letters of Support—Statements from community, public and commercial leaders which support the project proposed for funding.

B. Noncompeting Continuation Applications

A program narrative usually will not be required for noncompeting continuation applications for nonconstruction programs. Noncompeting continuation applications shall be abbreviated unless the ACF Program Office administering this program has issued a notice to the grantee that a full application will be required.

An abbreviated application consists of:

1. The Standard Form 424 series (SF 424, SF 424A, SF–424B)

2. The estimated or actual unobligated balance remaining from the previous budget period should be identified on an accurate SF–269 as well as in Section A, Columns (c) and (d) of the SF–424A.

3. The grant budget, broken down into the object class categories on the 424A, and if

category ''other'' is used, the specific items supported must be identified.

4. Required certifications.

A full application consists of all elements required for an abbreviated application plus:

1. Program narrative information explaining significant changes to the original program narrative statement, a description of accomplishments from the prior budget period, a projection of accomplishments throughout the entire remaining project period, and any other supplemental information that ACF informs the grantee is necessary.

2. A full budget proposal for the budget period under consideration with a full cost analysis of all budget categories.

3. A corrective action plan, if requested by ACF, to address organizational performance weaknesses.

C. Supplemental Requests

For supplemental assistance requests, explain the reason for the request and justify the need for additional funding. Provide a budget and budget justification *only* for those items for which additional funds are requested. (See Item D for guidelines on preparing a budget and budget justification.)

D. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated.The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both federal and non-federal resources should be detailed and justified in the budget and narrative justification. For purposes of preparing the program narrative, ''federal resources'' refers only to the ACF grant for which you are applying. Non-Federal resources are all other federal and non-federal resources. It is suggested that for the budget, applicants use a column format: Column 1, object class categories; Column 2, federal budget amounts; Column 3, non-federal budget amounts, and Column 4, total amounts. The budget justification should be a narrative.

Personnel. Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, show name/title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits. Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, taxes, etc.

Travel. Costs of project related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF sponsored workshops as specified in this program announcement should be detailed in the budget.

Equipment. Costs of all non-expendable, tangible personal property to be acquired by the project where each article has a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the applicant organization for financial statement purposes, or (b) $5,000.

Justification: For each type of equipment requested, provide a description of the equipment, cost per unit, number of units, total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends.

Supplies. Costs of all tangible personal property (supplies) other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual. Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if a sole source procurement is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Also provide back-up documentation where necessary to support selection process.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must provide a detailed budget and budget narrative for each delegate agency by agency, title, along with the required supporting information referenced in these instructions.

Applicants must identify and justify any anticipated procurement that is expected to exceed the simplified purchase threshold (currently set at $100,000) and to be awarded without competition. Recipients are required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc. under the conditions identified at 45 CFR Part 74.44(e).

Construction. Costs of construction by applicant or contractor.

Justification: Provide detailed budget and narrative in accordance with instructions for other object class categories. Identify which construction activity/costs will be contractual and which will be assumed by the applicant.

Other. Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, space and equipment rentals, printing and publication, computer use, training costs, including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Indirect Charges. Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or another cognizant Federal agency.

Justification: With the exception of most local government agencies, an applicant which will charge indirect costs to the grant must enclose a copy of the current rate agreement if the agreement was negotiated with a cognizant Federal agency other than the Department of Health and Human Services (DHHS). If the rate agreement was negotiated with the Department of Health and Human Services, the applicant should state this in the budget justification. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates, and submit it to the appropriate DHHS Regional Office. Applicants awaiting approval of their indirect costs proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under this program announcement, the authorized representative of your organization needs to submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Program Income. The estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from program support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification: Describe the nature, source and anticipated use of program income in the budget or reference pages in the program narrative statement which contain this information.

Non-Federal Resources. Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process.

Total Direct Charges, Total Indirect Charges, Total Project Costs (self explanatory).

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76,. Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug—Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identify of the workplace(s) on file in its office and make the information available for federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation. State employees in each local unemployment office, performers in concert halls or radio studios.)

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplace in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions form these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo cotendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violation of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, sue, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing on ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace:

(20 The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that

the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [Page 33043] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible,

or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

BILLING CODE 4284–01–P

OMB No. 9999-0020
OMB No. 0925-0418
Approved for use through 12/31/97

Protection of Human Subjects
Assurance Identification/Certification/Declaration
(Common Federal Rule)

POLICY: Research activities involving human subjects may not be conducted or supported by the Departments and Agencies adopting the Common Rule (56FR28003, June 18, 1991) unless the activities are exempt from or approved in accordance with the common rule. See Section 101(B) the common rule for exemptions. Institutions submitting applications or proposals for support must submit certification of appropriate Institutional Review Board (IRB) review and approval to the Department or Agency in accordance with the common rule.

Institutions with an assurance of compliance that covers the research to be conducted on file with the Department, Agency or the Department of Health and Human Services (HHS) should submit certification of IRB review and ap- proval with each application or proposal unless otherwise advised by the De- partment or Agency. Institutions which do not have such an assurance must submit an assurance and certification of IRB review and approval within 30 days of a written request from the Department or Agency.

1. Request Type	2. Type of Mechanism	3. Name of Federal Department or Agency and, if known, Application or Proposal Identification No.
☐ ORIGINAL ☐ FOLLOWUP ☐ EXEMPTION	☐ GRANT ☐ CONTRACT ☐ FELLOWSHIP ☐ COOPERATIVE AGREEMENT ☐ OTHER: ________	

4. Title of Application or Activity	5. Name of Principal Investigator, Program Director, Fellow, or Other

6. Assurance Status of this Project *(Respond to one of the following)*

☐ This assurance, on file with the Department of Health and Human Services, covers this activity:

Assurance identification no. M-________ IRB identification no.________

☐ This Assurance, on file with *(agency/dept.)* ________________, covers this activity:

Assurance identification no. ________ IRB identification no.________ *(if applicable)*

☐ No assurance has been filed for this project. This institution declares that it will provide an Assurance and Certification of IRB review and approval upon request.

☐ *Exemption status:* Human subjects are involved, but this activity qualifies for exemption under Section 101 (b), paragraph ________.

7. Certification of IRB Review *(Respond to one of the following IF you have an Assurance on file)*

☐ This activity has been reviewed and approved by the IRB in accordance with the common rule and any other governing regulations and subparts on *(date)*______ by: ☐ Full IRB Review or ☐ Expedited Review.

☐ This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by the common rule will be reviewed and approved before they are initiated and that appropriate further certification will be submitted.

8. Comments

9. The official signing below certifies that the information provided above is correct and that, as required, future reviews will be performed and certification will be provided.		10. Name and Address of Institution
11. Phone No. *(with area code)*	12. Fax No. (with area code)	
13. Name of Official		14. Title
15. Signature		16. Date

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Public reporting burden for this collection of information is estimated to average 5 minutes per response. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: PHS Reports Clearance Officer (9999-0020 and 0925-0418), Humphrey Building, 200 Independence Ave. S.W., Washington, D.C. 20201. Attn: PRA. *Do not return the completed form to this address.*

OPTIONAL FORM 310 (Rev. 1-95)
Sponsored by HHS/PHS/NIH

BILLING CODE 4184–01–C

Certification Regarding Lobbying—Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form—LL, ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,00 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For material change only** Year_____ Quarter_____ date of last report______

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ______, *if known.* Congressional District, *if known*	**5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:** **Congressional District,** *if known*
6. Federal Department/Agency:	**7. Federal Program Name/Description:** **CFDA Number,** *if applicable:*
8. Federal Action Number, ***if known***:	9. Award Amount, ***if known***: $
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*

Items 11 through 15 are deleted.

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: ______________________ Print Name: ______________________ Title: ______________________ Telephone No.: ____________ Date: ________
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

BILLING CODE 4184–01–C

Certification Regarding Environmental Tobacco Smoke

Public Law 103–227, Part C—Environmental Tobacco Smoke, also known as the Pro-Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity.

By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act. The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

[FR Doc. 97–13092 Filed 5–20–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Potential Reallotment of Funds for FY 1996 Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Preliminary determination concerning funds available for reallotment.

SUMMARY: Notice is hereby given that a preliminary determination has been made that fiscal year (FY) 1996 Low Income Home Energy Assistance Program (LIHEAP) funds are available for reallotment. Section 2607(b)(1) of the Low Income Home Energy Assistance Act (the Act) Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 *et seq.*), as amended, requires that if the Secretary of the Department of Health and Human Services determines that, as of September 1 of any fiscal year, an amount in excess of certain levels allotted to a grantee for any fiscal year will not be used by that grantee during the fiscal year, the Secretary must notify the grantee and publish a notice in the **Federal Register** that such funds may be reallotted to other grantees during the following fiscal year. It has been determined that a total of $457,022 of FY 1996 funds may be available for reallotment during FY 1997. This determination is based on reports from the District of Columbia, and from the Tanana Chiefs Conference, Inc. (Alaska) and the Association of Village Council Presidents (Alaska), which are Tribal grantees, which were submitted to the Office of Community Services as required by 45 CFR 96.81.

The statute allows grantees who have funds unobligated at the end of the fiscal year for which they are awarded to request that they be allowed to carry over up to 10 percent of their allotments to the next fiscal year. Funds in excess of this amount must be returned to HHS and are subject to reallotment under section 2607(b)(1) of the Act. All of the amounts described in this notice were reported as unobligated FY 1996 funds in excess of the amount that the District and the two Alaska Native Associations [tribes] named above could carry over to FY 1997.

The District of Columbia was notified by certified mail that $140,762 of its FY 1996 funds may be reallotted. The Association of Village Council Presidents of Alaska was notified by certified mail that $295,076 of its FY 1996 funds may be reallotted. The Tanana Chiefs Conference, Inc. was notified by certified mail that $21,184 of its FY 1996 funds may be reallotted. In accordance with section 2607(b)(3), the Chief Executive Officers of the District of Columbia, the Association of Village Council Presidents and the Tanana Chiefs Conference, Inc. have 30 days from the date of the letters to submit comments to: Donald Sykes, Director, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447.

That 30-day comment period will expire on June 20, 1997. After considering any comments submitted, the Chief Executive Officers will be notified of the decision, and the decision will also be published in the **Federal Register**. If funds are reallotted, they will be allocated in accordance with section 2604 of the Act and must be treated by LIHEAP grantees receiving them as an amount appropriated for FY 1997. As FY 1997 funds, they will be subject to all of the requirements of the Act, including section 2607(b)(2), which requires that a grantee must obligate at least 90% of its total block grant allocation for a fiscal year by the end of the fiscal year for which the funds are appropriated, that is, by September 30, 1997.

FOR FURTHER INFORMATION CONTACT: Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447; telephone (202) 401–9351.

Dated: May 15, 1997.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 97–13409 Filed 5–20–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on June 27, 1997, 9:30 a.m. to 3:30 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: G. Levering Keely, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8517, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12513. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and vote on a premarket approval application for an implanted stimulator, as an adjunct to drugs, for reducing the frequency of partial onset seizures in adults and adolescents over 12 years of age.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 13, 1997. Oral presentations from the public will be scheduled between approximately 9:30 a.m. to 10:30 a.m. Time allotted for each presentation may be limited. Those

desiring to make formal oral presentations should notify the contact person before June 13, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 13, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–13222 Filed 5-20-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1–800–741–8138 or 301–443–0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

MEETINGS: The following advisory committee meetings are announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. June 5 and 6, 1997, 8 a.m., Holiday Inn—Bethesda, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Closed committee deliberations, June 5, 1997, 8 a.m. to 8:30 a.m; open public hearing, 8:30 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 1 p.m.; closed committee deliberations, 1 p.m. to 1:15 p.m.; open committee discussion, 1:15 p.m. to 5 p.m.; open public hearing, 5 p.m. to 5:30 p.m.; closed committee deliberations, June 6, 1997, 8 a.m. to 5 p.m.; Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Vaccines and Related Biological Products Advisory Committee, code 12388. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person by May 28, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 5, 1997, the committee will consider the safety and efficacy of a combination vaccine for infant indication consisting of Haemophilus b conjugate reconstituted with Diphtheria/tetanus/acellular pertussis at the time of administration. The committee will also consider issues pertaining to the use of vaccines for the prevention of pertussis in adults.

Closed committee deliberations. On June 5 and 6, 1997, the committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug applications or pending product licensing applications. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Orthopedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. June 9, 1997, 10 a.m., and June 10, 1997, 8 a.m., Holiday Inn—Gaithersburg, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301–948–8900 and reference FDA's Orthopedic Panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Christie Wyatt, KRA Corp., 301–495–1591, ext. 224. The availability of appropriate accommodations cannot be assured unless prior notification is received.

Type of meeting and contact person. Open committee discussion, June 9, 1997, 10 a.m. to 12:30 p.m.; open public hearing, 12:30 p.m. to 1:30 p.m., unless public participation does not last that long; open committee discussion, 1:30 p.m. to 4:30 p.m.; closed committee deliberations, June 10, 1997, 8 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 4 p.m.; Jodi H. Nashman, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036, ext. 186, or FDA Advisory Committee Information Hotline, 1–800–741–8138 (301–443–0572 in the Washington, DC area), Orthopedic and Rehabilitation Devices Panel, code 12521. Please call the hotline for information concerning any possible changes.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before June 2, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On June 9 and 10, 1997, the committee will discuss general issues related to three premarket approval applications (PMA's) in accordance with the **Federal Register** of Friday, September 27, 1996

(61 FR 50704), which mandates the filing of PMA's for 41 class III preamendments medical devices under section 515(b) of the Federal Food, Drug, and Cosmetic Act. On June 9, 1997, the committee will also discuss a PMA for a finger joint prosthesis (metal/polymer constrained cemented). On June 10, 1997, the committee will also discuss two PMA's for hip joint prostheses (metal/polymer constrained cemented or uncemented).

Closed committee deliberations. On June 10, 1997, FDA staff will present to the committee trade secret and/or confidential commercial information regarding present and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of the meeting(s) shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: May 13, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–13223 Filed 5-20-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–3918–N–12]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Notice of a Computer Matching Program—HUD and Department of Justice (DOJ).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB

Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public,'' the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a computer matching program with the Department of Justice (DOJ) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with DOJ's debtor files. The CAIVRS data base now includes delinquent debt information from the Departments of Agriculture, Education and Veterans Affairs and the Small Business Administration. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government. Before granting a loan, a lending agency and/or an authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulters and debtor files of the DOJ and verify that the loan applicant is not in default on a Federal judgment or delinquent on direct or guaranteed loans of participating Federal programs. Authorized users place a telephone call to the system. The system provides a recorded message followed by a series of instructions, one of which is a requirement for the SSN of the loan applicant. The system then reports audibly whether the SSN is related to delinquent or defaulted Federal obligations for HUD or other agency direct of guaranteed loans. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: *Effective Date:* Computer matching is expected to begin 40 days after publication of this notice unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

COMMENTS DUE DATE: June 30, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR PRIVACY ACT INFORMATION AND FOR FURTHER INFORMATION FROM RECIPIENT AGENCY CONTACT: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 708–2374. [This is not a toll-free number.]

FOR FURTHER INFORMATION FROM SOURCE AGENCY CONTACT: Diane J. Miller, Debt Collection Management, Department of Justice, 10th and Constitution Avenue, NW, Washington, DC 20530. Telephone number (202) 514–5343. [This is not a toll-free number.]

Reporting

In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;'' copies of this notice and report are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

Authority

The matching program will be conducted under the authority of 28 U.S.C. 2301(e) (section 3611 of the Federal Debt Collection Procedures Act of 1990, Public Law 101–647), and Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables. One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs.

Objectives To Be Met by the Matching Program

By identifying those individuals or corporations against whom the DOJ has filed a judgment, the Federal Government can expand the prescreening search of their loan applicants to further avoid lending to applicants who are credit risks.

Records To Be Matched

HUD will utilize its system of records entitled, **Accounting Records, HUD/DEPT–2.** The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, System of Records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default.

The DOJ will provide HUD with its debtor files contained in its system of records entitled, Debt Collection Management System, JUSTICE/JMD–006. HUD is maintaining DOJ's records only as a ministerial action on behalf of DOJ, not as a part of HUD's HUD/DEPT–2 system of records. DOJ's data contain information on individuals or corporations who have defaulted on Federal judgments. The DOJ will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for DOJ's data.

Notice Procedures

HUD will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and the DOJ will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

Categories of Records/Individuals Involved

The debtor records include these data elements: SSN, claim number, program code, and indication of indebtedness. Categories of records include: Records of claims and defaults, repayment agreements, credit reports, financial statements, records of foreclosures, and Federal judgment liens.

Categories of individuals include: Former mortgagers and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement

loan debtors who are delinquent or in default on their loans, rehabilitation loan debtors who are delinquent or in default on their loans, and individuals or corporations against whom judgments have been filed by DOJ.

Period of the Match

Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreement are sent to both Houses of Congress or at least 40 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Issued at Washington, DC, May 15, 1997.

Steven M. Yohai,

Chief Information Officer.

[FR Doc. 97–13234 Filed 5–20–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF INTERIOR

Geological Survey

Notice

SUMMARY: Notice is hereby given that the United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with TriCal of Hollister, CA to conduct research on enhanced biodegradation of methyl bromide during field fumigation operations. Any other wishing to pursue the possibility of a CRADA for similar activities should contact the U.S. Geological Survey no later than 30 days from the publication of this notice.

ADDRESSES: Information on the proposed CRADA is available to the public upon request at the following location: U.S. Geological Survey, Water Resources Division, MS 480, 345 Middlefield Road, Menlo Park, CA 94025.

FOR FURTHER INFORMATION CONTACT: R.S. Oremland, U.S. Geological Survey, Water Resources Division at the address given above; telephone 415/329–4482; FAX 415/329–4412; email roremlan@usgs.gov.

Cathy L. Hill,

Assistant Chief Hydrologist for Operations.

[FR Doc. 97–13306 Filed 5–20–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

AGENCY: Bureau of Land Management.

ACTION: Resource advisory council meeting locations and times.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council (RAC) will be held as indicated below. The agenda includes a public comment period, and discussion of public land issues.

The Resource Advisory Council develops recommendations for BLM regarding the preparation, amendment, and implementation of land use plans for the public lands and resources within the jurisdiction of the council. For the Mojave-Great Basin RAC this jurisdiction is Clark, Esmeralda, Lincoln and Nye counties in Nevada. Except for the purposes of long-range planning and the establishment of resource management priorities, the RAC shall not provide advice on the allocation and expenditure of Federal funds, or on personnel issues.

The RAC may develop recommendation for implementation of ecosystem management concepts, principles and programs, and assist the BLM to establish landscape goals and objectives.

All meetings are open to the public. The public may present written comments to the council. Public comments should be limited to issues for which the RAC may make recommendations within its area of jurisdiction. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Michael Dwyer at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647–5000.

DATES, TIMES: Date is June 16, 1997, from 1:00 p.m.. to approximately 4 p.m. and will reconvene on June 17, 1997 and meet from 8 a.m. to 11:30 a.m. The council will meet at the Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, NV. The public comment period will begin at 3 p.m. on June 16 and at 11 a.m. on June 17.

FOR FURTHER INFORMATION CONTACT: Dan Netcher, District Minerals Specialist, Ely, telephone: (702) 289–1872.

Dated: May 12, 1997.

Timothy B. Reuwsaat,

Acting Ely District Manager.

[FR Doc. 97–13226 Filed 5–20–97; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–08–1020–235j]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on June 25 and 26, 1997 at the Inn of the Mountain Gods, Mescalero, NM 88340. The agenda for the RAC meeting will include agreement on the meeting agenda, any RAC comments on the draft summary minutes of the last RAC meeting of April 24 and 25, 1997 in Albuquerque, NM, an update and discussion on the status of the Resource Management Plan Amendment/ Environmental Impact Statement for the RAC Standards for Rangeland Health and Guidelines for Livestock Grazing, and discussions by the RAC on off road vehicle use and access to BLM lands and other items appropriate for RAC discussion. The meeting will begin on June 25, 1997 at 8 a.m. The meeting is open to the public. The time for the public to address the RAC is on Wednesday June 25, 1997, from 3 p.m. to 5 p.m. The RAC may reduce or extend the end time of 5 p.m. depending on the number of people wishing to address the RAC. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its

Agenda items. The meeting on June 26, 1997, will be from 8 a.m. to 4 p.m. The end time of 4 p.m. for the meeting may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, PO Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: May 15, 1997.

Richard A. Whitley,

Acting State Director.

[FR Doc. 97–13248 Filed 5–20–97; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–61–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council meeting, notice of meeting.

SUMMARY: This notice announces a meeting and tour of the Arizona Resource Advisory Council. The meeting will be held June 19, 1997, beginning at 1:00 p.m. at the Don Laughlin Conference Center, Kingman, Arizona. The center, 20 miles east of Kingman, is located off Interstate 40, Exit 66, on Blake Ranch Road. The agenda items to be covered at the business meeting include review of previous meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Arizona Recreation Strategy Update; Arizona Trail Update; RAC Feedback on Sonoita Valley Planning Partnership; Reports by the Recreation and Public Relations Working Groups; BLM Staff Update on Standards and Guidelines; Reports from RAC members; RAC Discussion on future meeting dates and locations. A public comment period will take place at 4:00 p.m. June 19, 1997 for any interested publics who wish to address the Council. On June 20, 1997, the RAC will tour the public lands along the Hualapai Ridge Road which are part of the proposed Hualapai Mountain Land Exchange. BLM staff will brief the RAC on the resources and ongoing planning efforts. The tour will start at 7:00 a.m. from the BLM Ingman Field Office, 2475 Beverly Ave., Kingman, AZ and will conclude at 4:00 p.m. For further information contact: Deborah Stevens or Ken Mahoney, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9512.

Michael Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 96–13251 Filed 5–20–96; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–11; WYW 4471–D]

Public Land Order No. 7261; Modification and Partial Revocation of 12 Executive Orders and 7 Secretarial Orders; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order modifies 7 Executive orders and 5 Secretarial orders to establish a 20-year term as to 1,914.46 acres of public lands withdrawn for Bureau of Land Management public water reserves. These withdrawals are also modified to allow for nonmetalliferous mining location. This order also partially revokes 8 Executive orders and 2 Secretarial orders insofar as they affect 1,877.39 acres of public lands withdrawn for Bureau of Land Management public water reserves. These lands do not meet the criteria for a public water reserve. This action will open 346.92 acres of the 1,877.39 acres to surface entry and nonmetalliferous mining. The remaining 1,530.47 acres are either withdrawn for other purposes or patented without the locatable nonmetalliferous minerals being reserved to the United States. All of the lands have been and will remain open to metalliferous mining location and to mineral leasing.

EFFECTIVE DATE: June 20, 1997.

FOR FURTHER INFORMATION CONTACT: Jim Paugh, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6306.

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 Executive Orders dated December 5, 1913; March 21, 1914; June 24, 1914; August 2, 1916; February 25, 1919; April 17, 1926; August 3, 1931 (No. 5672), and the Secretarial Orders dated October 23, 1929; February 3, 1932; February 15, 1933; May 14, 1935, and May 25, 1950, are hereby modified to be opened to nonmetalliferous mining and to expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 1714(f) (1988), the Secretary determines that the withdrawals shall be extended insofar as they affect the lands described below:

Sixth Principal Meridian

T. 34 N., R. 71 W.,
Sec. 33, SE¼NE¼.
T. 46 N., R. 76 W.,
Sec. 14, W½NW¼ and NW¼SW¼.
T. 57 N., R. 76 W.,
Sec. 28, SW¼SW¼.
T. 43 N., R. 77 W.,
Sec. 26, W½SW¼ and SE¼SW¼;
Sec. 27, NE¼SE¼.
T. 51 N., R. 78 W.,
Sec. 29, SE¼NE¼ and NE¼SE¼.
T. 33 N., R. 81 W.,
Sec. 26, NE¼NE¼.
T. 29 N., R. 82 W.,
Sec. 17, SW¼SE¼.
T. 36 N., R. 83 W.,
Sec. 5, N½SW¼ and SW¼SW¼;
Sec. 6, SE¼.
T. 46 N., R. 83 W.,
Sec. 5, SW¼NE¼.
T. 35 N., R. 84 W.,
Sec. 19, SW¼NE¼;
Sec. 33, S½NE¼.
T. 29 N., R. 85 W.,
Sec. 35, N½SE¼ and SW¼SE¼.
T. 45 N., R. 85 W.,
Sec. 2, lot 1.
T. 37 N., R. 87 W.,
Sec. 30, SE¼SW¼.
T. 38 N., R. 87 W.,
Sec. 10, SW¼SE¼.
T. 39 N., R. 87 W.,
Sec. 7, SE¼NW¼;
Sec. 21, NE¼SW¼;
Sec. 33, NW¼NE¼.
T. 33 N., R. 88 W.,
Sec. 19, lots 3 and 4;
Sec. 30, lot 1.
T. 39 N., R. 88 W.,
Sec. 4, SW¼NE¼;
Sec. 8, NW¼NW¼.
T. 40 N., R. 88 W.,
Sec. 23, NW¼NW¼ and SW¼NW¼;
Sec. 30, SW¼NE¼ and SE¼NE¼.
T. 39 N., R. 89 W.,
Sec. 2, lot 2, S½NW¼.
T. 40 N., R. 89 W.,
Sec. 1, SE¼NE¼;
Sec. 15, SW¼SE¼;
Sec. 34, NE¼SE¼.

The areas described aggregate 1,914.46 acres in Campbell, Converse, Johnson, Natrona, and Sheridan Counties, Wyoming.

2. At 10 a.m. on June 20, 1997, the lands described in paragraph 1 shall be opened to nonmetalliferous mineral location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The lands described in paragraph 1 have been and will continue to be open to metalliferous mineral location and entry under the United States mining laws and to applications and offers under the mineral leasing laws.

3. The Executive Orders dated December 5, 1913; March 21, 1914; June 24, 1914; February 29, 1916; January 3, 1917; October 24, 1920; May 25, 1921; and February 14, 1933 (No. 6025), and Secretarial Orders of March 28, 1935, and June 22, 1935, creating Public Water Reserves No(s). 12, 18, 20, 32, 43, 74, 77, 149, and 107, are hereby revoked insofar as they affect the following described lands:

Sixth Principal Meridian

T. 41 N., R. 66 W.,
Sec. 14, N½NW¼;
Sec. 20, NE¼NE¼.
T. 41 N., R. 67 W.,
Sec. 27, S½NE¼.
T. 40 N., R. 68 W.,
Sec. 14, NW¼SE¼.
T. 39 N., R. 69 W.,
Sec. 27, SW¼NW¼ and NW¼SW¼.
T. 40 N., R. 69 W.,
Sec. 5, W½SW¼, SE¼SW¼, and SW¼SE¼.
T. 42 N., R. 69 W.,
Sec. 6, lot 7;
Sec. 7, lots 1 to 4, inclusive.
T. 47 N., R. 70 W.,
Sec. 1, N½SW¼, SW¼SW¼, and S½SE¼;
Sec. 29, SE¼NW¼.
T. 41 N., R. 71 W.,
Sec. 35, NW¼NW¼ and SE¼NW¼.
T. 46 N., R. 71 W.,
Sec. 10, NE¼;
Sec. 21, W½NE¼.
T. 46 N., R. 72 W.,
Sec. 27, S½SW¼.
T. 52 N., R. 76 W.,
Sec. 35, SW¼NW¼.
T. 44 N., R. 76 W.,
Sec. 25, NE¼NE¼.
T. 39 N., R. 88 W.,
Sec. 19, lot 2.
T. 54 N., R. 79 W.,
Sec. 10, SE¼NE¼.
T. 39 N., R. 64 N.,
Sec. 34, SW¼NE¼.
T. 56 N., R. 77 W.,
Tract 103, (formerly Sec. 18, lot 3).
T. 45 N., R. 85 W.,
Sec. 18, SW¼NE¼.
T. 50 N., R. 83 W.,
Sec. 2, NE¼SW¼.
T. 30 N., R. 82 W.,
Sec. 8, lots 1 to 4 inclusive, (formerly N½SE¼).
T. 32 N., R. 88 W.,
Sec. 35, W½NE¼ and NE¼NW¼.
T. 41 N., R. 80 W.,
Sec. 10, NW¼NW¼.
T. 34 N., R. 82 W.,
Sec. 23, NW¼SE¼.

The area described contains 1,877.39 acres in Niobrara, Weston, Converse, Campbell, Sheridan, Johnson, and Natrona Counties, Wyoming.

4. At 10 a.m. on June 20, 1997, the lands in paragraph 3 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. June 20, 1997 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. At 10 a.m. on June 20, 1997, the public lands described below shall be opened to nonmetalliferous mineral location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Sixth Principal Meridian

T. 52 N., R. 76 W.,
Sec. 35, SW¼NW¼.
T. 54 N., R. 79 W.,
Sec. 10, SE¼NE¼.
T. 41 N., R. 80 W.,
Sec. 10, NW¼NW¼.
T. 34 N., R. 82 W.,
Sec. 23, NW¼SE¼.
T. 50 N., R. 83 W.,
Sec. 2, NE¼SW¼.
T. 32 N., R. 88 W.,
Sec. 35, W½NE¼ and NE¼NW¼.
T. 39 N., R. 88 W.,
Sec. 19, lot 2.

The area described contains 346.92 acres in Campbell, Sheridan, Johnson, and Natrona Counties, Wyoming.

6. All of the lands described in paragraph 1, in addition to the lands described in T. 39 N., R. 69 W., T. 46 N., R. 72 W., and T. 56 N., R. 77 W., have been and will continue to be open to coal leasing. All of the lands described in paragraph 2, in addition to the lands described in sec. 8, T. 30 N., R. 82 W., have been and will continue to be open to applications and offers under the mineral leasing laws.

Dated: May 9, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–13246 Filed 5–20–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Alaska Region, Beaufort Sea Lease Sale 170

AGENCY: Minerals Management Service.

ACTION: Notice of availability of the Draft Environmental Impact Statement and locations and dates of public hearings.

The Minerals Management Service (MMS) has prepared a draft Environmental Impact Statement (EIS) relating to the proposed 1998 Outer Continental Shelf oil and gas lease sale in the Beaufort Sea. The proposed Beaufort Sea Sale 170 will offer for lease approximately 1.7 million acres. You may obtain single copies of the draft EIS from the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99503–4302, Attention: Public Information. You may request copies by telephone at (907) 271–6070; 1–800–764–2627; or via e-mail at akwebmaster@mms.gov.

Copies of the draft EIS are also available for inspection in the following public libraries:

Alaska Resource Library, U.S. Department of the Interior, Anchorage, AK

Alaska State Library, Juneau, AK
Army Corps of Engineers Library, U.S. Department of Defense, Anchorage, AK
Elmer E. Rasmuson Library, 310 Tanana Drive, Fairbanks, AK
Fairbanks North Star Borough Public Library (Noel Wien Library), 1215 Cowles Street, Fairbanks, AK
George Francis Memorial Library, Kotzebue, AK
Kaveolook School Library, Kaktovik, AK
Kegoayah Kozga Public Library, Nome, AK
Nellie Weyiouanna Ilisaavik Library, Shishmaref, AK
North Slope Borough School District Library/Media Center, Barrow, AK
Northern Alaska Environmental Center Library, 218 Driveway, Fairbanks, AK
Nuiqsut Library, Nuiqsut, AK
Tikigaq Library, Point Hope, AK
University of Alaska, Anchorage Consortium Library, 3211 Providence Dr., Anchorage, AK
University of Alaska, Fairbanks Institute of Arctic Biology, 311 Irving Bldg., Fairbanks, AK
University of Alaska-Juneau Library, 11120 Glacier Highway, Juneau, AK

Under 30 CFR 256.26, the MMS will hold public hearings to receive comments and suggestions relating to the EIS.

The hearings will occur on the following dates and times:

June 24, 1997: Kisik Community Center, Nuiqsut, Alaska, 7:30 p.m.
June 25, 1997: Community Building, Kaktovik, Alaska, 6:00 p.m.
June 27, 1997: University Plaza Building, 949 East 36th Avenue, 3rd Floor Conference Room, Anchorage, Alaska, 12:00 p.m. (noon)
July 8, 1997: North Slope Borough, Assembly Chambers, Barrow, Alaska, 7:30 p.m.

The hearings will allow Government agencies and the public to provide additional information for evaluating the potential effects of the proposed lease sale. If you wish to testify at the June or July hearings, contact the Regional Director at the above address or Ray Emerson by telephone (907) 271–6650 or toll free 1–800–764–2627 by June 20, 1997, and by July 3, 1997, for the July hearing in Barrow.

Time limitations may make it necessary to limit the length of oral presentations to 10 minutes. You may supplement an oral statement with a more complete written statement and submit it to a hearing official at the hearing or by mail until July 18, 1997. You may also submit a written statement if you are unable to testify at a public hearing.

We will accept comments on the draft EIS until July 18, 1997. Address comments to the Regional Director, Minerals Management Service, Alaska Region, 949 East 36th Avenue, Anchorage, Alaska 99508–4302.

Dated: May 5, 1997.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 97–13266 Filed 5–20–97; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency For International Development

Board for International Food and Agricultural Development, One Hundred and Twenty-Third Meeting; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and twenty-third meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 9 a.m. to 4:30 p.m. on May 21, and from 9 a.m. to 1 p.m. on May 22, 1997, both days, at the Pan-American Health Organization, located at 525 23rd Street NW., Washington, DC, 20523, in Conference Room B.

The agenda will concentrate on the proposed restructuring of BIFAD to address Global Food Security, the strategic plan of the Agency for International Development, and National Consultations on Food Security.

The meeting is open to the public. Any interested person may attend the meeting, may file written statements with the Committee before or after the meeting, or present any oral statements in accordance with procedures established by the Committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting should contact Mr. George Like at the Agency for International Development, Office of Agriculture and Food Security, SA–2, Room 401–B, Washington, DC, 20523–0214, telephone (202) 663–2553, fax (202) 663–2552 or internet[glike@usaid.gov] with your full name.

Anyone wishing to obtain additional information about BIFAD should contact Mr. Tracy Atwood the Designated Federal Officer for BIFAD. Write him in care of the Agency for International Development, Office of Agriculture and Food Security, SA–2, Room 401K, Washington, DC 20523–0214, telephone him at (202) 663–2536 or fax (202) 663–2552.

Dated: April 21, 1997.

Tracy Atwood,

AID Designated Federal Officer, (Chief, Food Policy Division, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs).

[FR Doc. 97–13331 Filed 5–20–97; 8:45 am]

BILLING CODE 6116–71–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 30, 1997 at 11:30 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–748 (Final) (Engineered Process Gas Turbo-Compressor Systems from Japan)—briefing and vote.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 13, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–13407 Filed 5–16–97; 4:39 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substance Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1311.42 of Title 21, Code of Federal

Regulations (CFR), notice is hereby given that on March 17, 1997, Research Biochemicals, Limited Partnership, 1–3 Strathmore Road, Natick, Massachusetts 01760, made application to the Drug Enforcement Administration to be registered as an importer to the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Bufotenine (7433)	I
Dimethyltryptamine (7435)	I
Etorphine (except HCl) (9056)	I
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Diprenorphine (9058)	II
Etorphine Hydrochloride (9059).	II
Diphenoxylate (9170)	II
Metazocine (9240)	II
Methadone (9250)	II
Fentanyl (9801)	II

The firm plans to import small quantities of the listed controlled substances to manufacture laboratory reference standards and neurochemicals.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Acting Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 24, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–13311 Filed 5–20–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 17, 1997, Research Biochemicals, Limited Partnership, 1–3 Strathmore Road, Natick, Massachusetts 01760, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Dimethyltryptamine (7435)	I
1-[-(2-Thienyl) cyclohexyl] piperidene (7470).	I
Heroin (9200)	I
Normorphine (9313)	I
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture the listed controlled substances for laboratory reference standards and neurochemicals.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application. Any such comments or objections may be addressed, in quintuplicate, to the Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 21, 1997.

Dated: April 24, 1997.

Terrance W. Woodworth,

Acting Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 97–13312 Filed 5–20–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of May, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,267; FMC Corp., Agricultural Products Group, Middleport, NY

TA–W–33,373; Little Tikes, Aurora, MO

TA–W–33,255; Latestyle Belt Creations, Inc., New York, NY

TA–W–33,375; Eagle Coach Corp., Brownsville, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33,193 & A; Valmont, Inc— Valtex Industries, Pio Piedras, PR and New York, NY

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–33,429; East Manufacturing Corp., New Castle, PA

The preponderance in decline in employment at the subject firm are related to a shift in production to another domestic affiliated location.

TA–W–33,358; Sensormatic Co., CCTV Systems Div., Pearl River, NY

The investigation revealed that the layoffs at the subject plant were caused by the consolidation operations transfering the production of the subject plant to a plant located in Puerto Rico.

TA–W–33,230; Genicom Corp., Waynesboro, VA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–33,184; Universal-Rundle Corp., Bath Furniture Div., Rensselaer, IN
TA–W–33,451; Hillco, Inc., Missoula, MT
TA–W–33,433; Northern Forest Products, Inc., Noxon, MT
TA–W–33,359; Hauser Lake Lumber Operation, Planer Dept., Post Falls, ID
TA–W–33,465; Border Lumber, Rexford, MT
TA–W–33,414 & A; New Warwick Mining Co., Bobtown, PA & Mt. Morris, PA

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–33,137; Imperial Wallcoverings, Inc., Plattsburgh, NY: January 21, 1996.
TA–W–33,298; N. Erlanger Blumgart, New York, NY: February 28, 1996.
TA–W–33,202; Allied Signal, Inc., Truck Brake Systems Co., Charlotte, NC: January 21, 1996.
TA–W–33,313; Stony Creek Kniting Mills, Rocky Mountain, NC: March 6, 1996.
TA–W–33,351; Dienes Corp., Spencer, MA: March 17, 1996.
TA–W–33,211; Delco Electronics Corp., Delco Systems Operation, Goleta, CA: February 3, 1996.
TA–W–33,262; CMT Industries, Inc., El Paso, TX: January 13, 1996.
TA–W–33,220; Spenco Mfg., Inc., Glenville, WV: February 10, 1996.
TA–W–33,418; International Wire, Harness Group Div. (Formerly Wirekraft Industries) D/B/A Burcliff Industries, Erin, TN: April 4, 1996.
TA–W–33,292; Leica, Inc., Depew, NY: March 14, 1997.
TA–W–33,160; Roffe, Inc., Seattle, WA: January 24, 1996.
TA–W–33,241; Pine Bluff Industries, Pine Bluff, AR: February 10, 1996.
TA–W–33,208; Great Western Malting Co., Vancouver, WA: February 3, 1996.
TA–W–33,315; Lexington Fabrics, Inc., Hamilton Div., Hamilton, AL: March 4, 1996.
TA–W–33,231; Willamette Industries, Inc., Custom Service Div., Sweet Home, OR: February 10, 1996.
TA–W–33,382; Danti, Inc., Lansford, PA: March 25, 1996.
TA–W–33,397; Master Apparel Div. of Masterwear Corp., Sommerville, TN: March 26, 1996.
TA–W–33,059; Barry Hazan Sportswear, New York, NY: December 16, 1995.
TA–W–33,409; Lou Levy & Son/Jersey Fashion, Jersey City, NJ: April 3, 1996.
TA–W–33,410; Lou Levy & Son (Show Room), New York, NY: July 25, 1996.
TA–W–33,318 & A; Alfred Angelo, Inc., Hatboro, PA and Horsham, PA: March 21, 1997.
TA–W–33,331; American Fiber Resources, L.P., Fairmont, WV: March 4, 1996.
TA–W–33,394; Georgia Pacific West, Inc., Building Products Div., Martell, CA: February 20, 1996.
TA–W–33,346; Asiachem Corp., Orangeburg, SC: March 10, 1996.
TA–W–33,454; Sandvik, Inc., Sandvik Hard Materials Co., Warren, MI: April 17, 1996.
TA–W–33,438; General Electric Co., Bucyrus Lamp Plant, Bucyrus, OH: April 14, 1996.
TA–W–33,437; Holiday Products, Inc., El Paso, TX: April 10, 1996.
TA–W–33,432; Jos J. Pietrafesa Co., Sturgis, KY: March 24, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of May, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produce by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01472; Universal-Rundle Corp., Bath Furniture Div., Rensselaer, IN
NAFTA–TAA–01493; John H. Harland Co., Centralia, WA
NAFTA–TAA–01577; Eagle Coach Corp., Brownsville, TX
NAFTA–TAA–01596 & A; New Warwick Mining Co., Bobtown, PA and Mt. Morris, PA
NAFTA–TAA–01575; Little Tikes, Aurora, MO
NAFTA–TAA–01622; Hillco, Inc., Missoula, MT
NAFTA–TAA–01579; Hauser Lake Lumber Operations, Planer Department Post Falls, ID

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01638; Nissan Motor Corp., Gardena, CA

The investigation revealed that the workers of the subject firm did not

produce an article within the meaning of section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01570; Eagle Ottawa Leather Co., Grand Haven, MI: March 4, 1996.

NAFTA–TAA–01615; Jos J. Pietrafesa Co., Liverpool, NY: April 3, 1996.

NAFTA–TAA–01623; General Electric Co., Bucyrus Lamp Plant, Bucyrus, OH: April 14, 1996.

NAFTA–TAA–01544; Spenco Mfg., Inc., Glenville, WV: February 10, 1997.

NAFTA–TAA–01574; Stony Creek Knitting Mills, Rocky Mountain, NC: March 18, 1996.

NAFTA–TAA–01621; International Wire, Harness Group Div. (Formerly Wirekraft Industries), D/B/A Burcliff Industries, Erin, TN: April 15, 1996.

NAFTA–TAA–01557; Lexington Fabrics, Inc.—Hamilton Div., Hamilton, AL: March 4, 1996.

NAFTA–TAA–01498; Willamette Industries, Inc., Custom Service Div., Sweet Home, OR: February 10, 1996.

NAFTA–TAA–01635; Jos J. Pietrafesa Co., Sturgis, KY: April 8, 1996.

NAFTA–TAA–01600; Georgia Pacific West, Inc., Building Products Div., Martell, CA: February 26, 1996.

NAFTA–TAA–01614; Holiday Products, Inc., El Paso, TX: April 10, 1996.

NAFTA–TAA–01618; Osram Sylvania, Inc., Danvers, MA: April 16, 1996.

NAFTA–TAA–01565; GCC Cutting, Inc., El Paso, TX: March 13, 1996.

NAFTA–TAA–01626; Sandvik, Inc., Sandvik Hard Materials Co., Warren, MI: April 10, 1996.

NAFTA–TAA–01625; Allied Signal, Inc., Filters & Spark Plugs Group, Greenville, OH: April 7, 1996.

I hereby certify that the aforementioned determinations were issued during the month of May, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 12, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–13353 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than June 2, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than June 2, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 5th day of May, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 05/05/97]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,459	Copper Basin Garments (Wrks)	Copperhill, TN	04/04/97	Ladies' and Children's jeans.
33,460	Baby's N Things (Wrks)	Grafton, WV	04/14/97	Plastic Baby Toys.
33,461	Amy Group, Inc. (Comp)	York, PA	04/21/97	Ladies' Clothing.
33,462	Spotlight Co., Inc (Wrks)	New York, NY	04/18/97	Sleepwear Garments.
33,463	Champion Products Inc. (Wrks)	Perry, NY	04/17/97	Athletic Apparel for NFL and NBA.
33,464	Champion Products, Inc (Wrks)	Clayton, NC	04/17/97	Athletic Apparel for NFL and NBA.
33,465	Border Lumber (Wrks)	Rexford, MT	04/24/97	Dimensional Lumber.
33,466	C–Cor Electronics, Inc (Wrks)	Reedsville, PA	04/15/97	Power Supplies and Amplifiers.
33,467	International Wire Group (Wrks)	Rolling Prairie, IN	04/15/97	Automotive Wiring.
33,468	National Starch & Chem. (GCIU)	Plainfield, NJ	04/22/97	Adhesives for Diapers.
33,469	PHP Molding & Mfg., Inc (Wrks)	McMinnville, TN	04/23/97	Plastic Appliance Parts.

[FR Doc. 97–13342 Filed 5–20–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than June 2, 1997.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than June 2, 1997.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. this 28th day of April, 1997.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 4/28/97

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
33,436	Desert Cleaners (Wkrs)	El Paso, TX	03/20/97	Men's and Ladies' Denim Jeans.
33,437	Holiday Products (4/10/9)	El Paso, TX	04/10/97	Christmas Decorations.
33,438	General Electric (IUE)	Bucyrus, OH	04/14/97	Fluoresent Lamps.
33,439	Damrow Gea Group (Wkrs)	Fond du Lac, WI	04/07/97	Dairy Cheeze Making Equipment.
33,440	Pressman Gutman (Wkrs)	New York, NY	02/21/97	Administrative & Sales—Fabric.
33,441	Frolic Footwear (Co.)	Russellville, AR	04/08/97	Ladies' Footwear.
33,442	Colber Corporation (The) (Co.)	Irvington, NJ	04/08/97	Wirewound Resistors.
33,443	Kellogg Industries (Wkrs)	Jackson, MI	04/09/97	Cereal Food.
33,444	E-Lite Division (Wkrs)	Cameron, WV	04/15/97	Decorative Glassware for Lighting.
33,445	NCR St. Petersburg Repair (Wkrs)	St. Petersburg, FL	03/26/97	Repair of Defective Service Parts.
33,446	Quarles Drilling Corp (Co.)	Tulsa, OK	04/15/97	Oil, Gas Drilling, Exploration.
33,447	Quarles Drilling Corp (Co.)	Oklahoma City, OK	04/15/97	Oil, Gas Drilling & Exploration.
33,448	Quarles Drilling Corp (Co.)	Houston, TX	04/15/97	Oil, Gas Drilling & Exploration.
33,449	Quarles Drilling Corp (Co.)	Houma, LA	04/15/97	Oil, Gas Drilling & Exploration.
33,450	Techno Trim (Wkrs.)	Greencastle, IN	04/11/97	Automobile Seat Covers.
33,451	Hillco Trucking, Inc (Wkrs.)	Missoula, MT	04/14/97	Logging and Truck Transport.
33,452	Precision Scientific (USWA)	Chicago, IL	04/03/97	Incubators, Thelco Ovens, Vacuum Pumps.
33,453	Lion's Acquisition Co (Co.)	Gastonia, NC	04/17/97	Boys' Suits.
33,454	Sandvik Hard Materials (UAW)	Warren, MI	04/17/97	Carbide—Ball Point Pens, Dental Instr.
33,455	Mundet Hermetite (Co.)	Lexington, VA	04/16/97	Laser Perforated Cigarette Tipping Paper.
33,456	DMC Apparel (Wkrs.)	Knoxville, TN	04/16/97	Tee Shirts.
33,457	Rockwood Sportswear, Inc (Wkrs.)	Rockwood, TN	04/30/97	Leather & Wool Coats.
33,458	Northwest Food Service (Wkrs.)	Caldwell, ID	04/16/97	Provide Food Services.

[FR Doc. 97–13354 Filed 5–20–97; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,024]

Eagle Nest, Incorporated, Van, West Virginia; Notice of Negative Determination Regarding Application for Reconsideration

By application dated February 19, 1997, one of the petitioners requested administrative reconsideration of the Department's negative determination regarding worker eligibility to apply for trade adjustment assistance. The denial notice applicable to workers of the subject firm located in Johnstown, Pennsylvania, was signed on January 31, 1997 and published in the **Federal Register** on February 13, 1997 (62 FR 6805).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Findings of the initial investigation showed that workers of Eagle Nest, Incorporated, Mine Department located in Van, West Virginia produced coal. The Department's denial of TAA for workers of the subject firm was based on the fact ''that the contributed importantly'' test of the Group Eligibility requirements of Section 222 of the Trade Act of 1974 was not met.

The Department of Labor surveyed the major declining customers of the subject firm regarding their purchases of coal. The respondents reported no imports in the relevant period.

The investigation also revealed that the closing of the facility and separation of the workers was because the company was sold on August 31, 1996.

On reconsideration the Department learned that the petition was intended to be filed on behalf of workers at the mine site which was located in Van, West Virginia. The Johnstown, Pennsylvania location of Eagle Nest, Incorporated is an administrative office.

In order to determine worker eligibility, the Department must examine imports of products like or directly competitive with those articles produced at the Van, West Virginia mine. In this case, the product produced at Van was metallurgical coal. The end use of the coal by the customer was for making coke and steel. Metallurgical coal cannot be considered like or directly competitive with coke and steel.

The request for reconsideration claims that the Department did not consider Eagle Nest's production of steel which is being produced by the subject plant's major customer.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, D.C. this 5th day of May 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–13350 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33, 279]

Johnson Controls, Incorporated, Ann Arbor Plant, Ann Arbor, Michigan; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) as amended by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely; and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The investigation was initiated on February 18, 1997 in response to a petition filed on behalf of former workers at the Ann Arbor plant of Johnson Controls, Incorporated, located in Ann Arbor, Michigan. The workers produced power seat tracks for auto seats.

The investigation revealed that criterion (3) has not been met.

Sales of power seat tracks for auto seats at the Ann Arbor Plant of Johnson Controls, Incorporated in FY 1996 compared to FY 1995.

Employment at the Ann Arbor Plant of Johnson Controls, Incorporated increased in FY 1996 compared to FY 1995.

In early 1996, Johnson Controls, Incorporated made a business decision to transfer its production of power seat tracks for auto seats from its Ann Arbor Plant located in Ann Arbor, Michigan facility to another domestic facility.

Conclusion

After careful review, I determine that all workers of the Ann Arbor Plant of Johnson Controls, Incorporated, Ann Arbor, Michigan are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 17th day of April 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–13344 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,054]

Kerr-McGee Corporation, Headquartered in Oklahoma City, Oklahoma and Operating in Various Locations Throughout the States of: TA–W–33,054A, Oklahoma, TA–W–33,054B, Texas, TA–W–33,054D, Wyoming, TA–W–33,054E, North Dakota; Notice of Revised Determination on Reconsideration

On February 28, 1997, the Department issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to all workers of Kerr-McGee Corporation, Oklahoma City, Oklahoma and various locations throughout the States of Oklahoma, Texas, Louisiana, Wyoming and North Dakota. The notice was published in the **Federal Register** on March 21, 1997 (62 FR 13709).

By letter dated March 18, 1997, the company official requested administrative reconsideration of the Department's findings for workers of Kerr-McGee Corporation, Oklahoma City, Oklahoma and the various locations operating throughout the States of Oklahoma, Texas, Wyoming and North Dakota. The company official requested that the Louisiana location (TA–W–33,054C), which is part of the Gulf of Mexico Region Offshore operations be excluded because the workers are separately identifiable from those in the US Onshore Region.

The initial denial of TAA for the workers of Kerr-McGee Corporation, Oklahoma City, Oklahoma and the various locations throughout the States of Oklahoma, Texas, Louisiana, Wyoming and North Dakota for Trade Adjustment Assistance was based on the fact that criterion (2) of the Group Eligibility requirements of Section 222 of the Trade Act of 1974 was not met; production and revenues from crude oil and natural gas increased. New information provided on reconsideration shows that revenues at the subject facilities decreased in the relevant period. The workers were engaged in the exploration and production of natural gas and crude oil and are not separately identifiable by product. Other findings show that U.S. aggregate imports for crude oil increased absolutely in 1995 compared with the same period in 1994 and in 1996 compared with the same period in 1995. The imports/shipments ratio for crude oil was over 105% in both 1995 and 1996.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that the workers of Kerr-McGee Corporation, Oklahoma City, Oklahoma and the various locations throughout the States of Oklahoma, Texas, Wyoming and North Dakota were adversely affected by increased imports of articles like or directly competitive with crude oil and natural gas contributed importantly to the declines in sales or production and to the total or partial separations of workers of Kerr-McGee Corporation, Oklahoma City, Oklahoma and the various locations throughout the States of Oklahoma, Texas, Wyoming and North Dakota. In accordance with the provisions of the Act, I make the following certification:

All workers of Kerr-McGee Corporation, Oklahoma City, Oklahoma (TA–W–33,054) and operating in various locations throughout the States of Oklahoma (TA–W–33,054A); Texas (TA–W–33,054B); Wyoming (TA–W–33,054D) and North Dakota (TA–W–33,054E) who became totally or partially separated from employment on or after December 19, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 5th day of May 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–13347 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33, 374]

Parkway Building Systems, Inc. Poulsbo, Washington; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 31, 1997 in response to a worker petition which was filed on March 31, 1997 on behalf of workers at Parkway Building Systems, Inc. located Poulsbo, Washington.

All workers were separated from the subject firm more than one year prior to the date of the petition signed on March 19, 1997. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 30th day of April, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–13351 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,845]

Ryobi Motor Product Corp., Anderson, SC; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 4, 1996, applicable to all workers of the Ryobi Motor Product Corporation Anderson, South Carolina engaged in the production of BT 3000 table saws. The notice was published in the **Federal Register** on December 4, 1996 (61 FR 67858).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred due to the relocation of the production of power tool dust collection bags from the Anderson, South Carolina plant to a plant located in China during the later part of 1996. These workers were engaged in employment related to the production of dust collection bags used as a component part of various power tools from its own facility in Pickens, South Carolina.

Accordingly, the Department is amending the certification to cover workers engaged in the production of power tool dust collection bags at the subject firms' Anderson, South Carolina plant.

The intent of the Department's certification is to include all workers of Ryobi Motor Products Corporation, Anderson, South Carolina adversely affected by increased imports of BT 3000 table saws and power tool dust collection bags.

The amended notice applicable to TA–W–32,845 is hereby issued as follows:

All workers of Ryobi Motor Products Corporation, Anderson, South Carolina engaged in employment related to the production of BT 3000 table saws and power tool dust collection bags (TA–W–32,845) who became totally or partially separated from employment on or after October 14, 1995 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC, this 2nd day of May, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment.

[FR Doc. 97–13352 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,419]

Ryobi Motor Products Corporation Anderson, SC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 14, 1997 in response to a worker petition which was filed on April 4, 1997 on behalf of workers at the Ryobi Motor Products Corporation, Anderson, South Carolina.

An active certification covering the petitioning group of workers is already in effect (TA–W–32,845). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 2nd day of May, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–13355 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training 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 1955 (PRA95) [44 U.S.C. 3506(c)(a)(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 and Training Administration (ETA) is soliciting comments concerning the proposed extension of the collection of the ETA–227 Report, Overpayment Detection and Recovery Activities. A copy of the proposed information collection request (ICR) 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 July 21, 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: Robert Whiting, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5211 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Form ETA–227, Overpayment and Recovery Activities, provides information on determinations, overpayments, and recoveries of overpayments on intrastate and liable interstate claims under State and Federal unemployment compensation programs; i.e., programs providing unemployment compensation for Federal employees (UCFE) and ex-servicepersons (UCX), established under Chapter 85, Title 5, U.S. Code. This report includes claims for regular, additional and Federal-State extended benefits.

The State agency's accomplishments in principal detection areas of benefit payment control are shown in the ETA–227 report. ETA and State agencies need such information to monitor the effectiveness of the controls of benefit payment operations.

Data are also provided for criminal and civil actions involving benefit overpayments obtained fraudulently, and an aging schedule of outstanding benefit overpayment accounts is included.

II. Current Actions

By collecting data on overpayment detection and recovery, State agencies can monitor the effectiveness of their benefit payment process and the controls built into their systems. Section A of the report shows the establishment of fraud and nonfraud overpayments, with fraud being broken out into categories that identify cause. Section B shows overpayment recoveries and other actions taken to reconcile amounts outstanding. Section C shows the results of the primary detection activities. Section D shows the criminal and civil actions taken against claimants. Section E shows the aging of accounts, i.e., how long overpayments have remained uncollected. Together these data provide a comprehensive tool useful for management of benefit operations at the State level.

For ETA, the data provide a valuable tool to fulfill the Secretary's responsibility to oversee operations in State agencies individually and collectively. Periodic reporting provides data useful for trend analyses.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Overpayment Detection and Recovery Activities.

OMB Number: 1205–0173.

Agency Number: ETA–227.

Recordkeeping: State agencies are required to maintain all documentation supporting the information reported on the ETA–227 for three years following the end of each report period.

Affected Public: State Government.

Cite/Reference/Form/etc.: Form.

Total Respondents: 53 State agencies.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 10 hours.

Estimated Total Burden Hours: 2120.

Total Burden Cost (operating/maintaining): Estimated at $42,400 which is an allowable cost under the administrative grants awarded to States by the Federal government.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 15, 1997.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 97–13337 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–33–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–001633]

Carrier Corporation, Global Absorption Center, Syracuse, New York; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on April 23, 1997 in response to a petition filed on behalf of workers and former workers at the Global Absorption Center of Carrier Corporation, located in Syracuse, New York.

The Department of Labor has verified that the three petitioners were not employed by the above subject firm. Consequently, this is not a valid petition and the Department of Labor cannot make a determination as to whether the workers are eligible for adjustment assistance benefits under the Trade Act of 1974.

Therefore, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 6th day of May 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–13348 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01479]

General Motors Delco Systems Operations, Goleta, California; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA–Transitional Adjustment Assistance on March 18, 1997, applicable to workers of General Motors, located in Goleta, California. The notice was published in the **Federal Register** on March 31, 1997 (62 FR 15200).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of turret assemblies. Findings show that the Department incorrectly set the worker certification impact date at February 3, 1997. The impact date should be February 3, 1996, one year prior to the date of the petition. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to NAFTA—01479 is hereby issued as follows:

All workers at General Motors Corporation, Delco Systems Operations, Goleta, California who became totally or partially separated from employment on or after February 3, 1996, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of May 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–13345 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01352]

Lucent Technologies, Incorporated, Consumer Products Division, Atlanta, GA; Notice of Revised Determination on Reconsideration

On January 23, 1997, the Department issued a Negative Determination Regarding Eligibility to apply for NAFTA–TAA, applicable to workers and former workers of the subject firm. This notice was published in the **Federal Register** on February 13, 1996 (62 FR 6804).

The Department's initial denial was based on the fact that the affected group of workers were engaged in the repairing and refurbishing of telephone sets and did not produce an article within the meaning of Section 250(a) of the Trade Act of 1974, as amended.

The petitioners presented evidence to the Department which revealed that workers at the Consumer Products Division of Lucent Technologies, Incorporated, located in Atlanta, Georgia were engaged in employment related to the production of telephone sets for its parent company. It was further revealed that the parent company made a corporate decision to shift its production of telephone sets from its Atlanta, Georgia facility to a facility located in Mexico and these telephone sets are being imported back into the United States for marketing by the subject firms's parent company.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports from Mexico and Canada of articles like or directly competitive with telephone sets contributed importantly to the declines in sales or production and to the total or partial separation of workers at the Consumer Products Division of Lucent Technologies, Incorporated, located in Atlanta Georgia. In accordance with the provisions of the Act, I make the following certification:

All workers of the Consumer Products Division of Lucent Technologies, Incorporated, located in Atlanta, Georgia who become totally or partially separated from employment on or after November 22, 1995 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of May 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–13349 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–01266]

Redpath Apparel Group, Denison, Texas and NAFTA–01266A Dallas, Texas, NAFTA–01266B Sherman, Texas, NAFTA–01266C White Oak, Texas, NAFTA–01266D Wichita Falls, Texas, NAFTA–01266E New York, New York; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Tital II, of the Trade Act of 1974 as amended (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 27, 1996, applicable to all workers at Redpath Apparel Group located in Denison, Texas. The notice was published in the **Federal Register** on December 24, 1996 (61 FR 67858).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in employment related to the production of children's clothing and also provided administrative and support service functions. New findings show that worker separations occurred at Redpath Apparel Group Located in Dallas, Sherman, White Oak, and Wichita Falls, Texas and New York, New York when all production and support service operations ceased in October, 1996.

Accordingly, the Department is amending the certification to cover workers at the subject firms' Dallas, Sherman, White Oak and Wichita Falls, Texas and New York, New York locations.

The intent of the Department's certification is to include all workers of Redpath Apparel Group who were adversely affected by increased imports from Mexico or Canada.

The amended notice applicable to NAFTA–01266 is hereby issued as follows:

All workers of Redpath Apparel Group, Denison, Texas (NAFTA–01266), Dallas, Texas (NAFTA–01266A), Sherman, Texas (NAFTA–01266B), White Oak, Texas (NAFTA–01266C), Wichita Falls, Texas (NAFTA–01266D), and New York, New York (NAFTA–01266E) who became totally or partially separated from employment on or after October 3, 1995, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of May, 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–13346 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Program Manager of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes actions pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment of after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Program Manager of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Program Manager of OTAA not later than June 2, 1997.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Program Manager of OTAA at the address shown below not later than June 7, 1997.

Petitions filed with the Governors are available for inspection at the Office of the Program Manager, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 12th day of May, 1997.

Russell Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Standard Products (The) (Wkrs)	Lexington, KY	03/05/97	NAFTA–1,617	Automotive weather strip.
OSRAM Sylvania (IBU)	Danvers, MA	04/16/97	NAFTA–1,618	Fluorescent lamps and reprographic.
Alof's Manufacturing (Wkrs)	Grand Rapids, MI	04/02/97	NAFTA–1,619	Automotive parts.
Damrow Gea Group (USWA)	Fond Du Lac, WI	04/10/97	NAFTA–1,620	Dairy cheese making equipment.
International Wire (Co.)	Erin, TN	04/15/97	NAFTA–1,621	Wiring harnesses.
Hillco (Wkrs)	Missoula, MI	04/15/97	NAFTA–1,622	Logger.
General Electric (IUE)	Bucyrus, OH	04/17/97	NAFTA–1,623	Trimline lamps.
Corning (AFGW)	Greenville, OH	04/17/97	NAFTA–1,624	Glass lighting products.
Allied Signal (FEIU)	Greenville, OH	04/18/97	NAFTA–1,625	Filter component parts.
Sandvik (UAW)	Warren, MI	04/14/97	NAFTA–1,626	Balls for ball point pens.
Kellogg Industries (Wkrs.)	Jackson, MI	04/18/97	NAFTA–1,627	Orthopedic soft products.
Champion Products (Co.)	Clayton, NC	04/18/97	NAFTA–1,628	Textiles.
Northwest Food Service (Wkrs)	Caldwell, ID	04/18/97	NAFTA–1,629	Food services.
Lion's Acquisition (Co.)	Gastonia, NC	04/22/97	NAFTA–1,630	Boys' suits and pants.
Cone Mills (Wkrs)	Greenboro, NC	04/23/97	NAFTA–1,631	
Amy Group (Wkrs)	York, PA	04/23/97	NAFTA–1,632	Women's clothing.
Carrier Corporation (Wkrs)	Syracuse, NY	04/23/97	NAFTA–1,633	Design and drafting.
PHP Molding (Wkrs)	McMinnville, TN	04/28/97	NAFTA–1,634	Food grinder parts.
Jos J. Pietrafesa (Wkrs)	Sturgis, KY	04/15/97	NAFTA–1,635	Men and women tailored clothing.
Union Oil Company of California (Wkrs)	Arroyo Grande, CA	04/28/97	NAFTA–1,636	Oil.
Mundet Hermetite (Wkrs)	Buena Vista, VA	04/23/97	NAFTA–1,637	Cigarette tipping perforated machines.
Nissan Motor (Wkrs)	Gardena, CA	04/28/97	NAFTA–1,638	Cars, trucks and parts.
National Starch and Chemical (Co.)	Plainfield, NJ	04/30/97	NAFTA–1,639	Adhesives.
Renee Jabbour (Co.)	Allentown, PA	05/01/97	NAFTA–1,640	Knit outerwear.
Champion Products (Wkrs)	Perry, NY	05/05/97	NAFTA–1,641	Athletic apparel.
Genlyte Group (Wkrs)	Cameran, WV	04/22/97	NAFTA–1,642	Lighting fixtures.
Vision Technologies (Wkrs)	Iron Ridge, WI	05/05/97	NAFTA–1,643	Personal computers.
Rockwood Sportswear (Wkrs)	Rockwood, TN	04/23/97	NAFTA–1,644	Leather and wool coats.
Coats American (Co.)	Rossville, GA	05/07/97	NAFTA–1,645	Coats.
Coats North America (Co.)	Cleveland, GA	05/07/97	NAFTA–1,646	Zippers.

[FR Doc. 97–13343 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; 30 CFR 77.1101, Escape and Evacuation Plans

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 Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Escape and Evacuation Plans for surface coal mines and surface work areas of underground coal mines. MSHA 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.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

DATES: Submit comments on or before July 21, 1997.

ADDRESSES: Submit comments to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 627, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to psilvey@msha.gov, along with an original printed copy.

FOR FURTHER INFORMATION CONTACT: George M. Fesak, Director, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Mr. Fesak can be reached at gfesak@msha.gov (Internet E-mail), (703) 235–8378 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 77.1101(a) requires operators of surface coal mines and surface work areas of underground coal mines to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire.

Section 77.1101(c) requires escape and evacuation plans to include the designation and proper maintenance of an adequate means for exiting areas where persons are required to work or travel including buildings, equipment, and areas where persons normally congregate during the work shift.

Section 77.1101(b) requires that all employees be instructed in current escape and evacuation plans, fire alarm signals, and applicable procedures to be followed in case of fire. The training and record keeping requirements associated with this standard are addressed under OMB No. 1219–0070 (Certificate of Training).

While escape and evacuation plans are not subject to approval by MSHA district managers, MSHA inspectors evaluate the adequacy of the plans during their inspections of surface coal mines and surface work areas of underground coal mines.

II. Current Actions

MSHA proposes to continue the information collection requirement related to escape and evacuation plans for surface coal mines and surface work areas of underground coal mines for an additional 3 years. MSHA believes that eliminating this requirement would expose miners to unnecessary risk of injury or death should a fire occur at or near their work location.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Escape and Evacuation Plans.

Recordkeeping: Indefinite.

OMB Number: 1219–0051.

Affected Public: Business or other for-profit institutions.

Cite/Reference/Form/etc: 30 CFR 77.1101.

Total Respondents: 401.

Frequency: On occasion.

Total Responses: 401.

Average Time per Response: 4.8 hours.

Estimated Total Burden Hours: 1,930 hours.

Estimated Total Burden Cost: $0.

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 request; they will also become a matter of public record.

Dated: May 14, 1997.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 97–13356 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

98th Official Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held June 13, 1997 of the Advisory Council on Employee Welfare and Pension Benefit Plans.

The 98th session of the full ERISA Advisory Council will take place in Room N–5437 A&B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210. The purpose of the open meeting, which will run from 1:00 p.m. to approximately 3:30 p.m., is to inform the full ERISA Advisory Council of the progress the Council's three working groups are making on the topics they are studying this year. Members also will be given an update of activities in the Pension and Welfare Benefits Administration.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before June 6, 1997, to Sharon Morrissey, Executive

Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group on Soft Dollar Arrangements and Commission Recapture should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by June 6, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 6.

Signed at Washington, D.C. this 16th day of May, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–13338 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Soft Dollar Arrangements and Commission Recapture; Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held June 13 of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group formed to study Soft Dollar Arrangements and Commission Recapture.

The session will take place in Room N–5437 A&B, U.S. Department of Labor Building, Second and Constitution Avenue, NW, Washington, D.C. 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to continue taking testimony on the topics of industry soft dollar and directed brokerage practices.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before June 6, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW, Washington, D.C. 20210. Individuals or representatives of organizations wishing to address the Working Group on Soft Dollar Arrangements and Commission Recapture should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by June 6, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 6.

Signed at Washington, D.C. this 16th day of May, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–13339 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group Studying Employer Assets In ERISA Employer-Sponsored Plans, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1994 (ERISA), 29 U.S.C. 1142, a public meeting will be held on June 12, 1997 of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group studying Employer Assets in ERISA Employer-Sponsored Plans.

The purpose of the open meeting, which will run from 1:00 p.m. until approximately 3:30 p.m. in Room N–5437 A&B, U.S. Department of Labor Building, Second and Constitution Avenue NW., Washington, DC 20210, is for Working Group members to continue taking testimony on the topic of employer assets in ERISA employer-sponsored plans. The group will be especially interested in seeking testimony from the plan sponsor community.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before June 6, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on Employer Assets in ERISA Employer-Sponsored Plans should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by June 6, 1997, at the address indicated in this notice. Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 6.

Signed at Washington, DC this 16th day of May, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–13340 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Working Group on Studying the Merits of Defined Contribution vs. Defined Benefit Plans, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group established to Study the Merits of Defined Contribution vs. Defined Benefit Plans With an Emphasis on Small Business Concerns will hold a public meeting on June 12, 1997 in Room N–5437 A&B, U.S. Department of Labor Building, Second and Constitution Avenue, NW., Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working

Group members to take testimony on the topic.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before June 6, 1997, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group on Studying the Merits of Defined Contribution vs. Defined Benefit Plans With an Emphasis on Small Business Concerns should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by June 6, at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 6.

Signed at Washington, DC this 16th day of May, 1997.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 97–13341 Filed 5–20–97; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–063]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, 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)). This information is used to determine whether the requested license should be granted.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before July 21, 1997.

ADDRESSES: All comments should be addressed to Mr. Harry Lupuloff, Office of the General Counsel, Code GP, National Aeronautics and Space Administration, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: Application for a Patent License.

OMB Number: 2700–0039.

Type of review: Extension.

Need and Uses: The information supplied is used by the NASA Associate General Counsel to make agency determinations that NASA should either grant or deny a request for a patent license, and whether the license should be exclusive, partially exclusive, or nonexclusive.

Affected Public: Individuals or households, business or other for-profit.

Number of Respondents: 45.

Responses Per Respondent: 1.

Annual Responses: 45.

Hours Per Request: 6.

Annual Burden Hours: 270.

Frequency of Report: Annually.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–13361 Filed 20–5–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–064]

Notice of Agency Report Forms Under OMB Review

SUMMARY: The National Aeronautics and Space Administration, 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)). The information is used by NASA attorneys and technology transfer specialists to determine if a licensee is achieving and maintaining practical application of the licensed inventions as required by its license agreement.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before July 21, 1997.

ADDRESSES: All comments should be addressed to Mr. Harry Lupuloff, Office of the General Counsel, Code GP, National Aeronautics and Space Administration, Washington, DC 20546–0001. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: Patent License Report.

OMB Number: 2700–0010.

Type of review: Extension.

Need and Uses: Each licensee is required to report annually on its activities in commercializing its licensed inventions and any royalties due. NASA uses information collected to monitor the activities of its licensees.

Affected Public: Individuals or households, business or other for-profit.

Number of Respondents: 100.

Responses Per Respondent: 1.

Annual Responses: 100.

Hours Per Request: 30 min.

Annual Burden Hours: 50.

Frequency of Report: Annually.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 97–13362 Filed 5–20–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–069]

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.

DATES: May 21, 1997.

FOR FURTHER INFORMATION CONTACT: Beth Vrioni, Patent Attorney, Kennedy Space Center, Mail Stop DE–TPO, at (407) 867–2544.

NASA Case No. KSC–11909: Ultrasonic Imaging System.

Dated: May 15, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–13359 Filed 5–20–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–065]

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, Langley Research Center. Claims are deleted from the patent applications to avoid premature disclosure.

DATE: May 21, 1997.

FOR FURTHER INFORMATION CONTACT: Office of Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681–0001; telephone (757) 864–9260.

NASA Case No. LAR–15065–1: Piezo-Electric Pump;

NASA Case No. LAR–15217–2: Method for Molding Structural Parts Utilizing Modified Silicone Rubber;

NASA Case No. LAR–15273–1: Inductive Systems (Heating) for Bonding and Joining;

NASA Case No. LAR–15274–1: High-Temperature Lightweight, Composite Valves for Internal Combustion;

NASA Case No. LAR–15318–1: Distributed Fiber-Optic Strain Sensor;

NASA Case No. LAR–15407–1: Piezo-Electric, Active, Fluid Flow Control Valve;

NASA Case No. LAR–15462–1: Integral Ring Carbon-Carbon Piston;

NASA Case No. LAR–15463–1–SB: Method of Improving the Magnetic and Mechanical Properties of Molded Magnet Cores with Directionally-Ordered Non-Spherical Particles and Fabrication Technique Using SI Binder;

NASA Case No. LAR–15492–1: Carbon-Carbon Piston Architectures;

NASA Case No. LAR–15493–1: Pistons and Cylinders Made of Carbon-Carbon Composite;

NASA Case No. LAR–15495–1: Carbon-Carbon Rotary Engine Rotor and Housing;

NASA Case No. LAR–15496–1: Carbon-Carbon Turbocharger for IC Engine;

NASA Case No. LAR–15497–1: Carbon-Carbon Exhaust Manifold for IC Engine;

NASA Case No. LAR–15498–1: Carbon-Carbon Rotary Valve for IC Engines;

NASA Case No. LAR–15510–1: Use of a Fluorinated Polyimide as an Antifoulant;

NASA Case No. LAR–15512–1: Dimensionally Stable Polyimide Copolymers Containing Cyclobutene 3,4-Dione Moiety;

NASA Case No. LAR–15524–1: A Method and Apparatus for Thickness of Layers Using a Scanning Linear Heat Source and Infrared Detector;

NASA Case No. LAR–15643–1: Chopper-Fiber Composite Piston Architecture;

NASA Case No. LAR–15653–1: Meth of Manuf Carbon Fiber Reinforced Carbon Composite Valve for an Internal Combustion Engine;

NASA Case No. LAR–15656–P: Use of A Fluorinated Poly (Phenylene Ether Ketone) and A Fluorinated Aromatic Polyimide Antifouling Coatings;

NASA Case No. LAR–15665–1–CU: Catalyst for Carbon Monoxide Oxidation (CIP of 15317–1–CU).

Dated: May 14, 1997.

Edward A. Frankle,

General Counsel.

[FR Doc. 97–13363 Filed 5–20–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–070]

NASA Advisory Council (NAC), Aeronautics and Space Transportation Technology Advisory Committee (ASTTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee.

DATES: June 25, 1997, 8:30 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 7H46, 300 E Street , S.W., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aeronautics and Space Transportation Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202) 358–4729).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Overview
—University Strategy Update
—Space Transportation Technology
—Subcommittee Reports
—Aviation Safety Research Initiative
—Update of Enterprise Planning Activity
—Vehicle Systems Analysis Results

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: May 15, 1997.

Leslie M. Nolan,

Advisory Committee Management Officer.

[FR Doc. 97–13360 Filed 5–20–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 97–068]

NASA Advisory Council (NAC), Technology and Commercialization Advisory Committee (TCAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

DATES: June 3, 1997, 8:30 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–7, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory M. Reck, Code AF, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4700).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Discuss Organizational Changes at NASA
—Review Status of Office of Chief Technologist
—Discuss Key Technologies for NASA
—Discuss Action Plan for TCAC

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: May 15, 1997.

Leslie M. Nolan,

Advisory Committee Management Office, National Aeronautics and Space Administration.

[FR Doc. 97–13358 Filed 5–20–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL INSTITUTE FOR LITERACY

Proposed OMB Information Collection Activities; Comment Request

AGENCY: National Institute for Literacy.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), this notice announces an information Collection Request (ICR) by the NIFL. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before June 20, 1997.

ADDRESSES: Submit written comments to: National Institute for Literacy, 800 Connecticut Avenue, NW, Suite 200, Washington, DC 20006, Attention: Susan Green. Copies of the complete ICR and accompanying appendixes may be obtained from the above address or by contacting Susan Green at (202) 632–1509. Comments may also be submitted electronically by sending electronic mail (e-mail) to: Sgreen@nifl.gov.

All written comments will be available for public inspection from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

SUPPLEMENTARY INFORMATION:

Title

''Learning Disabilities Training and Dissemination Project.'' Application for Award to States or other entities to develop and implement methods for incorporating the products of the National Adult Literacy and Learning Disabilities (ALLD) Center into existing literacy service delivery systems for the purpose of improving services to adults with learning disabilities.

Abstract

The National Literacy Act of 1991 established the National Institute for Literacy and required that the Institute conduct basic and applied research and demonstration on literacy; collect and disseminate information to Federal, State and local entities with respect to literacy; and improve and expand the system for delivery of literacy services. In 1993, the NIFL funded the National ALLD Center to enhance awareness about the implications of learning disabilities for literacy efforts, and to develop tools and resources to assist literacy providers better identify and serve adults with learning disabilities. The NIFL will consider applications from states and other entities to develop and implement methods for incorporating the products and services of the National ALLD Center into existing literacy service delivery systems for the purpose of improving services to adults with learning disabilities. Evaluations to determine successful applicants will be made by a panel of literacy experts using the published criteria. The Institute will use this information to make a minimum of one cooperative agreement award for a period of up to 2 years.

Burden Statement: The burden for this collection of information is estimated at 40 hours per response. This estimate includes the time needed to review instructions, complete the form, and review the collection of information.

Respondents: Governors of States and Trust Territories, State Departments of Adult Education, other public and non-profit entities.

Estimated Number of Respondents: 20.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 152 hours.

Frequency of Collection: One time. Send comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden to: Susan Green, National Institute for Literacy, 800 Connecticut Ave., NW, Suite 200, Washington, DC 20006.

Request for Comments: NIFL solicits comments to: (i) 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. (ii) Evaluate the accuracy of the agency's estimates of the burden of the proposed collection of information. (iii) Enhance the quality, utility, and clarity of the information to be collected. (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies of other forms of information technology, e.g., permitting electronic submission of responses.

Dated: May 8, 1997.

Andrew J. Hartman,

Director, NIFL.

[FR Doc. 97–13244 Filed 5–20–97; 8:45 am]

BILLING CODE 6055–01–M

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 10:00 a.m., immediately following case adjudicatory matters, Tuesday, April 22, 1997.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices).

MATTERS TO BE CONSIDERED: Personnel.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated, Washington, DC, May 16, 1997.

By direction of the Board:

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 97–13493 Filed 5–19–97; 12:27 pm]

BILLING CODE 7545–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; 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: Advisory Committee for Education and Human Resources (1119).

Date and Time: June 2–3, 1997, from 8:00 am to 5:00 pm.

Place: Room 830, NSF, 4210 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Terry Woodin, Division of Undergraduate Education, Rm. 830, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1670.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the NSF Collaboratives for Excellence in Teacher Preparation Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the

Government in the Sunshine Act would be improperly disclosed.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–13243 Filed 5–20–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–454 and STN 50–455]

Commonwealth Edison Company; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Commonwealth Edison Company (ComEd, the licensee) to withdraw its August 19, 1996, application for proposed amendments to Facility Operating License Nos. NPF–37 and NPF–66 for the Byron Station, Units Nos. 1 and 2, located in Ogle County, Illinois.

The proposed amendments would have revised the Byron, Unit 1, Technical Specifications (TS) to extend, for one additional operating cycle, the steam generator tube voltage-based repair criteria presently in the Byron, Unit 1, TSs.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on February 12, 1997 (62 FR 6570). However, by letter dated April 29, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated August 19, 1996, and the licensee's letter dated April 29, 1997, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Pubic Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Byron, Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Dated at Rockville, Maryland, this 14th day of May 1997.

For the Nuclear Regulatory Commission.

M.D. Lynch,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–13273 Filed 5–20–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

In the Matter of Consumers Power Company; (Palisades Plant); Exemption

I

Consumers Power Company (CPCo, the licensee) is the holder of Facility Operating License No. DPR–20 which authorizes operation of the Palisades Plant. The Palisades facility is a pressurized water reactor located at the licensee's site in Van Buren County, Michigan. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

In 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' paragraph (a), in part, states that ''The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

In 10 CFR 73.55(d), ''Access Requirements,'' paragraph (1), It specifies that ''The licensee shall control all points of personnel and vehicle access into a protected area.'' Also, 10 CFR 73.55(d)(5) requires that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' It further states that individuals not employed by the licensee (e.g., contractors) may be authorized access to protected areas without escort provided that the individual, ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *.''

The licensee proposes to implement an alternative unescorted access system that would eliminate the need to issue and retrieve picture badges at the entrance/exit location to the protected area and would allow all individuals, including contractors, to keep their picture badges in their possession when departing the Palisades site.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. According to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have the same ''high assurance'' objective, that the proposed measures meet the general performance requirements of the regulation, and that the overall level of system performance provides protection against radiological sabotage equivalent to that which would be provided by the regulation.

Currently, unescorted access into the protected area of Palisades for both employee and contractor personnel is controlled through the use of picture badges. Positive identification of personnel who are authorized and request access into the protected area is established by security personnel making a visual comparison of the individual requesting access and that individual's picture badge. In accordance with 10 CFR 73.55(d)(5), contractor personnel are not allowed to take their picture badges off site. In addition, in accordance with the plant's physical security plan, the licensee's employees are also not allowed to take their picture badges off site.

The proposed system will require that all individuals with authorized unescorted access have the physical characteristics of their hand (hand geometry) registered with their picture badge number in a computerized access control system. Therefore, all authorized individuals must not only have their picture badge to gain access to the protected area, but must also have their hand geometry confirmed. All individuals, including contractors, who have authorized unescorted access into the protected area will be allowed to keep their picture badges in their possession when departing the Palisades site.

All other access processes, including search function capability and access revocation, will remain the same. A security officer responsible for access control will continue to be positioned within a bullet-resistant structure. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to the protected area without escorts. Badges will continue to be displayed by

all individuals while inside the protected area.

It should also be noted that the proposed system is only for individuals with authorized unescorted access and will not be used for those individuals requiring escorts.

Sandia National Laboratories conducted testing that demonstrated that the hand geometry equipment possesses strong performance characteristics. Details of the testing performed are in the Sandia report, ''A Performance Evaluation of Biometric Identification Devices,'' SAND91—0276 UC—906 Unlimited Release, June 1991. Based on the Sandia report and the licensee's experience using the current photo picture identification system, the false acceptance rate for the proposed hand geometry system would be at least equivalent to that of the current system. To assure that the proposed system will continue to meet the general performance requirements of 10 CFR 73.55(d)(5), the licensee will implement a process for testing the system. The site security plan will also be revised to allow implementation of the hand geometry system and to allow employees and contractors with unescorted access to keep their picture badges in their possession when leaving the Palisades site.

IV

For the foregoing reasons, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet the same high assurance objective and the general performance requirements of 10 CFR 73.55. In addition, the staff has determined that the overall level of the proposed system's performance will provide protection against radiological sabotage equivalent to that which is provided by the current system in accordance with 10 CFR 73.55.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the following exemption:

The requirement of 10 CFR 73.55(d)(5) that individuals who have been granted unescorted access and are not employed by the licensee are to return their picture badges upon exit from the protected area is no longer necessary. Thus, these individuals may keep their picture badges in their possession upon leaving the Palisades site. The exemption is granted on the condition that the licensee implements a system testing process and revises the site security plan as discussed in Section III above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (62 FR 22975).

Dated at Rockville, Maryland, this 14th day of May, 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–13275 Filed 5–20–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Southern Nuclear Operating Company, Inc., et al.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Southern Nuclear Operating Company, Inc. (the licensee) to withdraw its April 22, 1996, application for proposed amendment to Facility Operating License No. NPF–8 for the Joseph M. Farley Nuclear Plant, Unit 2, located in Houston County, Alabama.

The proposed amendment would have revised the facility technical specifications pertaining to implementation of an L* repair criteria for the FNP Unit 2 steam generators.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 3, 1996 (61 FR 34899). However, by letter dated May 5, 1997, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 22, 1996, as supplemented by letters dated May 3, July 25, August 30, September 16 and 19, and October 8, 1996, and the licensee's letter dated May 5, 1997, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 14th day of May 1997.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–13272 Filed 5–20–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–334]

Duquesne Light Company; Ohio Edison Company; Pennsylvania Power Company; Beaver Valley Power Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–66, issued to Duquesne Light Company, et al. (the licensee), for operation of the Beaver Valley Power Station, Unit No. 1 (BVPS–1), located in Beaver County, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would revise BVPS–1 Technical Specification (TS) 5.3.1.2 to allow storage of new reactor fuel in the new fuel storage racks with an enrichment not to exceed a nominal 5.0 weight percent Uranium-235.

The proposed amendment is in accordance with the licensee's application for dated February 27, 1997.

The Need for the Proposed Action

The proposed changes to the Facility Operating License are needed so that the licensee can store and use more highly enriched fuel, and thereby provide the flexibility of extending the fuel irradiation/burnup to permit longer fuel cycles (i.e., longer continuous period of operation). Use of the proposed more highly enriched fuels would require the use of fewer fuel assemblies over the remaining life of the plant.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit storage of new fuel in the new fuel storage racks and subsequent use of fuel enriched with Uranium-235 (U–235) to a nominal 5.0 weight percent (5.0 weight percent plus a tolerance of 0.05 weight percent). The safety considerations associated with the storage of and subsequent reactor

operation with higher enriched fuel have been evaluated by the NRC staff. Based on its review, the NRC staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse affect on the probability of any accident. The higher enrichment, with increased fuel burnup, may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that the proposed action would result in no significant radiological environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation,'' dated July 7, 1988. This assessment was published in connection with an Environmental Assessment related to the Shearon Harris Nuclear Plant, Unit 1, which was published in the **Federal Register** (53 FR 30355) on August 11, 1988, as corrected on August 24, 1988 (53 FR 32322). As indicated therein, the environmental cost contribution of an increase in the fuel enrichment of up to 5.0 weight percent Uranium-235 and irradiation limits of up to 60,000 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 increase at BVPS–1 given that the proposal involves 5% and burnup of less than 60,000 GWD/MT. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any other alternative would have equal or greater environmental impacts and need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impact of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

The action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Beaver Valley Power Station, Unit No. 1 dated July 1973.

Agencies and Persons Consulted

In accordance with its stated policy, on April 14, 1997, the staff consulted with the Pennsylvania State official, Mr. Michael P. Murphy of the Bureau of Radiation Protection, Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for amendment dated February 27, 1997, that 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—5- room located at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Rockville, Maryland, this 15th day of May 1997.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–13271 Filed 5–20–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications And Amendments To Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 28, 1997 through May 9, 1997. The last biweekly notice was published on May 7, 1997 (62 FR 24984).

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 June 20, 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.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: December 27, 1996

Description of amendments request: The proposed amendments would revise Technical Specification (TS) 3.6.1.3.b (peak containment internal pressure for the design basis loss of coolant accident (LOCA)) from 49.5 psig to 52 psig and the associated Bases Sections. The proposed amendments reflect values based on a revised LOCA analysis. The LOCA analysis was revised to reflect the maximum primary containment internal pressure specified in other TS. This maximum primary containment internal pressure was not used in the original LOCA analysis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff's analysis 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 amendment increases the peak calculated containment internal pressure for the design basis LOCA from 49.5 psig to 52 psig. The maximum pressure occurs following an accident. Since the pressure is a consequence of an accident, this change has no effect on the probability of accident initiation, and therefore, the probability of an accident previously evaluated has not been significantly increased.

The consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR) will not be significantly increased. UFSAR Section 15.6.5.6, ''Analyses of Effects and Consequences - Large Break LOCA,'' states that ''It is assumed that the containment leaks at the maximum rates allowed by the Technical Specifications, i.e., 0.1 vol. %/d for the first 24 hours and half of that rate thereafter.'' The dose calculation assumes that under accident conditions, the release of radionuclides to the containment is instantaneously homogenized within the containment free air volume. This results in a constant radioactivity per volume (curies/cc) regardless of containment internal pressure. Since radioactivity is assumed to be homogenized in the containment free air volume, the volume percent leaked per day is equivalent to the fraction of radioactivity which leaks from the containment per day. Therefore, the increase in the peak calculated containment internal pressure for the design basis LOCA from 49.5 psig to 52 psig does not effect dose consequences associated with the design basis LOCA. The proposed change to the peak calculated containment internal pressure for the design basis LOCA does not impact the radiological consequences of a LOCA as analyzed in Chapters 6 and 15 of the UFSAR.

The proposed amendments do not, therefore 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 possibility of a new or different kind of accident has not been created. The increase in the peak calculated containment internal pressure for the design basis LOCA does not affect the design or operation of existing plant equipment, nor involve new plant equipment. 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.

The containment design pressure is 60 psig. The acceptance criteria in NRC Standard Review Plan, Section 6.2.1.1.A, ''PWR Dry Containments, including Subatmospheric Containments,'' requires in Item 11.1 that ''the containment design pressure should provide at least a 10% margin above the accepted peak calculated containment pressure following a loss of coolant accident.'' For PVNGS to maintain the required margin, this requires that the peak calculated containment internal pressure for the design basis LOCA would be no higher than 54 psig. Since the revised peak calculated containment internal pressure for the design basis LOCA remains below the 54 psig limit, the proposed change does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration. Local Public Document Room location: Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: William H. Bateman

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: April 9, 1997

Description of amendment request: The proposed change will extend the existing Technical Specifications surveillance intervals from 7 days to 14 days for the Channel Functional Tests for the refueling equipment interlocks and for the one-rod-out interlock. The change will permit, under most normal circumstances, a complete offloading, shuffling, or onloading of fuel, without the need to halt refueling activities solely for the performance of these surveillance tests.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change extends the Technical Specification Surveillance Requirement (SR) Frequency for the Channel Functional Tests (CFTs) for the refueling equipment interlocks and the one-rod-out interlock. The refueling equipment interlocks and the one-rod-out interlock are explicitly assumed in the analysis of the control rod removal error during refueling. Criticality, and therefore, subsequent prompt reactivity excursions are prevented during the insertion of fuel, provided all control rods are fully inserted during the fuel insertion. The refueling equipment interlocks accomplish this by preventing loading fuel into the core with any control rod withdrawn, or by preventing withdrawal of a control rod from the core during fuel loading. The one-rod-out interlock and adequate shutdown margin prevent criticality by preventing withdrawal of more than one control rod. With one control rod withdrawn, the core will remain subcritical, thereby preventing any prompt critical excursion. The proposed change does not change the function of any of these interlocks, only the frequency at which the interlocks undergo channel functional testing. A review of past test performances has demonstrated that extending the Frequency from 7 days to 14 days will not result in any increase in test failures. Therefore, the proposed change will not change the ability of these interlocks to perform when required. Based on this, there can be no significant increase in the radiological consequences of any previously evaluated accident since all interlocks will continue to perform as presently analyzed. Therefore, the proposed change does not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change extends the SR Frequency for performing CFTs for refueling equipment and one-rod-out interlocks. This change does not result in a modification to the plant or to the manner in which the plant is operated. The testing will still demonstrated the operability of the interlocks. Thus, the interlocks will still function in the same manner. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety.

The proposed change extends the SR Frequency for performing CFTs on the refueling equipment and one-rod-out interlocks from 7 days to 14 days. Reviews of past test results indicate that extending the test interval to 14 days will not result in an increase in the number of CFT failures for these interlocks. This implies that extending the SR Frequency to 14 days will not result in an increase in the amount of time the instrument channels will be inoperable when required to be operable. Since the proposed change does not result in any reduction in the amount of time the instrument channels will be operable, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: April 21, 1997

Description of amendment request: The proposed amendment would revise the Technical Specifications that would (1) reduce the volume of borated water in the core flood tank (CFT) from 1040 cubic feet to 940 cubic feet, (2) reduce the surveillance acceptance criteria for the emergency core cooling system (ECCS) high pressure injection (HPI) flowrate from 500 gallons per minute (GPM) to 431 GPM, and (3) revise a limiting condition for operation (LCO) which currently allows either local or remote manual operability of decay heat valves to delete the local manual valve operability option.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

1. State the basis for the determination that the proposed activity will not represent a significant increase in the probability of occurrence or consequences of an accident.

This TSCR [Technical Specification change request] revises the LCO for RB [reactor building] sump isolation valves, the LCO for the core flood tank level, and the surveillance requirement for HPI injection flow rate. The Core Flood and HPI systems are not actuated until an event occurs. The CFT level used in the new accident analysis is that level required to be maintained in the CFT throughout operation (i.e., pre-accident). The new CFT level does not prevent safe accident mitigation.

Likewise, the reduced HPI flow cannot cause an event to occur, and while such flow results in less injection to the RCS [reactor coolant system] when actuated, this is acceptable as demonstrated in the LOCA [loss-of-coolant accident] analyses. Changes to the LCO for the RB sump isolation valves support the safety analysis assumptions. The action statements related to both the level requirement and flow rates remain unchanged by this request. The function, operation and surveillance intervals for the isolation valves (DH-V-6A/B), the CFT level and HPI injection system are not changed by this request. Therefore, this activity does not increase the probability of occurrence of an accident, previously evaluated in the SAR [safety analysis report].

Reducing the CFT nominal volume and reducing the HPI flow acceptance criteria in the Technical Specifications will not increase the radiological consequences of any LOCA evaluated in the SAR. The results of analyses using the reduced CFT inventory and reduced HPI flow demonstrate that the consequences are within the limits of 10 CFR 50.46. No fuel failure in addition to that assumed in the evaluation of the dose consequences would occur. Therefore, the radiological consequences would not increase.

The editorial changes described above have no impact upon the probability of occurrence or consequences of an accident.

2. State the basis for the determination that the activity does not create the possibility of an accident of a new or different type than any previously analyzed in the SAR.

This TSCR revises the LCO for RB sump isolation valves, the LCO for the core flood tank level, and the surveillance requirement for HPI injection flow rate. This change will not adversely affect the capability of the emergency core cooling systems in the event of a LOCA. The function, operation and surveillance intervals for both the borated water level in the core flood tank, and ECCS systems are not changed by this request and no physical changes or modifications are being made to Core Flood and HPI system boundaries. Therefore, because there are no configuration changes this activity does not create the possibility of an accident or malfunction of a different type than previously analyzed in the SAR.

In addition, the editorial changes described above do not create the possibility of an accident of a new or different type than any previously analyzed in the SAR.

3. State the basis for the determination that the margin of safety is not significantly reduced.

This TSCR revises the LCO for RB sump isolation valves, the LCO for the core flood tank level, and the surveillance requirement for HPI injection flow rate. No system configuration changes (hardware modifications) will be made to implement the change request, upon approval of the license amendment. The action requirements for these technical specifications have not changed. Actions to be taken if operability requirements are not met include plant shutdown under certain conditions.

Furthermore, impact upon the margin to safety is limited because the results of the LOCA analyses demonstrate that the 10 CFR 50.46 acceptance criteria are met, specifically: the PCT [peak clad temperature] limit and the core-wide oxidation limit of 1 percent of the fuel cladding, as identified in the Technical Specification bases. Hence the margin of safety as defined in the bases of any technical specification is not significantly reduced or impacted by the implementation of this change request, or the editorial changes described above.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

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

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: April 22, 1997

Description of amendment request: The proposed amendments would revise Technical Specifications 5.3.1, Fuel Assemblies, and 6.9.1.6, Core Operating Limits Report, to allow use of

an alternate zirconium-based fuel cladding, ZIRLO, and limited substitution of fuel rods by ZIRLO filler rods.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The methodologies used in the accident analyses remain unchanged. With the exception of a reduction in the heat flux hot channel factor (F_Q), the operating limits will not be changed. The proposed changes will not result in any equipment exceeding its design limits under normal or accident conditions. The calculated doses presented in the UFSAR will remain bounding. Other than the changes to the fuel assemblies, there are no physical changes to the plant associated with this Technical Specification change. A reload safety analysis will continue to be performed for each cycle to demonstrate compliance with fuel safety design bases.

VANTAGE+ fuel assemblies with ZIRLO clad fuel rods meet the same fuel assembly and fuel rod design bases as VANTAGE 5H fuel assemblies. Since the original design criteria are met, the ZIRLO clad fuel rods will not be an initiator for any new accident. The clad material is similar in chemical composition and has similar physical and mechanical properties to Zircaloy. Thus, cladding integrity is maintained and the structural integrity of the fuel assembly is not affected. ZIRLO cladding improves corrosion performance and dimensional stability. No concerns have been identified with respect to the mixed core of Zircaloy and ZIRLO clad assemblies. Also, no concerns have been identified with respect to the use of an individual assembly containing a combination of Zircaloy and ZIRLO clad fuel rods.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in any equipment exceeding its design limits under normal or accident conditions. All design and performance criteria continue to be met and no new failure mechanisms have been identified. The ZIRLO cladding material offers improved corrosion resistance and structural integrity.

The proposed changes do not affect the operation of any system or component in the plant. The safety functions of the related structures, systems, or components are not changed, nor is the reliability of any structure, system, or component reduced. The changes do not affect the manner by which the facility is operated and do not change any facility design feature, structure, or system. No new or different type of equipment will be installed. Since there is no other change to the facility or operating procedures, and the safety functions and reliability of structures, systems, or components are not affected, the proposed changes do not create the possibility of a new accident or an accident different from those previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

Use of ZIRLO fuel cladding material will not result in any equipment exceeding its design or licensing bases limits under normal or accident conditions. VANTAGE 5H reload design and safety analysis limits are unchanged. For each cycle reload core, the fuel assemblies will be evaluated using NRC-approved reload design methods, including consideration of the core physics analysis peaking factors and core average linear heat rate effects. ZIRLO fuel assemblies will be assessed for use under conditions consistent with normal core operating conditions allowed in the Technical Specifications. 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 standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036-5869

NRC Project Director: William D. Beckner

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: March 26, 1997

Description of amendment request: The proposed amendment would modify the technical specifications (TSs) which describe the control room ventilation system autostart functions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, the proposed changes do not involve a significant hazards consideration if the proposed changes do not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated;

2. create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. involve a significant reduction in a margin of safety.

Criterion 1

These changes are administrative in nature, intended to correct and clarify the TS description of control room ventilation system operation. Because no changes to plant operations or physical changes to the plant will occur due to these changes, they do not involve a significant increase in the probability or consequences of a previously evaluated accident.

Criterion 2

Because no changes to plant operations or the physical plant will occur due to these changes, the changes will not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3

These changes are administrative in nature, intended to correct and clarify the present TSs with regard to system operation descriptions. Thus, the changes involve no reduction in margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: March 26, 1997

Description of amendment request: The proposed amendment would make three administrative changes to the technical specifications (TSs) dealing with a grammatical error, an inadvertently deleted frequency requirement, and a footnote which is no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, the proposed changes do not involve a significant hazards consideration if the proposed changes do not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated;

2. create the possibility of a new or different kind of accident from any accident previously evaluated; or

3. involve a significant reduction in a margin of safety.

Criterion 1

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes to the TSs do not affect the assumptions, parameters, or results of any UFSAR accident analysis. The firstproposed change, ''A'', is a grammatical correction; the second proposed change, ''B'', reformats the page, and returns a frequency requirement that, while inadvertently deleted from the TSs, was still met via procedure; the third proposed change deletes a footnote which is no longer applicable. As described in Section II.C. of licensee's application request dated March 26, 1997, a load drop analysis is not required for single-failure-proof load blocks.

Criterion 2

The proposed changes do not involve physical changes to the plant or changes in plant operating configuration. The changes described above are essentially administrative in nature, and thus do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The proposed changes are essentially administrative in nature. Per NUREG-0612, single-failure-proof cranes are exempt from the requirements of a load drop analysis; therefore, there is no 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: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Gail H. Marcus

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 12, 1997

Description of amendment request: The proposed amendment would change position titles in certain Seabrook Station, Unit No. 1 (Seabrook) Appendix A Technical Specifications (TS) to reflect the present Seabrook organization, would clarify the approval authority for the Station Qualified Reviewer Program, and would correct a reference. Specifically, the proposed amendment would:

1. Change TS 6.0, ''Administrative Controls'' to reflect accurately the current North Atlantic Management organization, their assigned duties as previously reported to the NRC, and their proper titles,

2. Corrects an incorrect reference in TS 6.4.3.9.b., and

3. Clarifies the term ''Manager'' in TS 6.4.2, ''Station Qualified Reviewer Program.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probabilityor consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes are merely administrative or editorial in nature. The proposed changes involve position title changes to reflect current organization, correct an incorrect reference, and provide clarification with regard to the organizational level for certain approvals. The changes do not affect the manner by which the facility is operated and do not change any facility design feature or equipment. Since there is no change to the facility or operating procedures, there is no effect upon the probability or consequences of any accident previously analyzed.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated or involve any changes to equipment or features which affect the operational characteristics of the facility. Therefore, no new accident initiator is introduced that could cause a new or different kind of accident from those previously evaluated. The proposed changes merely involve position title changes to reflect current organization, correct an incorrect reference, and provide clarification with regard to the organizational level for certain approvals.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.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: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esquire, Northeast Utilities Service Company, Post Office Box 270, Hartford CT 06141-0270.

NRC Project Director: Patrick D. Milano

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 15, 1997

Description of amendment request: The proposed amendment would make changes to Technical Specification Sections 4.3.3.6 and 4.6.4.1, which require that the hydrogen monitors be periodically tested. Specifically, the changes to the surveillances would increase the testing of the monitor's hydrogen sensor, correct inconsistencies between surveillances, and make changes to the Bases of the surveillances.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO [Northeast Nuclear Energy Company] has reviewed the proposed changes in accordance with 10CFR 50.92 and has concluded that the change does not involve a significant hazards consideration (SHC). The bases for this conclusion is that the three criteria of 10CFR 50.92(c) are not satisfied. The proposed changes do not involve [an] SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specification Surveillances 4.3.3.6 and 4.6.4.1 to perform a hydrogen sensor calibration test once per 92 days on a staggered test basis is consistent with the design and operation of the hydrogen monitor system. The hydrogen monitoring system is independent of the reactor coolant system boundary, has no effect on the probability of occurrence of a loss of coolant accident and performing surveillance testing does not significantly increase the probability of an accident previously evaluated.

The proposed change to Technical Specification Surveillances 4.3.3.6 and 4.6.4.1 to perform a hydrogen sensor calibration test will not require the opening of a containment isolation valve and conducting surveillance testing does not significantly increase the consequence of an accident previously evaluated.

The proposed change to Technical Specification Surveillances 4.3.3.6 and 4.6.4.1 to change the channel check frequency from once per 31 days to once per 12 hours on Table 4.3-7 Item 18, add an analog channel operational test to surveillance 4.3.3.6.2 and make editorial changes to the surveillances and bases sections are considered administrative changes. Administrative changes do not involve a significant increase in the

probability or consequence of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to Technical Specification Surveillances 4.3.3.6 and 4.6.4.1 to perform a hydrogen sensor calibration test do not add any new equipment to the plant and do not affect the way any system important to safety is operated either in normal or under accident conditions.

The proposed changes to Technical Specification Surveillances 4.3.3.6 and 4.6.4.1 to change the channel check frequency from once per 31 days to once per 12 hours on Table 4.3-7 Item 18, add an analog channel operational test to surveillance 4.3.3.6.2 and make editorial changes to the surveillances and bases sections are considered administrative changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes to Technical Specification Surveillances 4.3.3.6 and 4.6.4.1 to perform a hydrogen sensor calibration test will provide assurance of expected instrument performance under accident conditions and performing surveillance testing do not involve a significant reduction in a margin of safety.

The proposed changes to Technical Specification Surveillances 4.3.3.6 and 4.6.4.1 to change the channel check frequency from once per 31 days to once per 12 hours on Table 4.3-7 Item 18, add an analog channel operational test to surveillance 4.3.3.6.2 and make editorial changes to the surveillances and bases sections are considered administrative changes. Administrative changes do not involve a significant reduction in a margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed changes do not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270NRC Deputy Director: Phillip F. McKee

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: April 17, 1997

Description of amendment request: The proposed amendment would modify Technical Specification 3.7.14 by clarifying the actions to be taken when an area temperature exceeds its temperature limit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO [Northeast Nuclear Energy Company] has reviewed the proposed change in accordance with 10CFR 50.92 and has concluded that the change does not involve a significant hazards consideration (SHC). The bases for this conclusion is that the three criteria of 10CFR 50.92(c) are not satisfied. The proposed change does not involve [an] SHC because the change would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed change to Technical Specification 3.7.14 will establish allowable tolerances to ensure that the applicable systems, structures and components are operated within their existing design bases.

Technical Specification 3.7.14 specifies the actions to be taken when an area temperature exceeds its temperature limit. The action taken is dependent on the amount and duration by which the area temperature exceeds its limit. Actions are currently specified for exceeding area temperature by less than 20 °F and greater than 20°F for periods less than 8 hours and for periods greater than 8 hours. This change clarifies the actions to be taken when the temperature exceeds its limit by exactly 20 °F or exceed its limit for exactly 8 hours. It is concluded that this change is a clarification only in that it causes the more conservative actions to be taken at greater than or equal to 20 °F, or at greater than or equal to 8 hours.

The proposed change, therefore, does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Establishment of tolerances and clarification of actions at a specific value does not [ ] change the operation of any system, structure or component during normal or accident conditions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The change is administrative in nature in that it resolves a discontinuity in the range of temperatures and in the duration period above the applicable limit for which action is required. Establishment of tolerances ensures parameters are set and maintained within allowable design constraints. Clarification of applicability for the required actions ensures that action is proscribed for all possible conditions thereby not permitting operation outside of allowable design.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed change does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141-0270

NRC Deputy Director: Phillip F. McKee

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 31, 1997

Description of amendment request: The proposed amendment would change Technical Specification (TS) Sections 3/4.6.5.3.2, ''Filtration, Recirculation, and Ventilation System (FRVS),'' to (1) provide an appropriate Limiting Condition for Operation and ACTION Statement that reflects the design basis for the FRVS, and (2) clarify the manner in which FRVS testing is performed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or

consequences of an accident previously evaluated.

The proposed TS revisions involve: 1) no hardware changes; 2) no significant changes to the operation of any systems or components in normal or accident operating conditions; and 3) no changes to existing structures, systems or components. Therefore these changes will not increase the probability of an accident previously evaluated. Since the plant systems associated with these proposed changes will still be capable of: 1) meeting all applicable design basis requirements; and 2) retaining the capability to mitigate the consequences of accidents described in the HC [Hope Creek] UFSAR [Updated Final Safety Analysis Report], the proposed changes were determined to be justified. As a result, these changes will not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes contained in this submittal will not adversely impact the operation of any safety related component or equipment. Since the proposed changes involve: 1) no hardware changes; 2) no significant changes to the operation of any systems or components; and 3) no changes to existing structures, systems or components, there can be no impact on the potential occurrence of any accident. Furthermore, there is no change in plant testing proposed in this change request which could initiate an event. Therefore, these changes 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 proposed changes for the TS related to the Filtration Recirculation and Ventilation System (FRVS) Recirculation Subsystem provide consistency between the Hope Creek TS and post-accident descriptions of the FRVS Recirculation Subsystem operation already contained in the UFSAR and reflected in the Hope Creek SER [Safety Evaluation Report] (NUREG-1048). PSE&G [Public Service Electric & Gas] believes that the proposed allowed outage times and ACTION Statements for the FRVS Recirculation Subsystem: 1) will ensure that the required minimum number of FRVS recirculation units will be available to mitigate the consequences of accidents described in the UFSAR; and 2) provide appropriate direction and time requirements for placing the unit in a safe shutdown condition when the system is degraded. Therefore, the changes contained in this request do not result in a significant reduction in a margin of safety.

The revisions to Surveillance Requirement 4.6.5.3.2.b provide an accurate and clearly defined basis for performing this surveillance test. The proposed changes implement PSE&G—s existing interpretation of the TS requirements and therefore do not alter the manner in which this surveillance test is currently being performed. PSE&G has concluded that this surveillance test method appropriately tests the FRVS Recirculation Subsystem. Since the FRVS recirculation units will continue to be tested with the heaters: 1) operable; and 2) set at the demand necessary to ''reduce the buildup of moisture,'' PSE&G believes that the proposed changes to clarify the TS are justified. Therefore, the changes contained in this request do 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 amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 31, 1997

Description of amendment request: The proposed amendment would provide changes to Technical Specification (TS) 2.1.2, ''THERMAL POWER, High Pressure and High Flow,'' ACTION a.1.c for TS 3.4.1.1, ''Recirculation Loops,'' and the Bases for TS 2.1, ''Safety Limits.'' These changes are being made to implement an appropriately conservative Safety Limit Minimum Critical Power Ratio (SLMCPR) for all Hope Creek core and fuel designs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The derivation of the revised SLMCPRs for Hope Creek for incorporation into the Technical Specifications, and its use to determine cycle—specific thermal limits, have been performed using NRC approved methods. Additionally, interim implementing procedures which 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.

There are no significant increases in the consequences of an accident previously evaluated. The basis of the MCPR [Minimum Critical Power Ratio] Safety Limit is to ensure that no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPRs preserve the existing margin to transition boiling and the probability of fuel damage is not increased. Therefore, the proposed change does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes contained in this submittal result from an analysis of the Cycle 7 core reload using the same fuel types as previous cycles. 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 Technical Specification changes do not create the possibility of a new or different kind of accident, from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety as defined in the Technical Specification bases will remain the same. The new SLMCPRs are 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 MCPR Safety Limit 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. Therefore, the proposed Technical Specification changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: John F. Stolz

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: April 11, 1997

Description of amendment request: The proposed amendments would change Technical Specification 3.6.2.3, ''Containment Cooling System'' and the

associated bases. The changes would increase the cooling water flow rate for the 31-day and 18-month surveillances and specify that during the 31-day surveillance the fans are started and operated in low speed. The changes are being proposed to ensure that the cooling water flow rate and the fan speed being verified are representative of the Containment Fan Cooling Unit post-accident mode of operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes ensure that the fan speed and cooling water flow rate being verified is representative of the fan speed and cooling water flow rate required for the post-accident mode of operation. The proposed changes affect an accident mitigation system and are being made to assure that the system is being tested in its accident mitigation mode. There are no new accident initiators created by the proposed changes. Therefore, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

The proposed changes provide assurance that the CFCUs will be capable of maintaining peak containment pressure and temperature within design limits by verifying the proper post-accident cooling water flow to the CFCUs. No physical changes to the plant result from the proposed changes to the surveillance requirements. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes for demonstrating operability of the CFCUs in the low speed mode, with the required post-accident cooling water flow rate, are consistent with the existing safety function of the CFCUs following a Design Basis Accident (DBA). The proposed changes to the surveillance requirements do not involve any physical changes to plant components, systems or structures, or the operation of the CFCUs in the post-accident mode. 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 changes to the surveillance requirements provide assurance that the CFCUs will perform their intended design function of maintaining peak containment pressure and temperature consistent with the current design basis following a DBA by verifying the proper post-accident cooling water flow to the CFCUs. Since the high speed and low speed control circuits are independent and there are separate breakers used to energize the CFCU motors in high and low speed, the CFCUs would be capable of starting in the low speed mode following a DBA although the high speed breaker and control circuit may not be available.

Verification of the post-accident flow rate during the 31 day surveillance also ensures that the required supporting system, Service Water, is available for normal operation. To ensure that the containment air temperature is maintained below the initial temperature condition assumed in the accident analysis during normal operation, Technical Specification 3/4.6.1.5 requires verification of the average containment temperature once every 24 hours in Modes 1 through 4.

The proposed changes to the CFCU surveillance requirements do not affect the ability of the CFCUs to perform their normal and post-accident functions. These proposed changes ensure the verification of the proper post-accident service water flow rate to the CFCUs. 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: Salem Free Public library, 112 West Broadway, Salem, NJ 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

NRC Project Director: John F. Stolz

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: March 26, 1997

Description of amendment request: The proposed amendment would revise the Virgil C. Summer Nuclear Station Technical Specifications to change the definition of "Core Alteration." The proposed definition will not consider movement of components other than fuel, sources, or reactivity control components. These proposed changes are technically consistent with the requirements of NUREG-1431, Revision 1, "Westinghouse Standard Technical Specifications," issued on April 7, 1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes revise the definition of Core Alteration to be the movement of fuel, sources, or reactivity control components; and to delete "or manipulation" and "conservative" from the text. These changes do not affect the probability of an accident previously evaluated. The movement of components other than fuel, sources, and reactivity control components, within the reactor vessel is enveloped by the analyzed event. Deleting the words "or manipulation" and "conservative" from the definition of Core Alteration are administrative changes and also do not impact initiators of analyzed events. The only component assumed to be an initiator of an analyzed event is dropping an irradiated fuel assembly, however, fuel is still part of the definition. Furthermore, a fuel handling accident is minimized by administrative controls and physical limitations imposed on fuel handling operations. The movement of components other than fuel, sources, and reactivity control components within the reactor vessel will be controlled under plant administrative controls. This change has no effect on the boron dilution event because when boron concentration is below limits, Core Alterations are restricted to maintain the maximum Shutdown Margin. Movement of other components will have a negligible impact on core reactivity.

The changes to the definition of Core Alteration do not increase the consequences of an accident previously evaluated. The accident analysis assumes an irradiated fuel assembly is dropped with the consequences well within the 10 CFR 100 limits. The dropping of other components was not addressed in the plant safety analyses, however, the analysis of the dropped fuel assembly encompasses other components. The consequences of a boron dilution event are not addressed because Core Alterations are not allowed when the boron concentration is below limits. These changes do not affect the mitigation capabilities of any component or system nor do they affect the assumptions relative to the mitigation of accidents or transients. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes revise the definition of Core Alteration to be the movement of fuel, sources, or reactivity control components; and to delete "or manipulation" and "conservative" from the text. The change does not involve a

significant change in the design or operation of the plant. The changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed), or new or unusual operator actions. The changes will not impose any new or different requirements or eliminate any existing requirements. The definition of Core Alteration is being clarified and made consistent with NUREG-1431, Rev. 1. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

The proposed changes revise the definition of Core Alteration to be the movement of fuel, sources, or reactivity control components; and to delete ''or manipulation'' and ''conservative'' from the text. The safety analysis assumes an irradiated fuel assembly is dropped. Controls for handling components other than fuel, sources, or reactivity control components within the reactor vessel are in plant administrative controls. The effect of a boron dilution event on Shutdown Margin is limited due to the requirement to suspend Core Alterations. The movement of other components have a negligible impact on core reactivity. No change is being proposed, in the applicability of the definition, to the movement of components which factor in the design basis analyses (fuel handling accident). Deleting the terms ''or manipulation'' and ''conservative'' from the definition of Core Alteration results in a clarification to the definition that does not technically alter the meaning. Therefore, the change does not involve a significant reduction in a margin of safety

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: F. Mark Reinhart, Acting

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: March 26, 1997

Description of amendment request: The proposed amendment would revise the Virgil C. Summer Nuclear Station Technical Specifications (TS), Surveillance Requirement (SR) 4.5.2.a, to add (1) the charging/high head safety injection (HHSI) pump cross connect valves, and (2) the charging pump mini-flow header isolation valve, to the SR valve list. The proposed change is an administrative change to meet the recommendations of NRC Branch Technical Position (BTP) EICSB 18, which establishes the acceptability of disconnecting power to electrical components of fluid systems as one means of designing against a single failure that might cause an undesirable component action. TS SR 4.5.2.a includes a list of the required positions of manually-controlled, electrically-operated valves, and identify those valves to which the requirements for removal of electrical power is applied in order to satisfy the single failure criterion.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change adds the charging/HHSI pump cross connect valves and the charging pump mini-flow header isolation valve to the ECCS [Emergency Core Cooling System] Subsystems - T_{avg} (greater than or equal to) 350°F Technical Specification Surveillance Requirement. This Surveillance Requirement will require the valves to be verified open with power to the valve operators removed once per 12 hours. ... The charging/HHSI pump cross connect valves and the charging mini-flow header isolation valve are not initiators of any analyzed event. ... The charging pump/HHSI pump cross connect valves are being modified to meet the recommendations of the BTP (including this Technical Specification change). The charging pump mini-flow header isolation valve meets the requirements of the BTP except it is not located in the Technical Specifications. ... Requiring the valves to be verified open with power removed from the valve operator once per 12 hours does not affect the assumptions relative to the mitigation of accidents or transients. This requirement ensures that the valves are in a position with power removed so that a failure will not occur that will affect the mitigation of an accident. These valves are required to be open during a LOCA [loss-of-coolant accident]. This change will ensure that the valves are open with power removed. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does this change create the possibility of a new or different kind of accident from any accident previously evaluated?

...This change does not involve a significant change in the design or operation of the plant. This change is a result of BTP EICSB 18. The charging/HHSI pump cross connect valves are being modified to have power lockout capability, redundant indication on the main control board, and be included in the Technical Specifications. This will ensure that a single failure (hot short in the controls of either valve) will not cause spurious actuation of the valves during the injection or recirculation phase of the ECCS. The charging pump mini-flow header isolation valve meets the requirements of the BTP except it is not located in the Technical Specifications. The charging/HHSI pump cross connect valves and charging pump mini-flow header isolation valve are required to remain open during a LOCA. This modification will ensure that the valves will remain open during an accident which requires ECCS operation. The proposed change will not introduce any new accident initiators. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in margin of safety?

...The ECCS is required to operate upon receipt of a safety injection signal. The charging/HHSI pump cross connect valves and the charging pump mini-flow header isolation valve are required to remain open during ECCS operation. However, a single failure may cause a spurious actuation (closure) of the valves which could hinder HHSI flow. The modification to the charging/HHSI cross connect valves (the addition of a power lockout feature and redundant position indication) and the added TS Surveillance Requirement will eliminate this failure scenario and ensure the valves remain in their safety function position (open). The charging pump mini-flow header isolation valves already contain a power lockout feature and redundant position indication. These valves are being added to the Technical Specifications to meet the requirements of BTP EICSB 18. Therefore, the change does not involve a significant reduction in a margin of safety[.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Project Director: Mark Reinhart, Acting

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 13, 1997 (TS 97-01)

Brief description of amendments: The amendments change the Technical Specifications by raising the allowable U-235 enrichment, as specified in Section 5.6.1.2, of fuel stored in the new fuel pit storage racks from 4.5 to 5.0 weight percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the allowed enrichment of new fuel stored in the new fuel storage racks does not change the criticality potential with the proposed fuel arrangement requirements for the storage racks. The potential k_{eff} values are maintained the same as the current TS [Technical Specification] requirements. In addition, the storage racks are not modified, other than the locations that cannot be filled with fuel assemblies, and the processes for loading and unloading fuel in these racks and the controls for these racks remain the same. Since the k_{eff} limits and operating processes are unchanged by the proposed revision, there is no increase in the probability of an accident previously evaluated. Likewise, there is no impact to the consequences of an accident or increase in offsite dose limits as a result of the proposed TS change because the criticality requirements are unchanged and plant equipment will be utilized and operated without change considering the fuel storage location limits imposed by this request.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As stated above, the plant equipment and operating processes will not be altered by the proposed TS change with the exception of allowed fuel storage locations in the new fuel storage racks. The limitations on acceptable fuel storage locations in the racks ensure that the k_{eff} limits are maintained at the same limits as currently required. TVA has not postulated a criticality event at SQN for the spent or new fuel storage locations because the design of the associated storage racks, potential moderation, and TS allowable fuel enrichments do not support the potential for this condition. Considering the physical barriers that will be installed and verified to be in place prior to initial loading of fuel in the new fuel storage racks, the new fuel storage rack physical limitations will continue to ensure that criticality events are not credible for the proposed change. Therefore, this change does not create the potential for a new accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed TS change maintains the existing requirements for criticality by utilizing limited storage locations in the new fuel pit storage racks. There is no change to operating practices associated with the use and control of these racks except for the storage limitations. For these reasons, there will be no reduction in the margin of safety as a result of implementing the proposed TS change.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 4, 1997 (TSCR 197)

Description of amendment request: The proposed amendments revise TS 15.6, ''Administrative Controls,'' and 15.7, ''Radiological Effluent Technical Specifications,'' to change the corporate officer responsible for nuclear operations from ''Vice President-Nuclear Power,'' to ''Chief Nuclear Officer,'' and to require that the position be an officer of the company.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative only. There are no physical changes to the facility or its operation. All Limiting Conditions of Operation, Limiting Safety System Settings, and Safety Limits specified in the Technical Specification remain unchanged. Additionally, there are no changes in the Quality Assurance Program, Emergency Plan, Security Plan, and Operator Training and Requalification Program. Therefore, an increase in the probability or consequences of an accident previously evaluated cannot occur.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative only. No changes to the facility structures, systems and components or their operation will result. The design and design basis of the facility remain unchanged. The plant safety analyses remain current and accurate. No new or different failure mechanisms are introduced. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not introduced.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not involve a significant reduction in a margin of safety.

The proposed amendments are administrative only. All safety margins established through the design and facility license including the Technical Specifications remain unchanged. In addition, the proposed amendments ensure continued emphasis and assignment of responsibility for overall nuclear safety. Therefore, all margins of safety are maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Power Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 14, 1997 (TSCR 198)

Description of amendment request: The proposed amendments revise TS 15.3.1, ''Reactor Coolant System,'' to require both reactor coolant pumps to be operable when the reactor is critical and to require that the reactor be placed in hot shutdown within 6 hours if one or both reactor coolant pumps cease operating. This revision eliminates the current provision which allows single pump operation up to 3.5 percent power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The amendments proposed eliminate an inconsistency in the Technical Specifications in a conservative manner. The proposed changes ensure that required protection functions remain operable in all required modes of operation. Since the protection functions remain operable in accordance with existing Technical Specification requirements and serve to mitigate analyzed events no increase in the consequences of a previously analyzed accident results. The protective functions are not accident initiators and are maintained and tested in accordance with existing Technical Specification requirements, therefore the probability of a previously analyzed accident cannot increase. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed changes does not result in an increase in probability or consequences of a previously analyzed accident.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendments restore consistency within the Technical Specifications thus ensuring the protections functions remain operable as required and the units are operated within the bounds of the existing safety analyses. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not involve a significant reduction in a margin of safety.

Margins of safety are defined by the bounds of the design and in the safety analyses performed for the Point Beach Nuclear Plant. The proposed amendments eliminate an inconsistency within the Technical Specifications and ensure the plant will respond as analyzed in the Safety Analyses. There is no physical change in the facility or operation. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not involve a reduction in safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 21, 1997, as supplemented by letter dated April 15, 1997.

Description of amendment request: This amendment request proposes to revise the technical specifications associated with the inspection of the reactor coolant flywheel to provide an exception to the recommendations of Regulatory Guide 1.14, Revision 1, ''Reactor Coolant Pump Flywheel Integrity.'' The proposed exception would allow either an ultrasonic volumetric examination or surface examination to be performed at approximately 10-year intervals. In addition, a correction of the issuance date of a referenced regulatory guide is included.

This amendment would also allow delaying the complete flywheel examination for the ''D'' reactor coolant pump until the Fall 1997 outage.

This supersedes the staff's proposed no significant hazards consideration determination evaluation for the requested changes that was published on January 2, 1997 (62 FR 133).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety function of the RCP [reactor coolant pump] flywheels is to provide a coastdown period during which the RCPs would continue to provide reactor coolant flow to the reactor after loss of power to the RCPs. The maximum loading on the RCP flywheel results from overspeed following a LOCA [loss-of-coolant accident]. The maximum obtainable speed in the event of a LOCA was predicted to be less than 1500 rpm. Therefore, a peak LOCA speed of 1500 rpm is used in the evaluation of RCP flywheel integrity in WCAP-14535. This integrity evaluation shows a very high flaw tolerance for the flywheels. The proposed change does not affect that evaluation. Reduced coastdown times due to a single failed flywheel is bounded by the locked rotor analysis, therefore, it would not place the plant in an unanalyzed condition. Therefore, these 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 amendment does not create the possibility of a new or different kind of accident from any previously evaluated since the proposed amendments will not change the physical plant or the modes of plant operation defined in the facility operating license. No new failure mode is introduced due to the proposed change, since the proposed change does not involve the addition or modification of equipment, nor do they alter the design or operation of affected plant systems, structures, or components.

3. The proposed change does not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are basically unchanged by the proposed amendment. The results of the flywheel inspections performed have identified no indications affecting flywheel integrity. As identified in WCAP-14535, detailed stress analysis as well as risk analysis have been completed with the results indicating that there would be no change in the probability of failure for RCP flywheels if all inspections were eliminated.

Therefore these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on 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 locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

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.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois

Date of amendment request: January 24, 1997.

Description of amendment request: The application proposed to change the Technical Specifications to reflect the installation of new reactor water level instrumentation for the Emergency Core Cooling System actuation.

Date of publication of individual notice in **Federal Register:** April 18, 1997 (62 FR 19143).Expiration date of individual notice: May 19, 1997

Local Public Document Room location: The Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, located in Grundy County, Illinois

Date of amendment request: March 5, 1997.

Description of amendment request: The application proposed to remove the Main Steam Line Radiation Monitor High scram and the Main Steam Line Tunnel Radiation High input to the Main Steam Line Isolation function requirement from the Technical Specifications (TS). The proposed changes are a result of a Boiling Water Reactor Owners Group initiative to minimize inadvertent scrams and Main Steam Isolation Valve closure due to erroneous radiation monitor actuation.

Date of publication of individual notice in **Federal Register:** April 18, 1997 (62 FR 19141).Expiration date of individual notice: May 19, 1997

Local Public Document Room location: The Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois

Date of amendment request: April 21, 1997

Description of amendment request: The amendments would reflect a change in the Quad Cities, Unit 2, Minimum Critical Power Ratio (MCPR) Safety Limit and add the Siemens Power Corporation (SPC) methodology for application of the Advanced Nuclear Fuel for Boiling Water Reactors (ANFB) Critical Power Correlation to coresident General Electric fuel for Quad Cities, Unit 2, Cycle 15, to Technical Specification Section 6.9.A.6.b.

Date of publication of individual notice in **Federal Register:** April 30, 1997 (62 FR 23499)

Expiration date of individual notice: May 30, 1997

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: March 31, 1997

Brief description of amendment: The proposed amendment would revise the Ginna Station Improved Technical Specifications to reflect a planned modification to the spent fuel pool storage racks.Date of publication of individual notice in **Federal Register:** April 30, 1997 (62 FR 23502)

Expiration date of individual notice: May 30, 1997

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

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.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: March 5, 1997, as supplemented May 9, 1997. The May 9, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

Brief description of amendments: The amendments incorporate a new Technical Specification for instrumentation associated with automatic isolation of a pathway for release of non-condensible gases from the main condenser.

Date of issuance: May 9, 1997

Effective date: May 9, 1997

Amendment Nos.: 185 and 216

Facility Operating License Nos. DPR-71 and DPR-62: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1997 (62 FR 17224) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 9, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

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 application for amendment: March 14, 1997

Brief description of amendment: The amendment extends the allowed outage time for its refueling water storage tank

while performing surveillance testing of its reactor coolant system pressure isolation valves (Surveillance 4.4.6.2.2).

Date of issuance: May 6, 1997

Effective date: May 6, 1997

Amendment No. 71

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** March 26, 1997 (62 FR 14459) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 6, 1997.No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

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 application for amendment: April 18, 1997, as supplemented April 29, 1997.

Brief description of amendment: The amendment approves the modification to the protection circuitry for emergency diesel generators. The associated Safety Evaluation delineates the staff's review and findings that the modification and related Final Safety Analysis Report (FSAR) changes are acceptable.

Date of issuance: May 8, 1997

Effective date: May 8, 1997

Amendment No. 72

Facility Operating License No. NPF-63. The amendment approves modification to the protection circuitry for emergency diesel generators and related FSAR changes.

Date of initial notice and proposed no significant hazards consideration in **Federal Register:** (62 FR 19818 dated April 23, 1997). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 23, 1997, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration is contained in a Safety Evaluation dated

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: November 4, 1996, as supplemented on December 4, 1996, and March 20, 1997.

Brief description of amendments: The amendments revise the technical specifications (TS) to permit the removal of containment tendon sheathing filler grease in up to 35 tendons for Byron, Unit 1, and Braidwood, Unit 1, in advance of the steam generator replacement outages. The grease will be removed approximately 6 months prior to the respective steam generator replacement outages. In addition, in Amendment No. 80 issued on April 16, 1997, the title in Braidwood's TS 6.9.1.7 was unintentionally left uncorrected. The corrected page is included in this amendment.

Date of issuance: May 6, 1997

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 89, 89 and 81, 81

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 15, 1997 (62 FR 2186). The March 20, 1997, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 6, 1997No significant hazards consideration comments received: No

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.

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: February 17, 1997, as supplemented February 27, March 12, March 26, April 2, and April 10, 1997

Brief description of amendments: The amendments evaluate the Unreviewed Safety Question (USQ) associated with the use of containment pressure to compensate for the deficiency in Net Positive Suction Head (NPSH) for the Emergency Core Cooling System (ECCS) pumps following a Design Basis Accident (DBA). In the resolution of the USQ, the licensee changed the Updated Final Safety Analysis Report (UFSAR) in the following areas:

1. containment analysis,
2. decay heat model,
3. increase in the suppression pool temperature and the effect on other associated systems following a DBA, and
4. ECCS heat exchanger duty and containment cooling service water (CCSW) system flow.In addition, the proposed amendments would change the Technical Specification (TS) allowable water temperature limits for the suppression chamber and the ultimate heat sink from less than or equal to 75 degrees Fahrenheit to less than or equal to 95 degrees Fahrenheit. The original licensing basis water temperature for both the suppression chamber and ultimate heat sink was 95 degrees Fahrenheit. Both values were changed in the TS in Amendment Nos. 152 and 147 for Dresden, Units 2 and 3, respectively, issued on January 28, 1997. The amendments to lower the ultimate heat sink and suppression pool temperature limits in the TS was in response to the resolution of a USQ associated with the operation of Dresden, Units 2 and 3, following the discovery of a calculational error concerning the head loss across the ECCS suction strainers. The proposed amendments will return both units to normal operating conditions allowing for continued power operations when the ultimate heat sink temperature goes above 75 degrees Fahrenheit during warm weather.

Date of issuance: April 30, 1997

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 157; 152.

Facility Operating License Nos. DPR-19 and DPR-25: The amendments revised the licenses, TS and USFAR.

Date of initial notice in **Federal Register:** February 27, 1997 (62 FR 8998). The February 27, March 12, March 26, April 2 and April 10, 1997, submittals provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated

April 30, 1997No significant hazards consideration comments received: No

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: February 17, 1997

Brief description of amendments: The amendments would change the Technical Specifications by increasing the load test values of the emergency diesel generators in Surveillance Requirement 4.9.A.8.h from between 2625 kW and 2750 kW to 2730 kW and 2860 kW.

Date of issuance: May 1, 1997

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 176 and 172

Facility Operating License Nos. DPR-29 and DPR-30: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 26, 1997 (62 FR 14460). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 1, 1997.No significant hazards consideration comments received: No

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: August 22, 1996, as supplemented March 28, 1997.

Brief description of amendment: The amendment revises Technical Specification Sections 3.3 and 4.5 to allow the deletion of the requirement to utilize sodium hydroxide (NaOH) as an additive in the post-accident containment spray system.

Date of issuance: April 23, 1997

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 191

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1997 (62 FR 4345) The March 28, 1997, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the amendment request as originally noticed. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 23, 1997No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 7, 1997, as supplemented by letters dated April 2, 10, 16, 22, and 28, 1997

Brief description of amendments: The amendment revise Section 3/4.7.1.6 of the Technical Specifications to require four instead of three steam generator pressure operated relief valves operable.

Date of issuance: April 29, 1997

Effective date: As of the date of issuance to be implemented within 30 days. Implementation of the amendments include the incorporation in the Updated Final Safety Analysis Report (UFSAR) of the changes to the description of the facility as set forth in the licensee's application dated March 7, 1997, as supplemented by letters dated April 2, 10, 16, 22, and 28, 1997, as evaluated in the staff's Safety Evaluation dated April 29, 1997.

Amendment Nos.: 159 and 151

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications and License Conditions.

Date of initial notice in **Federal Register:** March 13, 1997 (62 FR 11931) The April 2, 10, 16, 22, and 28, 1997, letters provided additional and clarifying information that did not change the scope of the March 7, 1997, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 1997.No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: September 30, 1994, as supplemented by letters dated September 18, 1995, and March 15, April 29, May 16, September 23, and October 28, 1996, and January 16, April 22, and May 2, 1997

Brief description of amendments: The amendments revise the Technical Specifications related to the replacement of the Westinghouse Model ''D'' type preheat steam generators with feedring steam generators designed by Babcock and Wilcox International.

Date of issuance: May 5, 1997

Effective date: As of the date of issuance to be implemented within 30 days for Unit 1; and effective upon replacement of the steam generators for Unit 2.

Amendment Nos.: 175 and 157

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 8, 1995 (60 FR 56366) The March 15, April 29, May 16, September 23, and October 28, 1996, and January 16, April 22, and May 2, 1997, letters provided clarifying information that did not change the scope of the September 30, 1994, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 5, 1997.No significant hazards consideration comments received: No

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina 28223-0001

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 15, 1996

Brief description of amendment: The amemdment revises the technical specifications to allow the performance of the 24-hour emergency diesel generator maintenance run while the unit is in either Mode 1 or Mode 2.

Date of issuance: May 5, 1997

Effective date: May 5, 1997

Amendment No.: 94

Facility Operating License No. NPF-47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 2, 1997 (62 FR 127) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 1997.No significant hazards consideration comments received. No.

Local Public Document Room location: Government Documents

Department, Louisiana State University, Baton Rouge, LA 70803

Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 11, 1997

Brief description of amendment: The amendment would permit steam generator tubes with intergranular corrosion indications that may exceed through-wall limits to remain in service until the next refueling outage.

Date of issuance: May 7, 1997

Effective date: May 7, 1997

Amendment No.: 189

Facility Operating License No. DPR-51: Amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (62 FR 19628 dated April 22, 1997). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 22, 1997, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated May 7, 1997.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: December 19, 1996

Brief description of amendment: The proposed changes revise Technical Specification Table 4.3-1 to change the power calibration requirements for the linear power level, the Core Protection Calculator (CPC) delta T power and the CPC nuclear power signals between 15 and 80 percent power to allow more conservative settings.

Date of issuance May 5, 1997

Effective date: May 5, 1997, to be implemented within 30 days.

Amendment No.: 183

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 29, 1997 (62 FR 4348) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 5, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: November 12, 1996, as supplemented November 27, 1996 (TSCR 224)

Brief description of amendment: The amendment updates the technical specifications to reflect the implementation of the revised 10 CFR Part 20, "Standards for Protection Against Radiation."

Date of issuance : May 8, 1997

Date of issuance : May 8, 1997

Effective date: May 8, 1997, with full implementation within 30 days.

Amendment No.: 191

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 18, 1996 (61 FR 66708). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 8, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: February 7, 1997

Brief description of amendment: The amendment revises TS 3.12, "Station Service Power," to require both 115 kV power circuits to be operable when the reactor is critical and to limit or restrict the time during which Maine Yankee may continue to operate if one or both of the 115 kV power circuits become inoperable.

Date of issuance May 2, 1997

Effective date: May 2, 1997, to be implemented within 30 days.

Amendment No.: 157

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications and/or License.

Date of initial notice in **Federal Register:** February 26, 1997 (FR 8799) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 1997No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request February 24, 1997, as supplemented by letters dated March 13, April 11, 23, and 29, 1997

Brief description of amendments: The amendments change the Technical Specification surveillance requirements for the Control Room Emergency Filtration System, the Penetration Room Filtration System, and the Containment Purge Exhaust Filter System.

Date of issuance May 1, 1997

Effective date: As of the date of issuance to be implemented within 30 days

Amendment Nos.: 127 and 121

Facility Operating License Nos. NPF-2 and NPF-8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** March 6, 1997 (62 FR 10294) The March 13, April 11, 23, and 29, 1997, letters provided clarifying information that did not change the scope of the February 24, 1997, application and the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 1, 1997.No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendments: June 21, 1996, supplemented February 7, 1997 (TS 377)

Brief description of amendments: The amendments provide a new minimum critical power ratio safety limit to replace a nonconservative value. Technical Specification Bases are also updated to clarify usage of the residual heat removal system supplemental spent fuel pool cooling mode.

Date of issuance : May 7, 1997

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: 247 and 207

Facility Operating License Nos. DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 7, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public library, 405 E. South Street, Athens, Alabama 35611

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: September 4, 1996, as supplemented February 3, 1997. The February 3, 1997 submittal provided clarifying information only, and did not change the proposed no significant hazards consideration determination.

Brief description of amendments: The amendments revise the license and technical specifications (TS) to permit the insertion of four demonstration fuel assemblies into the reactor core of either North Anna 1 or North Anna 2, as described in the licensee's submittal. The four lead test assemblies, fabricated by Framatome Cogema Fuels, will incorporate several advanced design features, including: a debris filter bottom nozzle, mid-span mixing grids, a floating top end grid, a quick disconnect top nozzle, and use of advanced zirconium alloys for fuel assembly structural tubing and for fuel rod cladding.

Date of issuance May 9, 1997

Effective date: May 9, 1997

Amendment Nos.: 204 and 185

Facility Operating License Nos. NPF-4 and NPF-7. These amendments revised the License and Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1996 (61 FR 64396) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 9, 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 Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: July 18, 1996, as supplemented on January 29, 1997.

Brief description of amendment: The amendment revises Kewaunee Nuclear Power Plant Technical Specification 3.8, ''Refueling,'' and its associated Basis, by allowing the containment personnel air lock doors to remain open during refueling operations.

Date of issuance May 7, 1997

Effective date: May 7, 1997

Amendment No.: 132

Facility Operating License No. DPR-43: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1996 (61 FR 42285). The January 29, 1997, submittal provided supplemental information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 7, 1997.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311-7001.

Notice Of Issuance Of Amendments To Facility Operating LicensesAnd Final Determination Of No Significant Hazards ConsiderationAnd 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 June 20, 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 No. 50-265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of application for amendment: April 29, 1997.

Brief description of amendment: The proposed amendment modifies Section 5.3.A, ''Design Features'' of the Technical Specifications (TS) to reflect the ATRIUM-9B fuel design and would include various Siemens Power Corporation (SPC) topical reports in TS Section 6.9.A.6, ''Core Operating Limits Report,'' to reflect mechanical design criteria for this fuel and topical reports required for operation. This change would allow this fuel to be loaded into the core only under Operational Modes 3 (Hot Shutdown), 4 (Cold Shutdown), and 5 (Refueling) and does not permit startup or power operation using the ATRIUM-9B fuel.

Date of issuance May 2, 1997

Effective date: May 2, 1997

Amendment No.: 173

Facility Operating License No. DPR-30: The amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: No.The Commission's related evaluation of the amendment, finding of emergency circumstances and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 2, 1997.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

NRC Project Director: Robert A. Capra

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 2, 1997, as superseded May 5, 1997.

Brief description of amendment: The proposed amendment relocates and revises the requirements for the control of the setpoint for the Standby Liquid Control system relief valves. The requirements would be relocated from Section 4.4.A.2.a and Bases Section 3.4.A of the Cooper Technical Specifications to the Updated Safety Analysis Report and the Inservice Testing Augmented Testing Program.

Date of issuance May 9, 1997

Effective date: May 9, 1997

Amendment No.: 176

Facility Operating License No. DPR-46: The amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: No.The Commission's related evaluation of the amendment, finding of emergency circumstances and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 9, 1997.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602-0499

NRC Project Director: William D. Beckner

Dated at Rockville, Maryland, this 14th day of May, 1997.

For the Nuclear Regulatory Commission

Elinor G. Adensam,

Deputy Director, Division of Reactor Projects III/IV, Office of Reactor Regulation

[Doc. 97-13190 Filed 5-20-97; 8:45 am]

BILLING CODE 7590-01-F

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

The meeting of the Railroad Retirement Board which was to be held at 9:00 a.m. on May 21, 1997, at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611, has been changed to 3:00 p.m. on May 21, 1997. The agenda for this meeting was published at 62 FR 26342 on May 13, 1997.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: May 16, 1997.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 97–13423 Filed 5–20–97; 10:09 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22663; 812–9440]

AIM Equity Funds, Inc., et. al.; Notice of Application

May 15, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: AIM Equity Funds, Inc., AIM Funds Group, AIM International Funds, Inc., AIM Investment Securities Funds, AIM Summit Fund, Inc., AIM Tax-Exempt Funds, Inc., AIM Variable Insurance Funds, Inc., Short-Term Investments Co., Short-Term Investments Trust, and Tax-Free Investments Co. (the ''Funds''), AIM Advisors, Inc., and AIM Capital Management, Inc. (the ''Advisers,'' and collectively with the Funds, the ''Applicants'').

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a) and 17(e) of the Act.

SUMMARY OF APPLICATION: Applicants request an order amending a prior order (the ''Prior Order'') under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(e) of the Act.[1] The requested order would let each Fund engage in purchase and sale transactions limited to U.S. government securities, certain other high quality debt securities and reverse repurchase agreements with banks whose affiliated relationship with the Funds arises solely out of their five percent or greater share interest in a Fund, except that no Fund will engage in such transactions with a bank that controls or advises that Fund. Any order also would let each Fund compensate an affiliated bank for acting as agent in executing certain securities transactions.

FILING DATES: The application was filed on January 19, 1995, and amended on July 18, 1995, January 16, 1996, and April 21, 1997. Counsel for applicants has agreed to file another amendment during the notice period, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on June 9, 1997, and should be accompanied by proof of service on the 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 reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Eleven Greenway Plaza, Suite 1919, Houston, Texas 77046.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. All of the Funds are registered under the Act as open-end management investment companies. AIM Advisors, Inc., a wholly-owned subsidiary of AIM Management Group Inc., a privately-owned corporation, serves as investment adviser for each Fund. AIM Capital Management, Inc., a wholly-owned subsidiary of AIM Advisors, Inc., serves as sub-adviser to three series (''Portfolios'') of one of the Funds, AIM Equity Inc. Both Advisers are registered investment advisers under the Investment Advisers Act of 1940.

2. The Prior Order granted the Funds or certain of their predecessors a conditional exemption, pursuant to sections 6(c) and 17(b) of the Act, from the provisions of section 17(a)(1), section 17(a)(2) and section 17(e) thereof. The Prior Order applies to transactions by the Funds with a bank, bank holding company or affiliate thereof which may be deemed to be an

[1] Investment Company Act Release Nos. 14220 (Oct. 31, 1984) (notice) and 14259 (Nov. 30, 1984) (order).

''affiliated person'' of a Fund solely by reason of such entity's owning, controlling, or holding with power to vote five percent or more of the outstanding voting securities of any of the Funds (''Affiliated Bank''). The transactions covered by the Prior Order include those for repurchase agreements, short-term money market obligations issued by one of the 50 largest United States banks measured by deposits, tax-exempt obligations and general brokerage services by banks acting as agent, subject to the limitations on compensation in section 17(e)(2).

3. Applicants request an order to amend and supersede the Prior Order. The requested order would apply to all existing and future Portfolios of the Funds and all existing and future investment companies and their portfolios for which either or both of the Advisers, or any entity controlling, controlled by or under common control with the Advisers, serves in the future as investment adviser or principal underwriter. The requested order would modify the Prior Order by redefining the term ''Affiliated Bank'' and by expanding the classes of transactions covered under the Prior Order.

4. Applicants propose to redefine the term ''Affiliated Bank'' as (a) any bank, bank holding company or affiliate thereof that is an affiliated person of a Fund or Portfolio *solely* because the bank, bank holding company or affiliate thereof owns, controls, or holds with power to vote five percent or more of the outstanding voting securities of the Fund or Portfolio, and (b) any ''affiliated person,'' as defined in section 2(a)(3) of the Act, of such bank, bank holding company or affiliate thereof; *provided, however,* that the term shall not include any person that exercises a controlling influence over that Fund or Portfolio. ''Controlling influence'' shall be deemed to include, but is not limited to, directly or indirectly owning, controlling, or holding with power to vote more than 25% of the outstanding voting securities of that Fund or Portfolio. Furthermore, an Affiliated Bank will not include a bank or an affiliated person of a bank that is an investment adviser to such Fund or Portfolio.

5. Applicants propose to expand the classes of transactions covered under the Prior Order to include transactions in U.S. government securities, reverse repurchase agreements, and ''Qualified Securities,'' as defined in Condition B.1. below, which meet specified credit quality standards. The term ''Qualified Securities'' will include any ''Eligible Security,'' as defined in rule 2a–7 under the Act, and, in addition, municipal securities, repurchase agreements, bank obligations, synthetic municipal securities and commercial paper.

6. Applicants anticipate that a number of banks which are now or may become Affiliated Banks will also be primary dealers or affiliates of primary dealers, in U.S. government securities. Applicants submit that the government securities market is highly competitive, and that removing one or more primary dealers from the Funds' market may deprive a Fund of the most favorable price and execution when the dealer has the best overall offer for a transaction. In addition, applicants represent that it is extremely important that the Funds have the ability to obtain quotations from any primary dealer to ensure that they are obtaining the most favorable price or to maximize the liquidity of their portfolios.

7. Applicants submit that commercial banks are important members of the municipal securities dealer community and are frequently involved in providing credit support for industrial development notes and similar municipal instruments. According to applicants, the need for portfolio management flexibility, particularly as it relates to liquidity and credit standards, is especially significant for municipal securities money market Portfolios advised by the Advisers. In addition, a Fund's inability to purchase municipal securities from an Affiliated Bank could be materially aggravated where the Affiliated Bank was the leading municipal securities underwriter in a particular region of the country.

8. Applicants anticipate that Affiliated Banks will constitute an increasingly attractive source of repurchase agreements and, therefore, propose to enter into repurchase agreement transactions with them. Applicants also propose to engage in transactions with Affiliated Banks involving other bank obligations, such as certificates of deposit and bankers' acceptances. Applicants submit that the elimination of Affiliated Banks from the universe of banks with which transactions in repurchase agreements and other bank obligations can be effected would necessarily increase the risk of credit exposure of the Funds and would likewise necessarily decrease their degree of diversification.

9. Applicants submit that many banks or their affiliates that are now or may become Affiliated Banks are market makers for synthetic municipal securities or may provide credit enhancements for such instruments, such as demand features or liquidity arrangements. According to applicants, synthetic municipal securities have been developed in part to address the limited supply of short-term tax-exempt securities. Applicants represent that the Funds will only purchase synthetic municipal securities from Affiliated Banks that have conditional puts exercisable at par value within seven days. In addition, the Funds will know the specific long-term ''core securities'' underlying such synthetic securities. As a result, there will be no ambiguity in determining par value, and applicants will not need to use matrix pricing. The credit risk on such synthetic securities will be equivalent to the credit risks on the core securities.

10. Applicants propose to engage in transactions involving commercial paper with Affiliated Banks acting as issuers or principal distributors. Applicants represent that it is often advantageous for a Fund to purchase such commercial paper directly from the issuer or the distributing bank rather than on the secondary market where the price of such instrument may be higher. Furthermore, applicants believe that an increasing number of banks, bank holding companies or their affiliates which are now or may become Affiliated Banks will be issuers or principal distributors of commercial paper that would be highly suitable for many of the Funds' Portfolios.

11. Applicants also anticipate that a number of banks or their affiliates that would be suitable counterparties for transactions in reverse repurchase agreements (''reverse repos'') will become Affiliated Banks. Reverse repos are primarily used for temporary liquidity purposes, such as to obtain cash to meet redemption requests. The Advisers will solicit quoted rates on reverse repos from potential counterparties with which the Funds have pre-existing arrangements who the Advisers believe will offer reverse repo rates at least as favorable as rates on comparable reverse repos available from other potential counterparties. At the time a Fund enters into a reverse repo, the Fund will segregate assets with a custodian, consisting of cash, U.S. government securities, or other appropriate high-grade debt securities have a value not less than the value of the proceeds received plus accrued interest. The segregated assets will be marked-to-market daily and additional assets will be segregated on any day in which the assets fall below the repurchase price (plus accrued interest).

12. Applicants also propose to compensate Affiliated Banks where they have acted as agent in transactions in U.S. government securities and Qualified Securities. Applicants propose to compensate Affiliated banks

for such services within the limits of section 17(e)(2).

Legal Analysis

1. Sections 17(a)(1) and 17(a)(2) of the Act prohibit affiliated persons of the Funds or Portfolios, or affiliated persons of such affiliated persons, acting as principal, knowingly to sell or purchase any securities to or from the Funds or Portfolios. Section 2(a)(3)(A) defines an ''affiliated person'' of another person as any person who owns, controls, or holds with power to vote, five percent or more of the outstanding voting securities of such other person. By virtue of section 2(a)(3)(A), if a bank, bank holding company or an affiliate thereof owns, controls or holds with power to vote five percent or more of the outstanding voting shares of one of the Funds, that bank, bank holding company or affiliate thereof is an affiliated person of the Fund. Furthermore, any affiliated person of such bank, bank holding company or affiliate thereof with such a five percent share interest in a Fund may be deemed to be an affiliated person of an affiliated person of that Fund.

2. Section 2(a)(3)(C) defines an ''affiliated person'' of another person as any person who controls, is controlled by or is under common control with such other person. By virtue of section 2(a)(3)(C), any person who is an affiliated person of a registered investment company also may be deemed to be an affiliated person of an affiliated person of each other registered investment company having a common investment adviser, or investment advisers which are affiliated persons of each other, or common directors or common officers, or a combination of the foregoing, because such investment companies may be deemed to be under common control. Accordingly, a bank, bank holding company, or affiliated person thereof that is deemed to be an Affiliated Bank in respect of one Fund by virtue of its ownership of such Fund's shares may be deemed to be an affiliated person of an affiliated person of all the other Funds.

3. The foregoing provisions could prohibit all of the funds and their Portfolios from engaging in any principal transaction in securities, including reverse repos,[2] with a wide range of banks, bank holding companies and their affiliates. Applicants anticipate that, as a result of accelerating marketing efforts towards institutional investors, as well as ongoing consolidation in the banking industry and the increasing complexity of bank holding company capital structures, the number of such affiliations likely will increase.

4. Section 17(b) provides that the SEC may exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the transaction is consistent with the policy of the investment company concerned and the general purposes of the Act. Section 6(c) provides that the SEC may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act, if such exemption is appropriate in the public interest and consistent with the protection of investors and the purposes of the Act.[3]

5. Section 17(e)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person thereof, from accepting any compensation for acting as an agent for the investment company unless it is in the course of such person's business as an underwriter or broker. Section 17(e)(2) provides that an affiliated person of a registered investment company, or an affiliated person thereof, acting as a broker for the registered investment company may accept a limited commission or fee for executing such transactions. Because banks are specifically excluded from the definition of broker in section 2(a)(6), however, they are unable to accept compensation under section 17(e) for acting as an agent for an affiliated investment company.

6. Applicants believe that the disqualification of even a few major banks from the universe of securities issuers and dealers with whom the Funds may do business may have a noticeable impact on portfolio management flexibility. For synthetic municipal securities, which are traded or sold by only a small number of banks, elimination of even one bank could substantially impair the Funds' ability to negotiate the most favorable terms for such transactions. Furthermore, the nature of the affiliation of Affiliated Banks makes it highly improbable that the proposed transactions could ever be negotiated on other than an arm's-length basis. It is unlikely that a bank could ever influence the transactions of a Portfolio of which it is a five percent holder, much less the transactions of another Portfolio in which it holds no shares whatsoever.

7. Applicants represent that there is no express or implied understanding between the Applicants and any bank, bank holding company or any affiliate thereof which is (or may become) an Affiliated Bank that the Applicants will cause the Funds to enter into purchase or sale transactions in U.S. government securities, Qualified Securities or reverse repurchase agreements with such entity. Moreover, Applicants will give no preference to any Affiliated Bank in effecting transactions between a Fund and an Affiliated Bank because such bank, bank holding company or affiliate thereof is (or may become) an Affiliated Bank or because the customers of such Affiliated Bank purchase shares of any of the Funds.

8. Applicants will maintain contemporaneous records, in accordance with Condition A.2. below, with respect to the solicitation of competitive prices and interest rates for each transaction in order to verify that the terms and price (or the terms and interest rates with respect to reverse repos) are at least equal to the best available terms and price or terms and interest rates offered by other sources. For each transaction, such records will include, among other things, the information or material upon which the determination to engage in the transaction was made, including: (a) The names of other sources offering prices or interest rates; (b) the material terms and prices or terms and interest rates, as applicable, offered by each of the sources; and (c) the date and time the information was solicited and received from the sources.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

A. General Conditions

1. The board of directors of each of the Funds, including a majority of the directors who are not interested persons of the Fund: (a) Will adopt procedures that are reasonably designed to provide that the conditions set forth below have been complied with; (b) will make and approve from time to time such changes

[2] When securities are segregated by a Fund as collateral for a reverse repo, then arguably such securities have been sold. *See Rubin* v. *United States,* 449 U.S. 424 (1981). Consequently, the Funds may be prohibited by sections 17(a)(1) and 17(a)(2) from engaging in such transactions with Affiliated Banks. Alternatively, reverse repo transactions may be prohibited by sections 17(a)(1) and 17(a)(2) because they consist of a sale and subsequent repurchase of portfolio securities by a Fund.

[3] Applicants seek relief under section 6(c) as well as section 17(b) because section 17(b) could be interpreted as giving the SEC power to exempt only a single transaction from section 17(a), as opposed to a class of transactions.

to the procedures as are deemed necessary; and (c) will determine no less frequently than quarterly that the transactions made pursuant to the order during the preceding quarter were effected in compliance with such procedures. The Adviser to each Fund may implement these procedures, subject to the direction and control of the board of directors of the relevant Fund.

2. Each Fund: (a) Will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto); and (b) will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the transaction, including the identity of the person on the other side of the transaction, the terms of the transaction, and the information or material upon which the determinations described below were made.

3. No Fund or Portfolio will engage in transactions with an Affiliated Bank if such entity exercises a controlling influence over that Fund or Portfolio (and ''controlling influence'' shall be deemed to include, but is not limited to, directly or indirectly owning, controlling, or holding with power to vote more than 25% of the outstanding voting securities of that Fund or Portfolio).

4. The transactions entered into by a Fund or Portfolio will be consistent with the investment objectives and policies of that Fund or Portfolio as recited in the Fund's registration statement and reports filed under the Act.

B. U.S. Government and Qualified Securities

1. Qualified Securities means any ''Eligible Security,'' as defined in rule 2a–7 under the Act, and, in addition, municipal securities, repurchase agreements, bank obligations, synthetic municipal securities, and commercial paper that meet the investment quality requirements of paragraphs (a)(9) (i), (ii), or (iii) of rule 2a–7, as amended from time to time. The ''minimal credit risk'' standards imposed by paragraph (3)(c) of rule 2a–7 with respect to money market fund investments will apply to all investments in Qualified Securities.

2. Before any transaction in U.S. government securities or Qualified Securities may be entered into with an Affiliated Bank, the Fund or its Adviser will obtain such information as it deems necessary to determine that the price or rate to be paid or received for the security is at least as favorable as that available from other sources for the same or substantially comparable securities in terms of quality and maturity. In this regard, the Funds or their Advisers will obtain and document competitive quotations from at least two other dealers or counterparties with respect to the specific proposed transaction. Competitive quotation information will include price or yield and settlement terms. These dealers or counterparties will be those who, in the experience of the Funds and their Advisers, have demonstrated the consistent ability to provide professional execution of U.S. government security and Qualified Security transactions at competitive market prices or yields. These dealers or counterparties also must be those who are in a position to quote favorable prices.

3. Any repurchase agreement will be ''collateralized fully'' within the meaning of rule 2a–7.

4. No Fund or Portfolio will purchase obligations of any Affiliated Bank (other than repurchase agreements) if, as a result, more than 5% of that Fund's or Portfolio's total assets would be invested in obligations of that Affiliated Bank.

5. The fee, spread, or other remuneration to be received by the Affiliated Bank as agent in transactions involving U.S. government and other Qualified Securities will be reasonable and fair compared to the fee, spread, or other remuneration received by other brokers or dealers in connection with comparable transactions at such time, and will comply with section 17(e)(2)(C) of the Act.

C. Reverse Repurchase Agreements

Before any transaction in reverse repurchase agreements may be entered into with an Affiliated Bank, the Fund or its adviser will obtain such information as it deems necessary to determine that the rate to be paid for the agreement is at least as favorable as that available from other sources. In this regard, the Funds or their Advisers will obtain and document quoted rates from at least two unaffiliated potential counterparties with which the Funds have arrangements to engage in such transactions. Solicited terms shall include the repurchase price, interest rates, repurchase dates, acceleration rights, maturity, collateralization requirements, and transaction charges.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13232 Filed 5–20–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Sparta Surgical Corporation, $4.00 Par Value Redeemable Preferred Stock; $4.00 Par Value Series A Convertible Redeemable Preferred Stock; Series A Common Stock Purchase Warrants) File No. 1–11047

May 15, 1997.

Sparta Surgical Corporation (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'').

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

According to the Company, it has complied with rules of the BSE by filing with such Exchange a copy of resolution adopted by the Company's Board of Directors authorizing the withdrawal of its securities from listing on the BSE and by setting forth in detail to such Exchange the reasons for such proposed withdrawal, and the facts in support thereof. The Securities of the Company have been listed on the Nasdaq Stock Market since March 12, 1992 and July 12, 1994. In making the decision to withdraw the Securities from listing on the BSE, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its securities on the Nasdaq Stock Market and the BSE.

Any interested person may, on or before June 5, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchange and what terms, if any, should be imposed by Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application

after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–13281 Filed 5–20–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38634; File No. SR–CBOE–97–02]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Use of Proprietary Brokerage Order Routing Terminals on the Floor of the Exchange

May 14, 1997.

I. Introduction

On January 21, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' 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 extend from the Standard & Poor's 500 index (''SPX options'') to the trading crowd in options on the Standard & Poor's 100 index (''OEX options'') its existing policy adopted pursuant to Exchange Rule 6.23 whereby members are permitted to establish, maintain and use proprietary hand-held, brokerage order routing terminals and related systems (''Terminals'') in the trading crowd.

The proposed rule change was published for comment in the **Federal Register** on February 20, 1997.[3] No comments were received on the proposal. This order approves the proposal.

II. Background

On December 16, 1996, the Commission approved a proposal by the CBOE to adopt a policy pursuant to its Rule 6.23 [4] allowing the use of proprietary brokerage order routing terminals and their related systems in the SPX trading crowd.[5] Written Exchange approval is required prior to a member establishing, maintaining, or using a Terminal. The Exchange does not approve a Terminal unless and until the member who proposes to establish one on the floor of the Exchange has filed with the Exchange an ''Application & Agreement for Brokerage/Order Routing Terminals in Trading Crowds'' (''Application Agreement''). In addition, the original filing limited the use of Terminals to the SPX options trading crowd for the routing of orders in SPX options.

The Application Agreement approved by the Commission for use in the SPX trading crowd addressed several important issues including restrictions on the use of Terminals and the information thereon. The Application Agreement prohibits the operators of Terminals from trading with orders transmitted to the floor through Terminals except when certain conditions are met and prohibits the use of Terminals to make markets.

The Application Agreement requires an applicant to agree that it will not trade with orders transmitted through the Terminal, except when (1) No one else wants to trade with it (*i.e.,* the member is the contra-party of last recourse) or (2) an applicant is able to participate in the order on the same basis that other market makers who do not have priority participate. Under the second exception, the member may trade with an order as long as (a) The member in the trading crowd who is the first to respond to such order (other than the applicant) has priority in taking the other side of such order, and (b) the aggregate portion of such order taken by the applicant is not greater than the portion of the order taken by every other Exchange market maker in the crowd who wishes to participate in the order in the same aggregate quantity.

The Application Agreement also prohibits an applicant from using for their own benefit any information contained in any order in the Terminal system until that information has been disclosed to the trading crowd.

The Application Agreement also requires an applicant to agree that its Terminal will be used to receive brokerage orders only, and that it will not be used to perform a market making function. In adopting this restriction, the Exchange was concerned that Terminals may enable person not subject to Exchange control to perform market making functions from off the floor of the Exchange without being burdened by the cost of maintaining an Exchange membership, or the obligations imposed on Exchange market makers.[6]

III. Description of the Proposal

The CBOE proposes to amend the policy adopted pursuant to its Rule 6.23 that would extend the use of proprietary brokerage order routing terminals and their related systems from the SPX options trading crowd to the OEX options trading crowd, Exchange members would still be required to obtain written approval from the Exchange to establish, maintain, or use a terminal in either of the two trading crowds. The Exchange would not approve the use of a Terminal unless and until the member who proposes to utilize it on the floor has filed with the Exchange an Application Agreement, and Terminals may only be used in the crowds trading SPX or OEX options to route orders in SPX or OEX options.[7] To accommodate this change, the application Agreement will also be amended to specifically allow for the use of Terminals in the OEX options trading crowd. The terms and restrictions of the Application Agreement remain unchanged and will be identical to those approved in the SPX-Terminal Approval Order as described above.

IV. Discussion

Section 6(b)(5) of the Act [8] requires that the rules of an exchange be designated to prevent fraudulent and manipulative acts and practices, 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. Section 6(b)(7) of the Act [9] requires that the rules of an Exchange be in accordance with Section 6(d) of the Act,[10] and in general provide a fair

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38268 (Feb. 11, 1997), 62 FR 7812 (Feb. 20, 1997).

[4] CBOE Rule 6.23 provides that no member shall establish or maintain any telephone or other wire communications between his or its office and the Exchange without prior approval by the Exchange. The Exchange may direct discontinuance of any communication facility terminating on the floor of the Exchange.

[5] *See* Securities Exchange Act Release No. 38054 (December 16, 1996), 61 FR 67365 (''SPX-Terminal Approval Order'').

[6] In addition, the Application Agreement has provisions relating to the installation and use of Terminals. These provisions relate to surveillance, audit trails, compliance, physical, electrical and communications requirements and termination of approval for Terminals.

[7] The Exchange requires applicants wishing to use Terminals in both the OEX and SPX options trading crowds to execute separate Application Agreements with the Exchange for each trading crowd. Telephone conversation between Tim Thompson, CBOE and David Sierazki, SEC, on May 13, 1997.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(7).

[10] 15 U.S.C. 78f(d). Section 6(d) of the Act, among other things, requires that an exchange, in any proceeding to determine whether a member should

procedure for the disciplining of members and the prohibition or limitation by an exchange of a person's access to services offered by the exchange. Section 6(b)(7) of the Act [11] requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 11A(a)(1)(C)(ii) of the Act [12] states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers. For the reasons set forth below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6(b)(5), 6(b)(7), 6(b)(8), and 11A(a)(1)(C) of the Act.[13]

The Commission believes that the CBOE's proposal should foster coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by expediting and making more efficient the process by which members can receive OEX orders to be executed on the floor of the Exchange. The proposal also will promote fair competition among brokers and dealers and facilitate transactions in options on the Exchange. Finally, the Commission believes that the requirement that an applicant file the Application Agreement with the Exchange and comply with it is reasonable and ensures adequate surveillance and compliance with CBOE Rules.

The Commission notes that the substantive provisions set forth in the Application Agreement submitted with this proposal, are identical to those approved in the SPX-FLoor Broker Terminal Approval Order.[14] The Commission believes that the Exchange's policy regarding the use of Terminals and the Application Agreement provide a reasonable framework in which to introduce the use of Terminals to the OEX options trading crowd. The Commission also believes that the requirement that an applicant file the Application Agreement with the Exchange and comply with it is reasonable and ensures adequate surveillance and compliance with CBOE rules. The Commission notes, however, that the Exchange is required to submit a proposed rule change with the Commission pursuant to Section 19(b) of the Act, if it wants to extend the use of Terminals beyond the SPX and OEX options trading crowds.

The Commission also believes that the termination procedures in the Application Agreement are consistent with the Act, including Sections 6(b)(7) and 6(d) of the Act,[15] and are designed to provide affected members with adequate due process. The Commission notes that a member so affected could seek relief pursuant to the Hearings and Review provisions of Chapter XIX of the Exchange's Rules. These provisions provide specific procedures to seek Exchange hearing and review for persons aggrieved by action of the Exchange in terminating or enforcing the terms of the Application Agreement.[16]

As noted above, the Application Agreement prohibits a member or an associated person from trading with orders transmitted through a Terminal, unless no other member were to trade with the order, or the applicant were to trade on the same basis as other members who do not have priority. In addition, the Application Agreement prevents a member from using for its benefit information transmitted through a Terminal, before that information is disclosed to the trading crowd. The Commission believes that these restrictions are an appropriate measure to ensure that an applicant or one if its associated persons does not: (1) Interact with an order prior to information relating to such order becoming known to the trading crowd, which would be inconsistent with the open auction market principles governing the Exchange's trading system; or (2) effect transactions or change quotes in the Exchange's market or in the markets for the underlying interest or related interests before the information were available in the market. The Commission also believes that the two exceptions to the general restriction on trading with orders in the Terminal system are consistent with these concerns, and ensure that members using Terminals trade on the same terms and conditions as other market participants and do not receive any trading advantages to interact with orders transmitted through the Terminals.

For the same reasons set forth in the Commission's findings in the SPX-Terminal Approval Order,[17] the Commission believes that the market making prohibition on the use of Terminals in OEX options adequately balances the potential benefits to be derived from Terminals with the important regulatory issues that are raised in connection with the potential use of Terminals for off-floor market making in CBOE-listed options. Because off-floor market makers potentially would enjoy the benefits of other ''public customers,'' while not having the concomitant obligations and responsibilities of CBOE market makers, the Commission does not believe it is unreasonable for the CBOE to determine that the introduction of unregulated market making through Terminals in OEX options could undermine its market maker system. Indeed, the CBOE's proposal will allow the expansion of an innovative technology into another extremely active trading crowd, while doing so in a manner designed to ensure the continued viability of its market maker system.[18]

The Commission also believes that the CBOE restriction on market making through the use of Terminals in OEX options has been effected in a clear and reasonable manner that is not ambiguous nor overbroad, and that takes into account regulatory and market impact concerns, including those relating to quote competition and price discovery.[19] Notably, the CBOE's proposal does not bar all two-sided limit orders. Instead it only restricts the acceptance of orders placed in the performance of a market making function. The distinction between market making and brokerage activity is well established among market participants. Moreover, the language of the market making restriction expressly restricts only an aggregate pattern of orders, which indicates whether an investor is performing a market making function, not the occasional entry of two-sided limit orders. Thus, the restriction on Terminal use for routing limit orders is the minimum necessary

be disciplined, bring specific charges, notify such member of and provide him with an opportunity to defend himself against such charges, and keep a record.

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78k-1(a)(1)(C)(ii).

[13] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* SPX-Terminal Approval Order, *supra* note 5. The discussion and findings in the SPX-Terminal Approval Order are incorporated herein.

[15] *See supra* notes 9–10 and accompanying text.

[16] *See* CBOE Rules 19.4, Hearing and 19.5 Review.

[17] *See* SPX-Terminal Approval Order, *supra* note 5.

[18] *See infra* note 22.

[19] *Cf.,* Securities Exchange Act Release No. 25842 (June 23, 1988), 53 FR 24539 (approving certain restrictions on the use of telephones on the floor of the New York Stock Exchange), *aff'd per curiam,* 866 F.2d 47 (2d Cir. 1989).

for the CBOE to bar Terminal use for off-floor market making.

The Commission also emphasizes that it expects the CBOE to interpret the term ''market making'' in accordance with its traditional definition as defined under the Act, *i.e.,* holding one's self out as being willing to buy and sell a particular security on a regular or continuous basis.[20] The definition of market making should not capture parties who enter orders on one side of the market; nor would it capture parties who enter two-sided limit orders on occasion. A party would not be deemed to be engaging in market making unless it regularly or continuously holds itself out as willing to buy *and* sell the security.[21]

By approving this proposed rule change, the Commission is not stating that it is impermissible for an options exchange to permit users of Terminals or other similar devices to make two-sided markets. Indeed, the CBOE may determine to reconsider its decision not to permit users of Terminals to engage in market making at some future time. Nevertheless, while it is not illegal to permit off-floor market making, the Commission believes that it is within the CBOE's prerogative as an exchange to prohibit it. In approving the market making restriction in the SPX-Terminal Approval Order the Commission noted that the CBOE was particularly concerned that off-floor market making effectively would establish a market making structure devoid of affirmative market making obligations that could result in less deep and liquid markets during periods of market stress, when off-floor Terminal market makers would not be required to continue making markets. The Commission believes that these concerns are reasonable. The Commission's approval of the proposed rule change reflects the Commission's belief that the CBOE may act incrementally in approving the use of Terminals for transactions in SPX, and now OEX options, given that the CBOE is still learning about the possible impact of Terminals upon its market.[22]

In summary, while the CBOE's restrictions on the use of Terminals raise regulatory issues, the Commission believes that, within the context of the OEX options trading crowd, the market making restriction is an acceptable exercise of the Exchange's rulemaking authority. While the Commission recognizes that there may be different ways to address the regulatory issues presented by off-floor market making through the use of Terminals, the Act does not dictate that any particular approach be taken. The Commission believes that the manner in which the Exchange has chosen to address the regulatory issues presented by off-floor market making reflects the considered judgment of the CBOE regarding the attributes of Exchange membership and the organization of its trading floor, and is a fair exercise of its powers as a national securities exchange.

For the reasons stated above, and the findings set forth in the SPX-Terminal Approval Order,[23] the Commission believes that the Exchange's proposal to extend the policy regarding the use of Terminals to the OEX options trading crowd is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–CBOE–97–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13277 Filed 5–20–97; 8:45 am]

BILLING CODE 8010–01–M

[20] *See, e.g.,* 15 U.S.C. 78c(a)(38); Securities Exchange Act Release No. 36719A (Sept. 6, 1996), 61 FR 48290, 48316 (Sept. 12, 1996).

[21] Securities Exchange Act Release No. 36719A (Sept. 6, 1996), 61 FR 48290, 48316 (Sept. 12, 1996). The Commission notes that a broker using a Terminal may receive numerous orders from multiple customers, some of which are on the bid side and others on the offer side of an SPX series. This is consistent with a brokerage function, not a market making function. If, however, a particular customer of a broker regularly or continuously places two-sided limit orders, then the CBOE might, under certain circumstances, reach a different conclusion as to the nature of the function being performed by the broker and the customer.

[22] The Commission recognizes that markets for certain equity options can be less deep and liquid than the OEX market. However, the rule change approved today concerns the use of Terminals only in the OEX crowd. The Commission will consider the merits of permitting the use of Terminals to represent two-sided limit orders that effectively create regular two-sided markets in less liquid options crowds when it is presented with that issue.

[23] *See* SPX-Terminal Approval Order, *supra* note 5.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 C.F.R. 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38633; File No. SR–CBOE–94–53]

Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 2 and 3 to Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to a Determination of the Exchange's Office of the Chairman Under Exchange Rule 4.10(b)(3)

May 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 8, 1997, and May 13, 1997, respectively, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment Nos. 2 and 3 to its previously filed proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.[2] The Commission is publishing this notice to solicit comments on the policy of the Exchange's Office of the Chairman from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to amend SR–CBOE–94–53 and the text of the Regulatory Circular which was attached as Exhibit A to the amendments. The Regulatory Circular is directed to options market-maker clearing firms and describes certain financial requirements the Exchange's Office of the Chairman has determined to apply to these Exchange members pursuant to Exchange Rule 4.10(b)(3). The text of the Regulatory Circular is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filings with the Commission, CBOE included statements concerning the purpose of and basis for the policy of the Exchange's Office of the Chairman. The text of these statements may be examined at the places specified in Item IV below. The CBOE has

[1] 15 U.S.C. 78s(b)(1).

[2] The proposed rule change was noticed for comment in Securities Exchange Act Release No. 35282 (February 2, 1995), 60 FR 6577. Amendment No. 1 to the proposed rule change was noticed for comment in Securities Exchange Act Release No. 36458 (November 6, 1995), 60 FR 57255.

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements as they pertain to the proposed amendments.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of these amendments to SR–CBOE–94–53 is to amend the Regulatory Circular to conform it to the recent amendments to Commission Rule 15c3–1.[3] The Regulatory Circular will require all Exchange members that clear options market-maker transactions on a proprietary of market-maker customer basis to calculate options market-maker haircuts in accordance with the recent SEC amendments. These amendments do not become effective for all broker-dealers until September 1, 1997. Acting pursuant to its authority under CBOE Rule 4.10(b)(3),[4] however, the Office of the Chairman has determined to impose those requirements upon Exchange members that clear the transactions of options market-makers before the September date. The Office of the Chairman has determined that the current method of calculating options market-maker haircuts under current Commission Rule 15c3–1(c)(2)(x) is less effective in that many hedged positions receive haircuts which are excessive while the haircuts for uncovered positions do not adequately reflect their potential risk.

To date, all but one Exchange member which clears the transactions of independent options market-makers are calculating haircuts pursuant to the methodology described in this filing. We understand that the remaining member is operationally prepared to calculate haircuts under these parameters.

There are a few changes that were made to the text of the Regulatory Circular itself. First, the circular will become effective thirty days from the date the SEC approves SR–CBOE–94–53. The Exchange believes that thirty days should be adequate time for Exchange members to make any final preparations for calculating haircuts under the new parameters, which are somewhat different from the parameters set forth under the Commission's no-action letter,[5] and which have been the basis for the firms' calculations. The previous version of the Regulatory Circular did not specify a time under which the new haircut treatment would become effective.

Second, the Regulatory Circular is being revised to give firms the option of calculating haircuts under the terms of the 1994 No-Action Letter until such time as the Commission's amendments adopted in the Net Capital Release[6] become effective. The current version of the Regulatory Circular would have required firms to calculate risk-based haircuts under the Rule 15c3–1 amendment version approved by the Commission. This change is being made to accommodate those firms that may have difficulty instituting the changes approved in the Net Capital Release from an operational standpoint before September 1, 1997, but which are already able to calculate haircuts under the 1994 No-Action Letter. Because the two versions of risk-based haircuts are similar, the Exchange does not believe there is a problem in allowing firms to calculate haircuts under either method.

Third, consistent with the recently approved rule changes to SEC Rule 15c3–1, the Regulatory Circular will allow the use of a third party vendor's system if that system is approved by an examining authority designated pursuant to Section 17(d) of the Act, *i.e.*, a Designated Examining Authority (''DEA''). The previous version of the Regulatory Circular and of Rule 15c3–1 would have required the third party system to be approved by the Commission.

Fourth, the Regulatory Circular will add a new product group category for high-cap broad-based indexes. The product group category will be referred to as U.S. market group ''B'' and will include the S&P Barra Growth Index and the S&P Barra Value Index. The product group that was referred to as ''U.S. market group'' will now be ''U.S. market group A.''

Fifth, the Regulatory Circular will also add a new product group category for non-high-cap broad-based indexes. The new category will be the Mexican market product group and will include the Mexican Index of Prices and Quotations (''IPC'').

Sixth, the Exchange is proposing to add a sentence to the Regulatory Circular that would authorize broker-dealers to include in the product group categories any index options which are not specified in the circular to the extent the Commission has authorized such inclusion by means of a no-action letter, rule interpretation, or rule amendment.

Finally, the Regulatory Circular is proposed to be amended by eliminating the generic references to the offsets permitted between types of instruments in determining the profits and losses for each portfolio type. Instead, the Regulatory Circular will now make reference to a chart that will be attached to the circular. This chart will depict the various portfolio offsets and will specify the particular indexes included in each product group. The CBOE believes that the chart should make it easier to determine the appropriate offsets.

The Exchange believes the filing, as amended, is consistent with and furthers the objectives of Section 6(b)(5) of the Act in that it will promote maintenance of fair and orderly markets and will contribute to the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the filing as amended will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the filing as amended.

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 filing, or

(b) Institute proceedings to determine whether the proposed rule filing should be disapproved.

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[3] *See* Securities Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (''Net Capital Release'').

[4] CBOE Rule 4.10(b)(3) provides that the Office of the Chairman may impose additional financial and/or operational requirements on a member that clears market-maker trades when the Office of the Chairman determines that the member's continuance in business without such requirements has the potential to threaten the financial or operational integrity of Exchange market-maker transactions. Paragraph (b)(7) of Rule 4.10 provides that the Exchange shall file notice with the Commission in accordance with the provisions of Section 19(d)(1) of the Act of all final decisions to impose extraordinary requirements pursuant to Subsection (b)(3) of Rule 4.10. In addition, the CBOE has elected to file the Regulatory Circular as a proposed rule change under Section 19(b)(1) of said Act and Rule 19b–4 thereunder.

[5] *See* letter from Brandon Becker, Director, Division of Market Regulation, SEC, to Mary L. Bender, First Vice President, CBOE, and Timothy Hinkes, Vice President, the Options Clearing Corporation (''OCC''), dated March 15, 1994 (''1994 No-Action Letter'').

[6] *Supra* note 3.

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 filing of the Exchange's policy imposing additional financial requirements upon Exchange members which clear the trades of options market-makers that are filed with the Commission, and all written communications relating to this matter between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–94–53 and should be submitted by June 11, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13278 Filed 5–20–97; 8:45 am]

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[7] 17 C.F.R. 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38636; File No. SR–GSCC–97–02]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Comparison of Transactions Between Insolvent and Solvent Members

May 14, 1997.

On March 11, 1997, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] to modify GSCC's rules regarding comparison of transactions between insolvent and solvent members. Notice of the proposed rule change together with the substance of the proposal was published in the **Federal Register**.[3] No comment letters were received. The Commission is approving the proposed rule change.

I. Background

Under the ordinary application of its rules, a transaction is not eligible for netting and guaranteed settlement by GSCC until and unless it is compared. Except for purchases made through the U.S. government's auction of Treasury securities, GSCC's rules provide that a comparison can only be generated upon the matching of data provided by two members. GSCC believes that this poses a potential problem from a risk management perspective in a situation where a netting member becomes insolvent and does not submit trades entered into prior to its insolvency. Pursuant to this proposed rule change, GSCC is able to issue a comparison of a transaction based solely on data submitted by one solvent netting member, which may be an interdealer broker, under the following circumstances: (1) The data submitted by the solvent member indicates that the counterparty to the transaction is either an insolvent member or an executing firm that uses the insolvent member as its submitting member; (2) the solvent member has submitted in a timely manner all of its activity with the insolvent member or executing firm; (3) if GSCC had announced to its members that it would cease to act for the insolvent member as of a specified date and time and thus not accept any further trades submitted against such member, the transaction was executed before such specified date and time; (4) the transaction is not an "off-the-market" transaction as defined in GSCC's rules;[4] and (5) GSCC has made a determination that the transaction was entered into by the solvent member or by an executing firm that uses the solvent member as its submitting member in good faith and not primarily in order to take advantage of the insolvent member's financial condition.

II. Discussion

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest. The Commission believes the proposed rule change is consistent with these requirements because the proposal will provide GSCC with the authority to compare and net a trade where only one side has submitted the trade in an insolvency situation. By allowing such trades to enter GSCC's comparison and netting systems, the proposal extends the benefits of GSCC's risk management system to solvent members that entered into trades with the insolvent member in good faith and thereby helps to protect investors. Furthermore, by allowing more trades to be settled through GSCC's clearance system instead of ex-clearing, the proposal promotes the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[6] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act that the proposed rule change SR–GSCC–97–02 be and hereby is approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13228 Filed 5–20–97; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38472 (April 2, 1997), 62 FR 17259.

[4] GSCC has filed a proposed rule change (File No. SR–GSCC–97–01) that will add a definition of "off-the-market" transactions to its rules. Essentially, an off-the-market transaction is a trade that has a price that differs significantly from the prevailing market price. Securities Exchange Act Release No. 38601 (May 9, 1997).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38618; File No. SR–NASD–97–36]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Redesignation of a Rule Number

May 12, 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 May 7, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items

have been prepared by the NASD. The NASD has designated this proposal as one concerned solely with the administration of the organization under § 19(b)(3)(A)(iii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to redesignate Rule 4623 that was approved by the SEC in Securities Exchange Act Release No. 38360 (March 4, 1997) with respect to Rule Filing SR–NASD–97–15, titled ''Penalty Bids and Syndicate Covering Transactions,'' as Rule 4624.

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. 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 Section 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 SEC approved, effective March 4 and 14, 1997, amendments to the NASD rules regarding Corporate Financing, the Nasdaq Stock Market, Inc., and the OTC Bulletin Board that are designed to assist members in complying with SEC Regulation M.[1] The NASD is proposing to change the rule number of Rule 4623, that was approved by the SEC in Securities Exchange Act Release No. 38360 (March 4, 1997) with respect to Rule Filing SR–NASD–97–15, titled ''Penalty Bids and Syndicate Covering Transactions,'' to Rule 4624. Rule 4623 was previously approved by the SEC in connection with SR–NASD–96–43 to designate a rule related to ''Electronic Communications Networks'' in connection with the Order Execution Rules.[2]

[1] Securities Exchange Act Release No. 38360 (March 4, 1997); Securities Exchange Act Release No. 38399 (March 14, 1997).

[2] Securities Exchange Act Release No. 38156 (January 10, 1997).

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(2) of the Act in that the proposed rule change will enforce and facilitate compliance by NASD members with the Securities Exchange Act Rules, in addition to compliance with the rules of the Association.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change concerns the administration of the organization in that it renumbers a rule, the rule change becomes effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(e) thereunder. In particular, the Commission believes the rule change makes a technical and clarifying change to an existing NASD rule. Accordingly, it neither significantly affects the protection of investors of the public interest and does not impose any significant burden on competition. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that maybe withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 11, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13227 Filed 5–20–97; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38635; File No. SR–NASD–97–22]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change To Amend the Damage Ceilings for Claims Under the Standard Arbitration and Simplified Arbitration Procedures

May 14, 1997.

I. Introduction

On March 27, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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 amend the Code of Arbitration Procedure (''Code'') of the NASD to: (1) Raise the ceiling for disputes to be eligible for resolution by a single arbitrator under simplified arbitration procedures from $10,000 to $25,000; and (2) raise the ceiling for disputes eligible for resolution by a single arbitrator under standard arbitration procedures from $30,000 to $50,000.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 38466 (April 2, 1997), 62 FR 17273 (April 9, 1997). No comments were received on the proposal. The NASD

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

subsequently filed Amendment No. 1, on May 5, 1997.[3]

II. Description

NASD Regulation, Inc. (''NASDR'') is proposing to amend Rules 10202, Composition of Panels (formerly Section 9) and 10308, Designation of Number of Arbitrators (formerly Section 19)[4] of the Code to establish the threshold for single arbitrator cases under standard arbitration at $50,000. NASDR is also proposing to amend Rules 10203, Simplified Industry Arbitration (formerly Section 10) and 10302, Simplified Arbitration (formerly Section 13) of the Code to establish the threshold for simplified arbitrations at $25,000. In addition, NASDR is proposing to amend each of those rules to state that the threshold amount is ''exclusive of attendant costs and interest.''

Under the proposed rule change to Rules 10302(d) and 10308(b), claims involving public customers and exceeding $25,000, exclusive of attendant costs and interest, will be heard by a three member arbitration panel, rather than ''a panel of no less than three and no more than five arbitrators.'' Under the proposed rule change to Rule 10302 (f) and (h)(3), the Director of Arbitration will ''appoint,'' rather than ''select,'' the public arbitrator for simplified arbitration. The original proposed rule change amended Rule 10308(a) to state that a majority of the arbitrators on a three member arbitration panel (for claims involving public customers under standard arbitration, that are less than or equal to $50,000, but where a party or arbitrator requested a panel of three arbitrators) ''shall be public arbitrators,'' rather than stating that a majority of the three arbitrator panel ''shall not be from the securities industry.'' Amendment No. 1 deletes this change, returning to the original language that at least a majority of the arbitrators appointed ''shall not be from the securities industry.'' The proposed rule change also includes several technical changes designed to correct inconsistencies in the rule language and which also were adopted by SICA.

III. Discussion

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A of the Act[5] in general and Section 15A(b)(6)[6] in particular in that raising the thresholds for simplified arbitration and for standard arbitrations using a single arbitrator will permit such cases to be resolved more quickly and at lower cost to the parties, and is consistent with the NASD's longstanding goal of providing the investing public with a fair, efficient and cost-effective forum for the resolution of disputes. Accordingly, as discussed below, the rule proposal is consistent with the requirements of Section 15A(b)(6) that NASD rules further investor protection and the public interest.[7]

The Commission believes that raising the arbitration thresholds to $25,000 and $50,000 is reasonable under the Act in that the change should serve to promote a more efficient allocation of resources and less expensive arbitration, while still providing adequate protection of investors and the public. The changes to the arbitration thresholds should result in a larger percentage of cases being resolved under the simplified arbitration procedure or the one arbitrator procedure under standard arbitration. This should result in a more efficient allocation of resources because the arbitrators whose attention and time would have been involved in those cases will now be able to hear other cases, resulting in a larger number of cases being heard. The threshold changes should also result in less expensive arbitration because the customer will not have to pay the costs attendant with three arbitrators or a hearing[8] (if they qualify for a decision on the pleadings and evidence).[9]

The Commission recognizes the NYSE and SICA's concerns, expressed by the NASD in its filing, that by setting the thresholds too high, a customer claimant's procedural rights under the Code could be disadvantaged in cases that have a significant economic value to the customer. However, the Commission believes that the change in the thresholds for simplified arbitration and single arbitrator standard arbitration, to $25,000 and $50,000 respectively, is adequate to protect against this concern and strikes an appropriate balance between protecting the investing public and promoting a more efficient and cost-effective forum to resolve disputes. The Commission notes that simplified industry arbitration provides for no fewer than one but no more than three arbitrators, and that simplified arbitration involving public customers provides for two additional arbitrators, upon the request of the arbitrator already appointed.[10] Also, for standard public arbitration and standard industry arbitration under $50,000, any party may request three arbitrators.[11]

The Commission believes that the proposed rule change to Rules 10302(d) and 10308(b), stating that claims involving public customers and exceeding $50,000, exclusive of attendant costs and interest, will be herd by a three member arbitration panel, rather than a panel of no less than three and no more than five arbitrators, is reasonable under the Act. This change should also promote greater efficiency and cost-effectiveness because these cases will now involve fewer arbitrators, whose time and attention will be available for other cases, and the customers will not have to bear the cost of up to five arbitrators. At the same time, this change will still provide adequate protection to public customers and a fair and efficient forum

[3] Amendment No. 1 amends Section 10308(a) of the Code, Designation of Number of Arbitrators, to delete the change that states that a majority of the arbitrators appointed shall be public arbitrators, and retain the original language, that at least a majority of the arbitrators appointed shall not be from the securities industry. *See* letter from John Ramsay, Deputy General Counsel, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated May 2,1997.

[4] NASDR will shortly be filing a proposed rule change to amend Rule 10308 to implement the list selection process for the selection of arbitrators recommended by the NASD's Arbitration Policy Task Force. The list selection rule filing will further substantially amend Rule 10308, but will not be implemented until NASDR has developed the technology and procedures to administer the process and developed a pool of arbitrators sufficient to provide lists of arbitrators in accordance with the requirements of the rule. Accordingly, NASDR is amending Rule 10308 in the interim until the list selection rule is filed, approved and implemented.

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] Under the simplified arbitration procedures for matters between a public customer and an associated person or member, cases are resolved without a hearing (so-called ''paper cases'') by a single public arbitrator. A public customer may, however, demand a hearing, or the arbitrator may call a hearing, in which case the arbitrator will hold a hearing and the parties will have the benefit of all of the available forms of discovery. *See* Rule 10302.

[9] The Commission notes that the NASD has stated that the arbitration fees will increase in some brackets, but that the increases would be larger in three arbitrator proceedings. Phone conversation between Elliot Curzon, NASD, Katherine England, Assistant Director, Market Regulation, Commission, and Heather Seidel, Attorney-Advisor, Market Regulation, Commission, on May 5, 1997.

[10] *See* Rules 10203(a)(1) and 10302(i) of the Code.

[11] *See* Rules 10308(a) and 10202(b)(1) of the Code.

for disputes because the claims will still be heard by three arbitrators.

The Commission believes that the proposed rule change to Rule 10302 (f) and (h)(3), where the Director of Arbitration will ''appoint,'' rather than ''select,'' the public arbitrator for simplified arbitration, is consistent with the Act in that it is not a substantive change; the Director of Arbitration will continue to be the individual who is responsible for choosing the arbitrator for these cases.[12]

As noted above, Amendment No. 1 amends Section 10308(a) of the Code, Designation of Number of Arbitrators, to delete the change in the original filing that states that a majority of the arbitrators appointed shall be public arbitrators, and retain the original language, that at least a majority of the arbitrators appointed shall not be from the securities industry. The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that this a non-substantive change in that it restores the rule to its original language and conforms the language with similar wording in Section 10308(b) of the Code. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–22 and should be submitted by June 11, 1997.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NASD–97–22), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13229 Filed 5–20–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38632; File No. SR–NSCC–97–02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change to Modify NSCC's Rules To Permit Unit Investment Trusts To Be Processed Through Fund/SERV, Networking, and Mutual Fund Commission Settlement Services

May 14, 1997.

On February 10, 1997, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–97–02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] to permit unit investment trust (''UITs'') to be processed through NSCC's Fund/SERV, Networking, and Mutual Fund Commission Settlement Services.[2] Notice of the proposal was published in the **Federal Register** on March 28, 1997.[3] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

Under the rule change, NSCC will permit UITs to be processed through NSCC's Fund/SERV, Networking, and Mutual Fund Commission Settlement Services. Prior to the rule change, UITs were eligible for NSCC processing through NSCC's continuous net settlement (''CNS'') system only.[4] Because Mutual Fund Services only members (*i.e.,* primarily bank broker-dealers and insurance company subsidiaries) are not permitted access to NSCC's CNS system, they had to settle UIT trades ex-clearing with their UIT positions held with a trustee in book-entry form. The rule change will allow Mutual Fund Services only members to process and settle UIT trades through the Fund/SERV, Networking, and Mutual Fund Commission Settlement systems.

The settlement process for UIT transactions through NSCC's Mutual Fund Services will be processed the same as if these transactions were processed in the CNS system, but UIT transactions processed through the Mutual Fund Services will not be guaranteed. If a Mutual Fund Services only member wants its UIT transactions submitted to NSCC to be guaranteed, it must submit or have submitted on its behalf such transactions to NSCC's CNS system.

II. Discussion

Section 17A(b)(3)(F) [5] provides that the rules of a clearing agency must be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the rule change is consistent with NSCC's obligations under the Act because it permits Mutual Fund Services only member to process UIT transactions within NSCC. By permitting UIT transactions to be processed through NSCC's Fund/SERV, Networking, and Mutual Fund

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[12] The Commission notes that the NASD has stated that it will implement this rule filing at the same time as a rule filing dealing with amendments to the arbitration fees, yet to be filed with the Commission. *See* letter from Elliot R. Curzon, Assistant General Counsel, NASDR, to Katherine England, Assistant Director, Market Regulation, Commission, dated May 5, 1997.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] These services collectively constitute NSCC's Mutual Fund Services. For a complete description of NSCC's Fund/SERV, Networking, and Mutual Fund Commission Services, refer to Securities Exchange Act Release Nos. 31937 (March 1, 1993), 58 FR 12609 [File No. SR–NSCC–92–14] (order approving proposed rule change regarding Fund/SERV system); 26376 (December 20, 1988), 53 FR 52546 [File No. SR–NSCC–88–08] (order approving Networking); and 31579 (December 17, 1992), 57 FR 60018 [File No. SR–NSCC–92–13] (order approving the Mutual Fund Commissions Settlement System and consolidating the Mutual Fund Commissions Settlement, Fund/SERV, and Networking Systems under NSCC's Mutual Fund Services).

[3] Securities Exchange Act Release No. 38428 (March 21, 1997), 62 FR 14954.

[4] A group of NSCC participants, bank trustees, and industry organizations such as the Securities Industry Association's Securities Operation Division, the Regional Municipal Operations Association, and National Unit Trust Association requested that NSCC permit UITs to be eligible for processing through its Fund/SERV, Networking, and Mutual Fund Commission Settlement Services.

[5] 15 U.S.C. 78q–1(b)(3)(F).

Commissions Settlement systems, Mutual Fund Services only members will no longer have to settle UIT transactions through exception processing or ex-clearing. As a result, this change should further perfect the mechanism of a national clearance and settlement system. At the same time, because NSCC does not apply its trade guarantee to transactions processed through Mutual Fund Services, processing and settling UIT transactions through Mutual Fund Services should not pose any significant additional risk to NSCC and therefore should not effect NSCC's ability to safeguard securities and funds.

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 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–NSCC–97–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13230 Filed 5–20–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38630; File No. SR–NYSE–97–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Percentage Order Rule 123A.30

May 13, 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 March 25, 1997, the New York Stock Exchange, Inc. (''NYSE'' 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 proposed rule change consists of amendments to Exchange Rule 123A.30 (''Rule''). The filing proposes to amend the Rule to provide that the percentage orders held by a specialist may be elected by the execution of a previously elected portion of a percentage order that is on the opposite side of the market. The filing also proposes to amend the Rule to permit the specialist to convert a percentage order on a destabilizing tick, as otherwise permitted by the Rule, when the transaction is 10,000 shares or more or represents a quantity of stock having a market value of $500,000 or more (whichever is less).[1]

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

A percentage order is a limited price order to buy or sell fifty percent (50%) of the volume of a specified stock after its entry. A percentage order is essentially a memorandum entry left with a specialist which becomes a ''live'' order capable of execution in one of two ways: (i) All or part of the order can be ''elected'' as a limit order on the specialist's book based on trades in the market; or (ii) all or part of the order can be ''converted'' into a limit order to make a bid or offer or to participate directly in a trade. Percentage orders were first adopted in 1972 to permit large size orders to trade along with the trend of the market.

The election process. Under the election process, as trades occur at the percentage order's limit price or better, an equal number of shares of the percentage order are ''elected'' and become a limit order on the specialist's book at the price of the electing sale. Most percentage orders are entered as ''last sale percentage orders,'' meaning that they may be executed at the price at which they were elected, or at a better price. These orders may not, however, be executed at an inferior price to the electing sale even if that inferior price is still within the limit price on the order.

The Rule provides that percentage orders shall not be elected by any portion of volume which results from the execution of a previously elected portion of a percentage order. The intent of this restriction is to prevent ''chain reaction'' executions of percentage order whereby executions of elected portions of percentage orders trigger additional elections. Such a result would usually be contrary to the objectives of those entering percentage orders, who generally want to go along with the overall trend of the market as reflected by other market interest, without necessarily leading that trend.

As currently drafted, the Rule does not distinguish between election of percentage orders on the same side of the market and percentage orders on opposite sides of the market. The Exchange believes that the rationale of the Rule, however, suggests that the restriction should be applied only to percentage orders on the same side of the market, as ''same side'' orders are the ones to be executed along with the market trend (*i.e.,* buy percentage orders would be executed along with other buying interest, and sell percentage orders would be executed along with other selling interest).

Proposed change to the election process. The Exchange is proposing to amend the Rule to provide that the percentage orders held by a specialist may be elected by the execution of a previously elected portion of a percentage order that is on the opposite side of the market.

For example, assume that the market is 20 to 20¼, 2,000 by 2,000, with the 2,000 share offer representing 2,000 ''elected'' shares of a percentage order to sell. The specialist then receives a percentage order to buy 10,000 shares at a limit price of 20⅝ after which he receives through SuperDOT an order to buy 1,000 shares at the market. After bidding 20⅛ on behalf of the SuperDOT order, the specialist executes that order

[1] The Exchange previously filed a proposed change to Rule 123A.30 which would provide that a converted percentage order retains its status on the specialist's book unless the transaction is effected on a higher bid, or a new higher bid is made, or the percentage order was not converted at its maximum limit price. That proposed rule change is still pending with the Commission. *See* Securities Exchange Act Release No. 37495 (July 30, 1996), 61 FR 40699 (August 5, 1996) (File No. SR–NYSE–96–16).

against the 2,000 share offer at 20¼. Under the current rule, no portion of the buy percentage order would be elected, and no additional portion of the sell percentage order would be elected. Under the proposed rule change, 1,000 shares of the buy percentage order would be elected at 20¼, and would then trade with the remaining 1,000 share balance of the offer at 20¼. No portion of the sell percentage order would be elected.

The conversion process. Under the Rule, the specialist may convert a percentage order into a ''live'' limit order on a destabilizing tick where: (i) The transaction for which the order is being converted is for 10,000 shares or more; and (ii) the price at which the converted percentage order is to be executed is no more than ¼ point away from the last sale price; provided, however, that this price parameter may be modified, in appropriate cases, with the prior approval of a Floor Official and the written consent of the broker who entered the order.[2]

Proposed change to the conversion process. The Exchange is proposing to amend the Rule to permit the specialist to convert a percentage order on a destabilizing tick, as otherwise permitted by the rule, when the transaction is 10,000 shares or more or represents a quantity of stock having a market value of $500,000 or more (whichever is less).

This amendment will make the size of permitted transactions consistent with the definition of a block in NYSE Rule 97, and thus facilitate conversion of percentage orders in stocks where the size of the trade has the appropriate market value to qualify as a block transaction, but may not have a share size of 10,000 or more.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [3] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. This proposed rule change will remove impediments to and perfect the mechanism of a free and open market by increasing opportunities for percentage orders' participation in the Exchange's auction when a percentage order may be elected by the execution of a previously elected portion of a percentage order on the opposite side of the market. In addition, increasing the opportunity for percentage orders to be converted based on a transaction size or market value will promote liquidity and depth in the market place.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

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 Exchange. All submissions should refer to File No. SR–NYSE–97–09 and should be submitted by June 11, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13231 Filed 5–20–97; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38638; File No. SR–NYSE–97–07]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rule 440A (''Telephone Solicitation-Recordkeeping'') and an Interpretation to Rule 472 (''Communications with the Public'')

May 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] Notice is hereby given that on March 18, 1997, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change form interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange has filed an amendment to Rule 440A (''Telephone Solicitation-Recordkeeping'') which is substantially similar to applicable provisions of the Federal Trade Commission rules adopted pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act''),[2] together with an interpretation of Rule 472 (''Communications with the Public'')

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[2] For a more detailed description of the procedures under which a percentage order may be converted on a destabilizing tick, see Securities Exchange Act Release No. 24505 (May 22, 1987), 52 FR 20484 (June 1, 1987) (order approving amendment to Rule 123A.30 to permit the conversion of percentage orders on destabilizing ticks).

[3] 15 U.S.C. 78f(b)(5).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 6101–08.

requiring telemarketing scripts to be retained for three years.

The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to the Telephone Consumer Protection Act (''TCPA''),[3] the NYSE adopted in June 1995 a ''cold call'' rule [4] that paralleled one of the rules of the Federal Communications Commission (''FCC Rules'') [5] and requires persons who engage in telephone solicitations to sell products and services (''telemarketers'') to establish and maintain a list of persons who have requested that they not be contacted by the caller (''do-not-call list'').

Under the Telemarketing Act, which became law in August 1994,[6] the Federal Trade Commission adopted detailed regulations (''FTC Rules'') [7] to prohibit deceptive and abusive telemarketing acts and practices; the regulations became effective on December 31, 1995.[8] The FTC Rules, among other things, (i) Require the maintenance of ''do-not-call'' lists and procedures, (ii) prohibit certain abusive, annoying, or harassing telemarketing calls, (iii) prohibit telemarketing calls before 8 a.m. or after 9 p.m., (iv) require a tele-marketer to identify himself or herself, the company he or she works for, and the purpose of the call, and (v) require express written authorization or other verifiable authorization from the customer before the firm may use negotiable instruments called ''demand drafts.''[9]

Under the Telemarketing Act, the SEC is required either to promulgate or to require the SROs to promulgate rules substantially similar to the FTC Rules, unless the SEC determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of orderly markets, or that existing federal securities laws or SEC rules already provide for such protection.[10] The purpose of the proposed rule change is to amend NYSE Rule 440A and the NYSE interpretation to Rule 472 in response to the Commission's request that major self-regulatory organizations (''SROs'') promulgate rules substantially similar to applicable provisions of the Federal Trade Commission rules adopted pursuant to the Telemarketing Act.

Time Limitations and Disclosure

The proposed rule change amends Rule 440A to prohibit, under proposed paragraph (a) To Rule 440A, a member, allied member, or employee of a member or member organization from making outbound telephone calls to a member of the public's residence for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location and to require, under proposed paragraph (b) to Rule 440A, such member, allied member or employee of a member or member organization to promptly disclose to the called person in a clear and conspicuous manner the caller's identity and firm, the telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services.

Proposed paragraph (c) to Rule 440A creates exemptions from the time-of-day and disclosure requirements of paragraphs (a) and (b) for telephone calls by any persons associated with a member or member organization, or other associated persons acting at the direction of such persons for the purposes of maintaining and servicing existing customers assigned to or under the control of the associated persons, to certain categories of ''existing customers.'' Paragraph (c) defines ''existing customer'' as a customer for whom the broker or dealer, or clearing broker or dealer on behalf of the broker or dealer, carries an account. Proposed subparagraph (c)(1) exempts calls, by an associated person, to an existing customer who, within the preceding twelve months, has effected a securities

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[3] 47 U.S.C. 227.

[4] Under the ''cold call'' rule, each NYSE member who engages in telephone solicitation to market its products and services is required to make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member or its associated persons. Securities Exchange Act Release No. 35821 (June 7, 1995), 60 FR 31337 (approving File No. SR–NYSE–95–11).

The NASD, the MSRB, the CBOE, the Amex, and the PSE also adopted similar rules. *See* Securities Exchange Act Release Nos. 35831 (June 9, 1995), 60 FR 31527 (approving File No. SR–NASD–96–28); 38053 (Dec. 16, 1996), 61 FR 68078 (Dec. 26, 1996) (approving File No. SR–MSRB–96–06; 36588 (Dec. 13, 1995), 60 FR 56624 (approving File No. SR–CBOE–95–63); 36748 (Jan. 19, 1996), 61 FR 2556 (approving File No. SR–AMEX–96–01); and 37897 (Oct. 30, 1996), 61 FR 57937 (approving File No. SR–PSE–96–32).

[5] Pursuant to the TCPA, the FCC adopted rules in December 1992 that, among other things, (1) prohibit cold-calls to residential telephone customers before 8 a.m. or after 9 p.m. (local time at the called party's location) and (2) require persons or entities engaging in cold-calling to institute procedures for maintaining a ''do-not-call'' list that included, at a minimum, (a) a written policy for maintaining the do-not-call list, (b) training personnel in the existence and use thereof, (c) recording a consumer's name and telephone number on the do-not-call list at the time the request not to receive calls is made, and retaining such information on the do-not-call list for a period of at least ten years, and (d) requiring telephone solicitors to provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made and a telephone number or address at which such person or entity maybe contacted. 57 FR 48333 (codified at 47 CFR 64.1200). With certain limited exceptions, the FCC Rules apply to all residential telephone solicitations, including those relating to securities transactions. *Id.* While the FCC rules are applicable to brokers that engage in telephone solicitation to market their products and services, those regulations cannot be enforced by either the SEC or the securities self-regulatory organizations (''SROs'')

[6] Telemarketing, *supra* note 2.

[7] 16 CFR 310.

[8] §§ 310.3–4 of FTC Rules.

[9] *Id.* Pursuant to the Telemarketing Act, the FTC Rules do not apply to brokers, dealers, and other securities industry professionals. Section 3(d)(2)(A) of the Telemarketing Act.

A ''demand draft'' is used to obtain funds from a customer's bank account without that person's signature on a negotiable instrument. The customer provides a potential payee with bank account identification information that permits the payee to create a piece of paper that will be processed like a check, including the words ''signature on file'' or ''signature pre-approved'' in the location where the customer's signature normally appears.

[10] In response, the NASD and MSRB have adopted rules to curb abusive telemarketing practices. *See* Securities Exchange Act Release Nos. 38009 (Dec. 2, 1996), 61 FR 65625 (Dec. 13, 1996) (order approving File No. SR–NASD–96–28) and 38053 (Dec. 16, 1996) 61 FR 68078 (Dec. 26, 996) (order approving File No. SR–MSRB–96–06).

The Commission has determined that the NASD Rule and MSRB Rule, together with the Exchange Act and the Investment Advisers Act of 1940, the rules thereunder, and the other rules of the SROs, satisfy the requirements of the Telemarketing Act, because the applicable provisions of such laws and rules are substantially similar to the FTC Rules except for those FTC Rules that involve areas already extensively regulated by existing securities laws or regulations or activities inapplicable to securities transactions. Securities Exchange Act Release No. 38480 (Apr. 7, 1996), 62 FR 18666 (Apr. 16, 1996). Accordingly, the Commission has determined that no additional rulemaking is required by it under the Telemarketing Act. *Id.* Notwithstanding this determination, the Commission still expects the remaining SROs to file similar proposals.

transaction in, or made a deposit of funds or securities into, an account under the control of or assigned to the associated person at the time of the transaction or deposit. Proposed subparagraph (c)(2) exempts calls, by an associated person, to an existing customer who, at any time, has effected a securities transaction in, or made a deposit of funds or securities into an account under the control of or assigned to the associated person at the time of the transaction or deposit, as long as the customer's account has earned interest or dividend income during the preceding twelve months. Each of these exemptions also permits calls by other associated persons acting at the direction of an associated person who is assigned to or controlling the account. Proposed paragraph (c)(3) exempts telephone calls to a broker or dealer. The proposed rule change also expressly clarifies that the scope of this rule is limited to the telemarketing calls described herein; the terms of the Rule do not otherwise expressly or by implication impose on members any additional requirements with respect to the relationship between a member and a customer or between a person associated with a member and a customer.

Demand Draft Authorization and Recordkeeping

Proposed paragraph (e) prohibits members or persons associated with a member from obtaining from a customer or submitting for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account (''demand draft'') without that person's express written authorization, which may include the customer's signature on the instrument, and to require the retention of such authorization for a period of three years. The proposal also states that this provision shall not, however, require maintenance of copies of negotiable instruments signed by customers.

Telemarketing Scripts

The proposed rule change also amends the definition of ''sales literature'' contained in the interpretation to Rule 472 to include ''telemarketing scripts'' within that definition. This will require telemarketing scripts to be retained for a period of three years.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to 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.[11]

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

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 Section 6(b) (5) of the Act[12] which requires, among other things, that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[13] The proposed rule change is consistent with these objectives in that it imposes time restriction and disclosure requirements, with certain exceptions, on members' telemarketing calls, requires verifiable authorization from a customer for demand drafts, and prevents members from engaging in certain deceptive and abusive telemarketing acts and practices while allowing for legitimate telemarketing activities.

The Commission believes that the amendments to Rule 440A, prohibiting a member or person associated with a member from making outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person, is appropriate. The Commission notes that, by restricting the times during which a member or person associated with a member may call a residence, the proposal furthers the interest of the public and provides for the protection of investors by preventing members and member organizations from engaging in unacceptable practices, such as persistently calling members of the public at unreasonable hours of the day and night.

The Commission also believes that the amendments to Rule 440A, requiring a member or person associated with a member to promptly disclose to the called person in a clear and conspicuous manner the caller's identity and firm, telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services, is appropriate. By requiring the caller to identify himself or herself and the purpose of the call, the Rule assists in the prevention of fraudulent and manipulative acts and practices by providing investors with information necessary to make an informed decision when purchasing securities. Moreover, by requiring the associated person to identify the firm for which he or she works and the telephone number or address at which the caller may be contacted, the Rule encourages responsible use of the telephone to market securities.

The Commission also believes that Rule 440A, creating exemptions from the time-of-day and disclosure requirements for telephone calls by associated persons, or other associated persons acting at the direction of such persons, to certain categories of ''existing customers'' is appropriate. The Commission believes it is appropriate to create an exemption for calls to customers with whom there are existing relationships in order to accommodate personal and timely contact with a broker who can be presumed to know when it is convenient for a customer to respond to telephone calls. Moreover, such an exemption also may be necessary to accommodate trading with customers in multiple time zones across the United States. The Commission, however, believes that the exemption from the time-of-day and disclosure requirements should be limited to calls to persons with whom the broker has a minimally active relationship. In this regard, the Commission believes that

[11] The Commission, however, received two comment letters on an NASD proposal, which is substantially similar. *See* Letter from Brad N. Bernstein, Assistant Vice President & Senior Attorney, Merrill Lynch, to Jonathan G. Katz, Secretary, SEC, dated Aug. 19, 1996 (''Merrill Lynch Letter''), and Letter from Frances M. Stadler, Associate Counsel, Investment Company Institute (''ICI''), to Jonathan G. Katz, Secretary, SEC, dated Aug. 21, 1996 (''ICI Letter''). For a discussion of the letters and responses thereto, see Securities Exchange Act Release No. 38009 (Dec. 2, 1996) (approving File No. SR–NASD–96–28).

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Rule 440A achieves an appropriate balance between providing protection for the public and the members' interest in competing for customers.

The Commission also believes that the amendment to Rule 440A, requiring that a member or person associated with a member obtain from a customer, and maintain for three years, express written authorization when submitting for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share or similar account, is appropriate. The Commission notes that requiring a member or person associated with a member to obtain express written authorization from a customer in the above-mentioned circumstances assists in the prevention of fraudulent and manipulative acts in that it reduces the opportunity for a member or person associated with a member to misappropriate customers' funds. Moreover, the Commission believes that by requiring a member or person associated with a member to retain the authorization for three years, Rule 440A protects investors and the public interest in that it provides interested parties with the ability to acquire information necessary to ensure that valid authorization was obtained for the transfer of a customer's funds for the purchase of a security.

The Commission also believes that the amendment to the NYSE interpretation to Rule 472 requiring the retention of telemarketing scripts for a period of three years is appropriate. By requiring the retention of telemarketing scripts for three years, the interpretation to Rule 472 assists in the prevention of fraudulent and manipulative acts and practices and provides for the protection of the public in that interested parties will have the ability to acquire copies of the scripts used to solicit the purchase of securities to ensure that members and associated persons are not engaged in unacceptable telemarketing practices.

Finally, the Commission believes that the proposed rule achieves a reasonable balance between the Commission's interest in preventing members from engaging in deceptive and abusive telemarketing acts and the members' interest in conducting legitimate telemarketing practices.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The proposal is identical to the NASD and MSRB rules, which were published for comment and, subsequently, approved by the Commission. The approval of the NYSE's rule and interpretation provides a consistent standard across the industry. In that regard, the Commission believes that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–97–07 and should be submitted by June 11, 1997.

V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

It is therefore Ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–97–07) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13279 Filed 5–20–97; 8:45 am]

BILLING CODE 8010–01–M

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38631; File No. SR–PSE–96–42]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to an Amendment to the Minor Rule Plan and the Adoption of a Forum Fee for Minor Rule Plan Appeals

May 14, 1997.

I. Introduction

On October 25, 1996, the Pacific Exchange, Inc. ("PCX" 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 add unbundling of option orders to the Exchange's list of Minor Rule Plan ("MRP") violations and to allow the imposition of a forum fee whenever a finding under the MRP is appealed and affirmed.[3] On October 25, 1996, the Exchange submitted a letter providing additional justification for the filing.[4]

The proposed rule change was published for comment in the **Federal Register** on February 24, 1997,[5] and no comments were received. This order approves the proposal.

II. Description

The Exchange is proposing to adopt a new subsection (5) to PCX Rule 10.11(d) to provide as follows: If, after a hearing or review on the papers pursuant to subsection (d) of PCX Rule 10.16,[6] a panel appointed by the pertinent committee determines that a Member or Member Organization has violated one or more Exchange rules, as alleged, that panel: (i) May impose any one or more of the disciplinary sanctions authorized

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 19d–1(c)(2) under the Act, 17 CFR 240.19d–1(c)(2), authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. The PCX's Plan was approved by the Commission in Securities Exchange Act Release No. 22654 (Nov. 21, 1985), 50 FR 48853.

[4] Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX, to Ivette López, Assistant Director, Division of Market Regulation, SEC, dated October 24, 1996 ("PSE Letter").

[5] Securities Exchange Act Release No. 38293 (Feb. 14, 1997), 62 FR 8286.

[6] PCX Rule 10.11, entitled "Appeal of Floor Citations and Minor Rule Plan Sanctions," sets forth the procedures that apply when a member or member organization appeals a sanction imposed in connection with a floor citation or the MRP. *See* PCX Rules 10.11 and 10.13.

by the Exchange's Constitution and Rules; and (ii) shall impose a forum fee against the person charged in the amount of two hundred fifty dollars ($250) if the determination was reached based on a review of the papers, or in the amount of five hundred dollars ($500) if a hearing was conducted. In the event that the Panel determines that a Member or Member Organization has violated one or more Exchange rules, as alleged, and the sole disciplinary sanction imposed by the pertinent committee for such rule violation(s) is a fine that is less than the total fine initially imposed by the Exchange for the subject violation(s), the Committee has the discretion to waive the imposition of a forum fee.[7] The Exchange believes this fee is necessary to, among other things, help offset the costs associated with certain appeals involving MRP violations.

The Exchange is also proposing to amend its MRP,[8] PCX Rule 10.13, to add the following violation to the section relating to Options Floor Decorum and Minor Trading Rule Violations: ''Dividing up an order to make its parts eligible for entry into Auto-Ex (Rule 6.87(c))'' (with recommended fines of $2,500, $3,750 and $5,000 for first, second, and third violations). The Exchange believes it is appropriate to include Rule 6.87(c) in the MRP because violations of this rule are objective in nature and easily verifiable.[9]

[7] The provisions of proposed Rule 10.11(d)(5) are similar to those contained in Rule 17.50(d)(2) of the Chicago Board Options Exchange (''CBOE'').

[8] Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). The PCX's MRP was approved by the Commission in 1985. *See* Securities Exchange Act Release No. 22654 (Nov. 21, 1985), 50 FR 48853 (approving File No. SR–PSE–85–24). In 1993, the Exchange amended its MRP and adopted detailed procedures relating to the adjudication of minor rule violations. *See* Securities Exchange Act Release No. 32510 (June 24, 1993), 58 FR 35491. Thereafter, the Exchange has modified its MRP several times. *See* Securities Exchange Act Release Nos. 34322 (July 6, 1994), 59 FR 35958; 35144 (Dec. 23, 1994), 59 FR 67743; 36622 (Dec. 21, 1995), 60 FR 67384; 37886 (Oct. 29, 1996), 61 FR 37886 (approving File No. SR–PSE–96–26); 37799 (Oct. 9, 1996), 61 FR 54479 (approving additions to the MRP).

[9] For example, an investigation will reveal that a customer's original order, as represented on an ''upstairs'' trading ticket, was for a number of option contracts that was greater than ten, but handwritten notes will indicate that the original order has been divided into separate orders. In addition, the Exchange's time and sales report will establish that a number of sub-orders occurred sequentially on the Auto-Ex system during a relatively short period of time. *See* PSE Letter, *supra* note 4.

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).[10] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(4) requirement that the rules of an exchange provide for the equitable allocation of reasonable fees, 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, the Section 6(b)(6) requirement that the rules of an exchange provide that its members be appropriately disciplined for violations of an exchange's rules and the Act, and the Section 6(b)(7) requirement that the rules of an exchange provide a fair procedure for the disciplining of members.[11]

A. Forum Fee

The Commission believes it is reasonable for the Exchange to establish the proposed forum fee for members who appeal Floor citations or MRP sanctions.[12] It is appropriate to shift a portion of the costs associated with appeal proceedings to those members seeking review of a fine. The imposition of the forum fee is reasonable because the fee serves as a vehicle to match Exchange costs in processing minor disciplinary matters. Moreover, the Panel has the discretion to waive the forum fee when the sole disciplinary sanction imposed is a fine that is less than the total fine initially imposed for the violation. This provision should help ensure that appropriate and equitable discipline is imposed under the PCX's MRP. In addition, the amount of the forum fee (either $250 or $500) appears reasonably designed to recover a portion of the costs of the use of Exchange staff and other Exchange resources that are utilized in processing appeals. Moreover, the Commission does not believe the fees are likely to deter respondents from appealing fines imposed pursuant to the MRP.

[10] 15 U.S.C. 78f(b).

[11] *Id*, sections 78f(b)(4), 78f(b)(5), 78f(b)(6), 78f(b)(7). In approving this rule, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* section 78c(f).

[12] The Exchange has stated that one purpose of the forum fee is to deter frivolous appeals. The Commission does not believe such rationale is acceptable for establishing a fee. Nonetheless, for the reasons set forth below, the Commission believes the fee is not inconsistent with the Act.

B. Auto-Ex Unbundling

The Commission believes that an exchange's ability to effectively enforce compliance by its members and member organizations with the Commission's and Exchange's rules is central to its self-regulatory function. The inclusion of a rule in an exchange's minor rule violation plan, therefore, should not be interpreted to mean that it is not an important rule. On the contrary, the Commission recognizes that the inclusion of minor violations of particular rules under a minor rule violation plan may make the exchange's disciplinary system more efficient in prosecuting more egregious or repeated violations of these rules, thereby furthering its mandate to protect investors and the public interest.

The Commission believes that adding Rule 6.87(c) to the Exchange's MRP is consistent with the Act. The purpose of the Exchange's MRP is to provide a response to a violation of the Exchange's rules when a meaningful sanction is needed but when initiation of the disciplinary proceeding pursuant to Exchange Rule 10.3[13] is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the nature of the violation. Rule 10.13 provides for an appropriate response to minor violations of certain Exchange rules while preserving the due process rights of the party accused through specified required procedures.[14]

Violations of Rule 6.87(c) can be appropriately handled through expedited proceedings because they are objective in nature and easily verifiable. Noncompliance with the provisions may be determined objectively and adjudicated quickly without the complicated factual and interpretive inquiries associated with more sophisticated Exchange disciplinary proceedings. If, however, the Exchange determines that a violation of one of these rules is not minor in nature, the Exchange retains the discretion to initiate full disciplinary proceedings in accordance with Exchange Rule 10.3. The Commission expects the PCX to bring full disciplinary proceedings in appropriate cases (*e.g.,* in cases where the violation is egregious or where there

[13] PCX Rule 10.3 governs the initiation of disciplinary proceedings by the Exchange for violations within the disciplinary jurisdiction of the Exchange.

[14] The MRP permits any person to contest the Exchange's imposition of the fine through submission of a written answer, at which time the matter will become a formal disciplinary action.

is a history or pattern of repeated violations).

Finally, the Commission finds that the imposition of the recommended fines for violations of Rule 6.87(c) should result in appropriate discipline of members in a manner that is proportionate to the nature of such violations.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–PSE–96–42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–13280 Filed 5–20–97; 8:45 am]

BILLING CODE 8010–01–M

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2545]

United States International Telecommunications Advisory Committee, National Study Group; Meeting Notice

The Department of State announces that the United States International Telecommunications Advisory Committee (ITAC), will meet on June 3, 1997, from 10:00 a.m. to 12 noon, in Room 1406 at the Department of State, 2201 C Street, N.W., Washington, DC 20520.

The U.S. National Advisory Group, is convening this meeting to review the results of the April 29–May 1, 1997 ITU Geneva meeting concerning Internet domain names, and to seek views as to the future role of the ITU on this issue. The Geneva meeting included an information session, a Meeting of Signatories and potential signatories of the generic top level domain Memorandum of Understanding (GTLD–MOU).

Members of the General Public may attend this meeting and join in the discussions, subject to the instructions of the Chairman, Earl S. Barbely.

Note: If you wish to attend please send a fax to 202–647–7407 not later than 24 hours before the scheduled meeting. On this fax, please include subject meeting, your name, social security number, and date of birth.

One of the following valid photo ID's will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, U.S. Government ID (company ID's are no longer accepted by Diplomatic Security). Enter from the ''C'' Street Main Lobby.

Dated: May 9, 1997.

Earl S. Barbely,

Chairman, U.S. ITAC for Telecommunications Standardization.

[FR Doc. 97–13305 Filed 5–20–97; 8:45 am]

BILLING CODE 4710–45–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Deadline for Submission of Petitions for the 1997 Annual GSP Product Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the 1997 annual GSP product review.

SUMMARY: The deadline for the submission of petitions in the 1997 Annual GSP Product Review is 5:00 p.m., Wednesday, July 2, 1997.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Announcement of 1997 Annual GSP Product Review

The GSP regulations (15 CFR 2007.3 *et seq.*) provide the schedule of dates for conducting an annual review unless otherwise specified by a Federal Register notice. Accordingly, notice is hereby given that, in order to be considered in the 1997 Annual GSP Product Review, all petitions to modify the list of articles eligible for duty-free treatment under the GSP must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m., Wednesday, July 2, 1997. Petitions submitted after the deadline will not be considered for review and will be returned to the petitioner.

The GSP provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461 *et. seq.*), as amended (the ''Trade Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations. Section 505 of the Trade Act states that duty-free treatment provided under the GSP shall not remain in effect after May 31, 1997. The 1997 Annual GSP review will be conducted according to a schedule to be issued in the **Federal Register** if and when the program is reauthorized. The review will be based on those petitions that are submitted prior to the July 2 deadline and accepted for review by the GSP Subcommittee.

A. 1997 GSP Annual Product Review

Interested parties or foreign governments may submit petitions: (1) To designate additional articles as eligible for GSP; (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; (3) to waive the competitive need limits for individual beneficiary developing countries with respect to specific GSP eligible articles; and (4) to otherwise modify GSP coverage. All product petitions must include a detailed description of the product and the Harmonized Tariff Schedule (HTS) subheading in which the product is classified.

B. Submission of Petitions and Requests

Petitions to modify GSP treatment should be addressed to GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 518, Washington, DC 20508. An original and fourteen (14) copies of each petition must be submitted in English. If the petition contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, the submission containing confidential information should be clearly marked ''confidential'' at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either ''public version'' or ''nonconfidential''). Furthermore, interested parties submitting petitions that request action with respect to specific products should list on the first page of the petition the following information: (1) The requested action; (2) the HTS subheading in which the product is classified; and (3) if applicable, the beneficiary country.

All such submissions must conform with the GSP regulations which are set forth at 15 CFR 2007. These regulations were published in the **Federal Register**

on Tuesday, February 11, 1986 (51 FR 5035). The regulations are printed in ''A Guide to the U.S. Generalized System of Preferences (GSP)'' (August 1991) (''GSP Guide''). Petitioners are strongly advised to review the GSP regulations. Submissions that do not provide all information required by § 2007.1 of the GSP regulations will not be accepted for review except upon a detailed showing in the submission that the petitioner made a good faith effort to obtain the information required. These requirements will be strictly enforced. Petitions with respect to waivers of the competitive need limitations must meet the informational requirements for product addition requests in § 2007.1(c). A model petition format is available from the GSP Subcommittee and is included in the GSP Guide. Petitioners are requested to use this model petition format so as to ensure that all informational requirements are met.

Information submitted (except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7) will be subject to public inspection by appointment only. Appointments may be made by contacting Ms. Brenda Webb (Tel. 202/395–6186) of the USTR Public Reading Room.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–13290 Filed 5–20–97; 8:45 am]

BILLING CODE 3901–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Allocation of the 200,000 Metric Ton Increase in the Amount Available Under the Raw Cane Sugar Tariff-Rate Quota

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the allocation among supplying countries and customs areas for the 200,000 metric ton increase in the amount available under the current raw cane sugar tariff-rate quota triggered by the fact that the stocks to use ratio for sugar reported in the U.S. Department of Agriculture's World Agricultural Supply and Demand Estimates on May 12, 1997, was 15.4 percent.

EFFECTIVE DATE: May 21, 1997.

ADDRESSES: Inquiries may be mailed or delivered to Audrae Erickson, Senior Economist, Office of Agricultural Affairs (Room 421), Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Audrae Erickson, Office of the Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains a tariff-rate quota for imports of raw cane sugar. On September 13, 1996, the Secretary of Agriculture announced the in-quota quantity for the tariff-rate quota for raw cane sugar for the period October 1, 1996–September 30, 1997, and announced an administrative plan under which the quantity available would be increased by 200,000 metric tons, raw value if the stocks-to-use ratio reported in the May 1997 U.S. Department of Agriculture's World Agricultural Supply and Demand Estimates (WASDE) is less than or equal to 15.5 percent. On May 12, 1997, the WASDE reported a stocks to use ratio of 15.4 percent, thereby triggering a 200,000 metric ton increase in the quantity available under the tariff-rate quota.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under paragraph (3) of Presidential Proclamation No. 6762 (60 FR 1007). Additional U.S. Note 5(b)(i) to chapter 17 of the HTS also provides that the quota amounts established under the note may be allocated among supplying countries and areas by the United States Trade Representative.

Raw Cane Sugar Allocation

Accordingly, USTR is allocating the 200,000 metric ton increase in the amount available under the raw cane sugar tariff-rate quota to the following countries or areas in metric tons, raw value:

Country	Current FY 1997 allocation	Additional allocation	New FY 1997 allocation
Argentina	78,505	8,731	87,236
Australia	151,533	16,853	168,386
Barbados	11,359	0	11,359
Belize	20,083	2,234	22,316
Bolivia	14,606	1,624	16,230
Brazil	264,727	29,442	294,169
Columbia	43,817	4,873	48,690
Congo	7,258	0	7,258
Cote d'Ivoire	7,258	0	7,258
Costa Rica	27,376	3,046	30,431
Dominican Republic	321,324	35,736	357,060
Ecuador	20,083	2,234	22,316
El Salvador	47,468	5,279	52,748
Fiji	16,431	1,827	18,259
Gabon	7,258	0	7,258
Guatemala	87,634	9,746	97,380
Guyana	21,908	2,437	24,345
Haiti	7,258	0	7,258
Honduras	18,257	2,030	20,288
India	14,606	1,624	16,230
Jamaica	20,083	2,234	22,316
Madagascar	7,258	0	7,258
Malawi	18,257	2,030	20,288
Mauritius	21,908	2,437	24,345

Country	Current FY 1997 allocation	Additional allocation	New FY 1997 allocation
Mexico	25,000	0	25,000
Mozambique	23,734	2,640	26,374
Nicaragua	38,340	4,264	42,604
Panama	52,945	5,888	58,834
Papua New Guinea	7,258	0	7,258
Paraguay	7,258	0	7,258
Peru	74,854	8,325	83,179
Philippines	246,470	27,411	273,881
South Africa	41,991	4,670	46,661
St. Kitts & Nevis	7,258	0	7,258
Swaziland	29,211	3,249	32,460
Taiwan	21,908	2,437	24,345
Thailand	25,560	2,843	28,403
Trinidad-Tobago	12,780	1,421	14,201
Uruguay	7,258	0	7,258
Zimbabwe	21,908	2,437	24,345
Total	1,900,000	200,000	2,100,000

Each allocation to a country that is a net importer of sugar is conditioned on compliance with the requirements of section 902(c)(1) of the Food Security Act of 1985 (7 U.S.C. 1446g note).

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 97–13289 Filed 5–20–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 3, 1997 [61, FR page 9478].

DATES: Comments must be submitted on or before June 20, 1997.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, U.S. Coast Guard, Office of Information Management, telephone (202) 267–2326.

SUPPLEMENTARY INFORMATION:

United States Coast Guard

Title: Incorporation and Adoption of Industry Standards into 33 CFR & 46 CFR Subchapters.

OMB No.: 2115–0525.

Type of Request: Extension of a currently approved collection.

Affected Public: Manufacturers of pressure-vacuum relief valves and safety relief valves.

Abstract: The collection of information requires manufacturers of pressure-vacuum relief valves or safety relief valves to submit to the Coast Guard, drawings and test reports of this equipment.

Need: Under 46 CFR 162.017–162.018, Coast Guard has the authority to approve specific types of safety equipment and materials that are to be installed on commercial vessels to ensure the equipment meets the minimum levels of safety and performance.

Annual Estimated Burden: The estimated burden is 279 hours annually.

ADDRESSEE: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention USCG Desk Officer.

Comments are invited on: the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; 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; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC, on May 15, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–13270 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Air Quality Final Conformity Analysis for Seattle-Tacoma International Airport, Seattle, Washington

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of availability of final conformity analysis.

SUMMARY: The Federal Aviation Administration (FAA) has released the Final Conformity Analysis concerning the proposed Master Plan Update improvements at Seattle-Tacoma International Airport as specified in the Section 176(c) [42 U.S.C. 7506c] of the Clean Air Act Amendments of 1990. This analysis is located within the Final Supplemental Environmental Impact Statement (FSEIS) for the Master Plan Update at Seattle-Tacoma International Airport.

SUPPLEMENTARY INFORMATION: A 30-day comment period is being conducted on the Final Air Conformity analysis, which is located in Appendix B of the Final Supplemental Environmental

Impact Statement. Comments concerning Appendix B of the FSEIS can be submitted until June 23, 1997, to Mr. Dennis Ossenkop, ANM–611, Federal Aviation Administration, Northwest Mountain Region, Airports Division, 1601 Lind Avenue S.W., Renton, WA 98055–4056.

Any person desiring to review the Final Supplemental Environmental Impact Statement may do so during normal business hours at the following locations:

- Federal Aviation Administration, Airports Division Office, Room 540, 1601 Lind Avenue S.W., Renton, Washington
- Port of Seattle, Aviation Planning, 3rd Floor, Terminal Building, Sea-Tac Airport, and Pier 69 Bid Office, 2711 Alaskan Way, Seattle
- Puget Sound Regional Council, Information Center, 216—1st Avenue, Seattle
- Beacon Hill Library, 2519—1st Avenue South, Seattle
- Boulevard Park Library, 12015 Roseberg South, Seattle
- Seattle Public Library, 1000—4th Avenue, Seattle
- Magnolia Library, 2801—34 Avenue West, Seattle
- Rainier Beach Library, 9125 Rainier Avenue S., Seattle
- Bothell Regional Library, 9654 NE 182nd, Bothell
- Burien Library, 14700—6th SW, Burien
- Des Moines Library, 21620—11th South, Des Moines
- Federal Way Regional Library, 34200—1st South, Federal Way
- Foster Library, 4205 South 142nd, Tukwila
- Kent Regional Library, 212—2nd Avenue N, Kent
- Vashon Ober Park, 17210 Vashon Highway, Vashon
- Tacoma Public Library, 1102 Tacoma Avenue S., Tacoma
- University of Washington, Suzallo library, Government Publications, Seattle
- Valley View Library, 17850 Military Road South, SeaTac
- West Seattle Library, 2306—42nd Avenue SW, Seattle
- Bellevue Regional Library, 1111—110th Avenue NE, Bellevue
- Columbia Library, 4721 Rainier Avenue South, Seattle
- Holly Park Library, 6805—32nd Avenue South, Seattle
- Douglas-Truth Library, 2300 E. Yesler Way, Seattle

CONTACT PERSON: If you desire additional information related to this project, please contact Mr. Dennis Ossenkop, Federal Aviation Administration, Airports Division, 1601 Lind Avenue, S.W., Renton, Washington 98055–4056.

Issued in Renton, Washington on May 13, 1997.

Lowell H. Johnson,

Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington.

[FR Doc. 97–13258 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Document Availability; Final Supplemental Environmental Impact Statement for Seattle-Tacoma International Airport, Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of document availability.

SUMMARY: The Federal Aviation Administration (FAA) and the Port of Seattle (Port), acting as joint lead agencies, have released the Final Supplemental Environmental Impact Statement (FSEIS) for the Master Plan Update at Seattle-Tacoma International (SEATAC) Airport. This FSEIS is a combined Federal National Environmental Policy Act (NEPA) and Washington State Environmental Policy Act (SEPA) document.

SUPPLEMENTARY INFORMATION: An additional comment period is being conducted on *only* the Final Air Conformity analysis. Comments concerning Appendix B of the FSEIS can be submitted until June 23, 1997, to Mr. Dennis Ossenkop, ANM–611, Federal Aviation Administration, Northwest Mountain Region, Airports Division, 1601 Lind Avenue, SW., Renton, WA 98055–4056.

Any person desiring to review the Final Supplemental Environmental Impact Statement may do so during normal business hours at the following locations:

Federal Aviation Administration, Airports Division Office, Room 540, 1601 Lind Avenue, SW., Renton
Port of Seattle, Aviation Planning, Terminal Building, 3rd Floor, Room 301, Sea-Tac Airport, Seattle
Port of Seattle, Second Floor Bid Counter, Pier 69, 2711 Alaskan Way, Seattle
Boulevard Park Library, 12015 Roseberg, South, Seattle
Burien Library, 14700–6th, SW., Burien
Des Moines Library, 21620–11th South, Des Moines
Federal Way Library, 34200–1st, South, Federal Way
Foster Library, 4205 South 142ns, Tukwila
Seattle Library, 1000–4th Avenue, Seattle
Tacoma Public Library, 1102 Tacoma Avenue, South, Tacoma
University of Washington, Suzallo Library, Government Publications, Seattle
Valley View Library, 17850 Military Road, South, SeaTac
Puget Sound Regional Council, Information Center, 216–1st Avenue, Seattle
Beacon Hill Library, 2519–1st Avenue South, Seattle
Magnolia Library, 2801—34th Ave W, Seattle
Rainier Beach Library, 9125 Rainier Avenue S., Seattle
Bothell Regional Library, 9654 NE 182nd, Bothell
Kent Regional Library, 212—2nd Ave N, Kent
Vashon Ober Park, 17210 Vashon Highway, Vashon
West Seattle Library, 2306—42nd Ave SW, Seattle
Bellevue Regional Library, 1111—110th Ave NE, Bellevue
Columbia Library, 4721 Rainier Avenue S., Seattle
Holy Park Library, 6805—32nd Avenue South, Seattle
Douglas-Truth Library, 2300 E. Yessler Way, Seattle.

CONTACT PERSON: If you desire additional information related to this project, please contact: Mr. Dennis Ossenkop, Federal Aviation Administration, Airports Division, 1601 Lind Avenue, S.W., Renton, Washington 98055–4056.

Issued in Renton, Washington on May 13, 1997.

Lowell H. Johnson,

Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington.

[FR Doc. 97–13259 Filed 5–26–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the

Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualification issues.

DATES: The meeting will be held on June 4 at 12:00 noon.

ADDRESSES: The meeting will be held at the Regional Airlines Association, Second floor, 1200 19th St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Regina L. Jones, (202) 267–9822, Office of Rulemaking, (ARM–100) 800 Independence Avenue, SW Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss training and qualification issues. This meeting will be held June 4, 1997, at 12:00 noon, at the Regional Airlines Association. The agenda for this meeting will include a progress report from the Air Carrier Pilot Pre-Employment Screening Standards and Criteria Working Group. The Air Carrier Pilot Pay for Training Working Group and the Air Carrier Minimum Flight Time Requirements Working Group will provide progress reports which will include their respective completed study recommendations. ARAC will review the Air Carrier Pilot Pay for Training Working Group and the Air Carrier Minimum Flight Time Requirements Working Group's study recommendations.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on May 19, 1997.

Jean Casciano,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–13471 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Public Hearing of the National Civil Aviation Review Commission

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public hearing.

SUMMARY: The FAA is issuing this notice to advise the public of a hearing of the National Civil Aviation Review Commission. The Commission is soliciting comments and suggestions from the public regarding issues surrounding the future financing and budgeting of Federal Aviation Administration activities.

DATES: The meeting will be held on May 28th at 9:30 a.m.

EFFECTIVE DATE: The hearing will be held in the U.S. Commerce Department Auditorium at 14th and Constitution Avenue, N.W. Washington, DC 20230. Those planning to attend should enter through the main entrance in the center section of the building on 14th Street.

FOR FURTHER INFORMATION CONTACT: Margie Tower, (202) 366–6942, fax: (202) 493–2963 National Civil Aviation Review Commission, Room 8332, Nassif Bldg. 400 7th Street, S.W. Washington DC 20590.

SUPPLEMENTARY INFORMATION: The Civil Aviation Review Commission was created by Congress as part of the Federal Aviation Reauthorization Act of 1996. If you would like to testify at the public hearing, please contact Margie Tower at the phone number listed above. Attendance is open to the interested public but may be limited to space available. The public must make arrangements in advance to present oral statements as the hearing, and will be required to provide written statements to the Commission by close of business Monday, May 26th.

Issued in Washington, DC, on May 14, 1997.

Margie Tower,

Hearing Officer, National Civil Aviation Review Commission.

[FR Doc. 97–13256 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Rotorcraft, Transport Airplane, and Normal and Utility Airplane Seating Systems

AGENCY: Federal Aviation Administration.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed revision to the Technical Standard Order pertaining to aircraft seating systems. The proposed TSO prescribes the minimum performance standards that aircraft seating systems must meet to be identified with the marking ''TSO–C127a.''

DATES: Comments must identify the TSO file number and be received on or before August 29, 1997.

ADDRESSES: Send all comments on the proposed Technical Standard Order to: Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C127a, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Bobbie J. Smith, Technical Programs and Continued Airworthiness Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9546.

Comments Invited

Interested persons are invited to comment on the proposed revision to TSO–C127 listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

The FAA held two public meetings on 16-g dynamic testing seat compliance in March and November 1995. In consideration of comments received at these meetings regarding the difficulties associated with demonstrating compliance with the requirements of TSO–C127, the FAA decided that a revision to TSO–C127 would be

beneficial in eliminating some of the stated constraints and speed up TSO approvals.

TSO articles are considered ''stand alone'' items with broad application and are intended to be design and production approvals independent of installation. The existing TSO provided performance standards for aircraft seating systems and incorporated a number of installation requirements related to head impacts and emergency evacuation. The proposed revision to TSO–C127, which references Society of Automotive Engineers (SAE) Aerospace Standard (AS) 8049, includes the following: deletes the pass/fail criteria for permanent structural deformation, head injury criteria (HIC), and femur loads; expands the belt angle between applicability to general aviation by including additional requirements for compliance with 14 CFR § 23.562; includes a general design requirement specifying that seat the belt and the seat pan (horizontal), be 45–55 degrees; requires additional marking to include the seating system, safety belt and seat cushion part numbers, and minimum seat pitch; permits optional marking to allow aircraft-specific installation limitations; and requires additional data requirements for the manufacturer to report HIC, head strike path, permanent deformations, and femur loads results to the installer/user.

How To Obtain Copies

A copy of the proposed TSO–C127a may be obtained by contacting ''For Further Information Contact.''

Copies of SAE Aerospace Standard (AS) 8049, ''Performance Standards for Seats in Civil Rotocraft and Transport Airplanes,'' dated July 1990, may be purchased from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, PA 15096–0001.

Issued in Washington, DC, on May 16, 1997.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 97–13267 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bellevue, King County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a NEPA/SEPA environmental impact statement (EIS) will be prepared for a proposed SR 520 Improved Access Project, located between I–405 and 148th Avenue NE in the City of Bellevue, King County, Washington. The EIS will evaluate alternatives and the associated environmental impacts to provide additional access to and from the east on SR 520 to service the commercial/light industrial area south of SR 520.

FOR FURTHER INFORMATION CONTACT: Gene K. Fong, Division Administrator, Federal Highway Administration, Evergreen Plaza Building, 711 South Capitol Way, Suite 501, Olympia, Washington, 98501, Telephone: (360) 753–9413; John Okamoto, Regional Administrator, Washington State Department of Transportation, Northwest Region, 15700 Dayton Avenue North, Seattle, Washington 98133–9710, Telephone (206) 440–4691; Kim Becklund, Project Development Coordinator, City of Bellevue, PO Box 90012, Bellevue, Washington 98009–9012, Telephone (425) 637–6145.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the City of Bellevue and the Washington State Department of Transportation, proposes to improve access to and from the east on SR 520 between Interstate 405 and west of 148th Avenue NE while maintaining adequate freeway traffic operations and safety and minimizing adverse impacts to businesses and residential neighborhoods. The project would address the need for improved mobility for regional vehicle trips. Level of service, average vehicle delay, queue length, travel speed, and traffic redistribution will be used as measures of effectiveness.

The proposed project is consistent with the current City of Bellevue's Comprehensive Plan and the 1986 Bel-Red Overlake Transportation Study (BROTS) as adopted by the City of Bellevue in 1988. Growth along the SR 520 corridor has increased traffic conjestion within the study area to exceed the traffic conjestion forecast in the BROTS. Future development in the corridor is expected to create even greater congestion on the transportation network.

To address congestion and maintain an acceptable level of service, as much as practicable, the BROTS recommended providing additional access to and from SR 520 within two general areas: (1) Between I–405 and west of 148th Avenue NE, and (2) between east of 148th Avenue NE and NE 51st Street. For area 2 above, access needs on SR 520 east of 148th Avenue NE are satisfied with the interchange soon to be constructed at NE 40th Street.

To meet the BROTS recommendation for area 1, in addition to the no action alternative, at least four alternatives relating to new access ramps to serve traffic to and from the east on SR 520 are under consideration in the vicinity of 124th Avenue NE, 130th Avenue NE, 136th Avenue NE, and 140th Avenue NE. Other alternatives identified during the scoping process would also be considered.

The EIS will evaluate alternatives based on their ability to (1) satisfy anticipated access needs between SR 520 and the commercial/light-industrial area south of SR 520 while maintaining adequate freeway operations, and (2) minimize impacts to nearby residential and business neighborhoods.

Environmental issues of concern identified to date include potential impacts to air quality, noise, and changes to community character.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, affected Native American tribes, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public pre-scoping open houses were held on December 3rd, 1996, and January 7, 1997. An agency scoping meeting will be held on June 24th, 1997, to solicit agency input. No other scoping meetings have been scheduled. Comments from the public and agencies regarding the scope and significance of issues to be addressed and alternatives to be evaluated in the EIS are requested by July 24th, 1997. Following the circulation of the draft EIS, an open house and public hearing will be held to receive comments on the draft EIS. The draft EIS will be available for agency and public review and comment at the public hearing and for at least 15 days prior to the public hearing. Public notice will be given regarding timing of the public scoping comments period, the public open houses, the EIS hearings, the availability of the draft and final EIS's and the issue of the Record of Decision.

To assure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS, or requests to be added to the mailing list, should be directed to the FHWA, the WSDOT, or the City of Bellevue at the corresponding address provided above.

(Catalog of Federal Domestic Assistance Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 9, 1997.

José M. Miranda,

Environmental Program Manager, Olympia, Washington.

[FR Doc. 97–13308 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Maglev Study Advisory Committee; Notice of Sixth Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Sixth Meeting of the Maglev Study Advisory Committee.

SUMMARY: As required by Section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 (1988) and 41 C.F.R. Part 101–6, section 101–6, 1015(a), the Federal Railroad Administration (FRA) gives notice of the sixth meeting of the Maglev Study Advisory Committee (''MSAC''). The purpose of the meeting is to advise DOT/FRA on the Congressionally mandated study of the near-term applications of maglev technology in the United States.

DATES: The sixth meeting of the MSAC is scheduled for 8:30 a.m. to 5:00 p.m. EDT on Monday, June 9, 1997.

ADDRESS: The sixth meeting of the MSAC will be held in the 7th floor Conference Room at FRA Headquarters, 1120 Vermont Avenue NW, Washington, D.C. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Those with special needs should inform Mr. Mongini 5 days in advance of the meeting so appropriate facilities can be provided.

FOR FURTHER INFORMATION CONTACT: Arrigo Mongini, Deputy Associate Administrator for Railroad Development, FRA RDV–2, 400 Seventh Street S.W., Washington D.C. 20590 (mailing address only) or by telephone at (202) 632–3286.

SUPPLEMENTARY INFORMATION: The sixth meeting of the Maglev Study Advisory Committee (MSAC) will be held on June 9th from 8:30 a.m. to 5:00 p.m. EDT at the Federal Railroad Administration (FRA) headquarters, 1120 Vermont Avenue, N.W., Washington, DC, in the 7th floor conference room. The meeting is open to the public.

The MSAC was created by the National Highway System Designation Act to advise the Secretary of Transportation in the preparation of a report to be submitted by the Secretary to the Congress evaluating the near term applications of magnetic levitation transportation technology in the U.S. ''with particular emphasis on identifying projects warranting immediate application of such technology.'' The Act further specifies that the study also ''evaluate the use of innovative finance techniques for the construction and operation of such projects.'' The eight committee members collectively have experience in magnetic levitation transportation, design and construction, public and private finance, and infrastructure policy disciplines. The conference report on the National Highway System Designation Act specifies that ''[t]he Committee should identify and analyze specific magnetic leviation projects, such as a connector from New York City to its airports, the transportation project under development between Baltimore, Maryland and Washington, DC, and technology transfer efforts underway in Pittsburgh, Pennsylvania, so that Congress can better assess how near-term magnetic levitation technology could complement existing modes of transportation. * * *'' The Secretary has assigned responsibility for preparing the report to the Federal Railroad Administrator, working closely with the MSAC. The Secretary's report to the Congress will discuss the extent to which the above and other potential magnetic levitation projects warrant immediate application, taking into account such factors as ability to be financed, benefits vs costs, extent of public commitment and support, and national significance.

This meeting will focus on reviewing a draft of the Secretary's report.

Issued in Washington, D.C. on May 16, 1997.

Donald M. Itzkoff,

Deputy Administrator.

[FR Doc. 97–13330 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB No. MC–F–20907]

Greyhound Lines, Inc.—Control—Carolina Coach Company, Inc., Kannapolis Transit Company, and Seashore Trailways

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Greyhound Lines, Inc. (Greyhound or applicant), has filed an application under 49 U.S.C. 14303 to acquire control of Carolina Coach Company, Inc., d/b/a Carolina Trailways (Carolina), Kannapolis Transit Company (Kannapolis), and Seashore Trailways (Seashore). Persons wishing to oppose the application must follow the rules under 49 CFR part 1182, subpart B. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments are due by July 7, 1997. Applicants may reply by July 21, 1997. If no comments are received by July 7, 1997, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20907 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of any comments to applicants' representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, N.W., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Greyhound is a motor passenger carrier operating nationwide, scheduled, regular-route service. Carolina is also a motor passenger carrier, operating scheduled, regular-route service in Delaware, Maryland, North Carolina, Pennsylvania, Virginia, and the District of Columbia. Kannapolis and Seashore are non-operating motor passenger carriers, holding authority to provide regular-route operations in North Carolina and Virginia.

Under the proposed transaction, Carolina, Kannapolis, and Seashore (which currently are wholly owned subsidiaries of Carolina Associates, Inc.) would remain separate corporations but become wholly owned subsidiaries of Greyhound. Greyhound also controls Texas, New Mexico & Oklahoma

Coaches, Inc., Continental Panhandle Lines, Inc., Vermont Transit Co., Inc., Los Rapidos, Inc., and Grupo Centro, Inc. (Grupo), each of which is a regional motor passenger carrier.

Applicant asserts that the aggregate gross operating revenues of Greyhound and its affiliates exceeded $2 million during the twelve months preceding the filing of this application (the minimum gross operating revenues required to trigger section 14303). Applicant also states that the proposed transaction will have no competitive effects, and that the operations of the carriers involved will remain unchanged; that the total fixed charges associated with the proposed transaction are well within Greyhound's financial means; and that there will be no change in the status of any employees.

Applicant certifies that the pertinent carrier parties have satisfactory safety fitness ratings (including Greyhound's affiliates, except Grupo, a newly organized motor carrier); that Greyhound and Carolina maintain sufficient liability insurance and are neither domiciled in Mexico nor owned or controlled by persons of that country; and that approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicant's representative.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed as having been vacated and a procedural schedule will be adopted to reconsider the application. If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on July 7, 1997, unless timely opposing comments are filed.

4. A copy of this notice will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington. DC 20530.

Decided: May 14, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–13315 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–167 (Sub–No. 1178X)]

Consolidated Rail Corporation—Abandonment Exemption—in Erie County, NY

On May 1, 1997, Consolidated Rail Corporation (Conrail) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Black Rock Industrial Track, extending from railroad milepost 396.97± to railroad milepost 397.56± in the City of Buffalo, NY, which traverses U.S. Postal Service ZIP Code 14207, a distance of 0.59 miles±, in Erie County, NY. Conrail has indicated that there are no stations on the line and that the line lies wholly within the station of Buffalo.

The line does not contain federally granted rights-of-way. Any documentation in Conrail's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Company—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 19, 1997.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer of financial assistance must be accompanied by a $900 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 10, 1997. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–167 (Sub-No. 1178X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) John J. Paylor, 2001 Market Street-16A, Philadelphia, PA 19101–1416.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: May 15, 1997.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 97–13314 Filed 5–20–97; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Notice of Receipt of Cultural Property Request From the Government of Guatemala

The Government of Guatemala 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 May 13, 1997, by the United States Information Agency. The request seeks U.S. protection of certain categories of archaeological material and ethnological material the pillage of which, it is alleged, jeopardizes the national cultural patrimony of Guatemala. In

accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603 *et seq.*) the request will be reviewed by the Cultural Property Advisory Committee which will develop recommendations before a determination is made.

Dated: May 15, 1997.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 97–13318 Filed 5–20–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Determination To Close the Meeting of the Cultural Property Advisory Committee; June 2 and 3, 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 June 2 and 3, 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: May 15, 1997.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 97–13319 Filed 5–20–97; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Notice of Meeting of the Cultural Property Advisory Committee

SUMMARY: The Cultural Property Advisory Committee will meet on Monday, June 2, 1997, from approximately 1:30 p.m. to 5:30 p.m., and on Tuesday, June 3, 1997, from approximately 9:00 a.m. to 2:00 p.m., at the United States Information Agency, Washington, D.C. The agenda will include deliberation of a cultural property request from the Government of Guatemala to the United States Government seeking protection of certain archaeological and ethnological materials. 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.*, Pub. L. 97–446). Since discussion of this matter 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: May 15, 1997.

Penn Kemble,

Deputy Director, United States Information Agency.

[FR Doc. 97–13320 Filed 5–20–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 62, No. 98
Wednesday, May 21, 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 HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF-HS-97-06]

Availability of Financial Assistance to Expand Head Start Enrollment

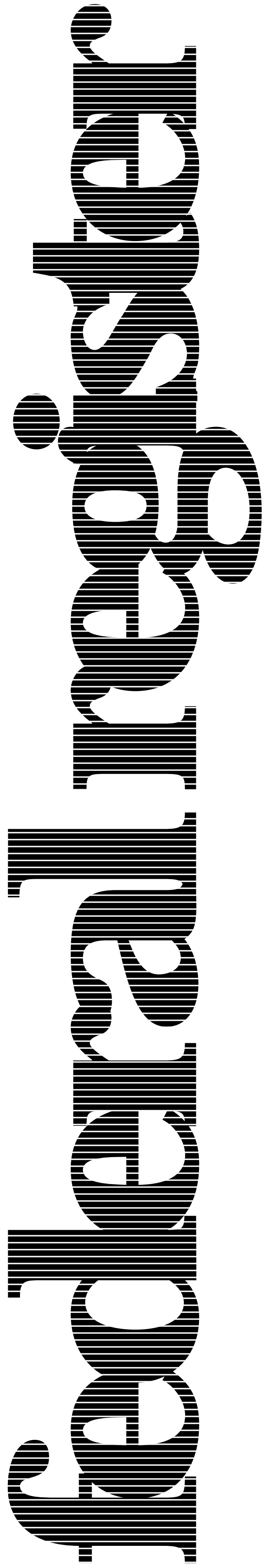
Correction

In notice document 97–12505 beginning on page 26525 in the issue of Wednesday, May 14, 1997, make the following corrections.

1. On page 26525, in the second column, in the **DATES** section, ''June 13, 1997'' should read ''July 14, 1997''.

2. On page 26529, in the third column, under *D. Closing Date for Receipt of Applications*, in the first paragraph insert the date ''July 14, 1997''.

BILLING CODE 1505-01-D



Wednesday
May 21, 1997

Part II

Nuclear Regulatory Commission

10 CFR Part 52

Standard Design Certification for the System 80+ Design; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150–AF15

Standard Design Certification for the System 80+ Design

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is amending its regulations to certify the System 80+ design. The NRC is adding a new provision to its regulations that approves the System 80+ design by rulemaking. This action is necessary so that applicants for a combined license that intend to construct and operate the System 80+ design may do so by appropriately referencing this regulation. The applicant for certification of the System 80+ design was Combustion Engineering, Inc. (ABB–CE).

EFFECTIVE DATE: The effective date of this rule is June 20, 1997. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 20, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry N. Wilson, Office of Nuclear Reactor Regulation, telephone (301) 415–3145 or Geary S. Mizuno, Office of the General Counsel, telephone (301) 415–1639, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background.
II. Public comment summary and resolution.
A. Principal Issues.
1. Finality.
2. Tier 2 Change Process.
3. Need for Additional Applicable Regulations.
B. Responses to specific requests for comment from proposed rule.
C. Other Issues.
1. NRC Verification of ITAAC Determinations.
2. DCD Introduction.
3. Duplicate documentation in design certification rule.
III. Section-by-section discussion.
A. Introduction (Section I).
B. Definitions (Section II).
C. Scope and contents (Section III).
D. Additional requirements and restrictions (Section IV).
E. Applicable regulations (Section V).
F. Issue resolution (Section VI).
G. Duration of this appendix (Section VII).
H. Processes for changes and departures (Section VIII).
I. Inspections, tests, analyses, and acceptance criteria (Section IX).
J. Records and Reporting (Section X).
IV. Finding of no significant environmental impact: availability.
V. Paperwork Reduction Act statement.
VI. Regulatory analysis.
VII. Regulatory Flexibility Act certification.
VIII. Backfit analysis.

I. Background

On March 30, 1989, Combustion Engineering, Inc. applied for certification of the System 80+ standard design with the NRC. The application was made in accordance with the procedures specified in 10 CFR Part 50, Appendix O, and the Policy Statement on Nuclear Power Plant Standardization, dated September 15, 1987.

The NRC added 10 CFR part 52 to its regulations to provide for the issuance of early site permits, standard design certifications, and combined licenses for nuclear power reactors. Subpart B of 10 CFR part 52 established the process for obtaining design certifications. A major purpose of this rule was to achieve early resolution of licensing issues and to enhance the safety and reliability of nuclear power plants.

On August 21, 1989, Combustion Engineering, Inc. requested that its application, originally submitted pursuant to 10 CFR part 50, Appendix O, be considered as an application for design approval and subsequent design certification pursuant to Subpart B of 10 CFR part 52. The application was docketed on May 1, 1991, and assigned Docket No. 52–002. Correspondence relating to the application prior to this date was also addressed to docket number STN 50–470 and Project No. 675. By letter dated May 26, 1992, Combustion Engineering, Inc. notified the NRC that it is a wholly owned subsidiary of Asea Brown Boveri, Inc., and the appropriate abbreviation for the company is ABB–CE. Therefore, ABB–CE will be used for Combustion Engineering, Inc. throughout this statement of consideration.

The NRC staff issued a final safety evaluation report (FSER) related to the certification of the System 80+ design in August 1994 (NUREG–1462). The FSER documents the results of the NRC staff's safety review of the System 80+ design against the requirements of 10 CFR part 52, Subpart B, and delineates the scope of the technical details considered in evaluating the proposed design. Subsequently, the applicant submitted changes to the System 80+ design and the NRC staff evaluated these design changes in a supplement to the FSER (NUREG–1462, Supplement No. 1). A copy of the FSER and Supplement No. 1 may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328 or the National Technical Information Service, Springfield, VA 22161. A final design approval (FDA) was issued for the System 80+ design on July 26, 1994 and revised on November 23, 1994 to provide a 15 year duration. An FDA, which incorporates the design changes, will be issued to supersede the current FDA after issuance of this final design certification rule.

The NRC staff originally proposed a conceptual design certification rule for evolutionary standard plant designs in SECY–92–287, ''Form and Content for a Design Certification Rule.'' Subsequently, the NRC staff modified the draft rule language proposed in SECY–92–287 to incorporate Commission guidance and published a draft-proposed design certification rule in the **Federal Register** on November 3, 1993 (58 FR 58665), as an Advanced Notice of Proposed Rulemaking (ANPR) for public comment. In accordance with the Administrative Procedure Act of 1947 (APA), as amended, 10 CFR part 52 provides the opportunity for the public to submit written comments on proposed design certification rules. However, Part 52 went beyond the requirements of the APA by providing the public with an opportunity to request a hearing before an Atomic Safety and Licensing Board in a design certification rulemaking. Therefore, on April 7, 1995 (60 FR 17924), the NRC published a proposed rule in the **Federal Register** which invited public comment and provided the public with the opportunity to request an informal hearing before an Atomic Safety and Licensing Board. The period within which an informal hearing could be requested expired on August 7, 1995. The NRC did not receive any requests for an informal hearing during this period. The NRC staff conducted public meetings on the development of this design certification rule on November 23, 1993, May 11 and December 4, 1995, and May 2 and July 15, 1996, in order to enhance public participation.

The Commission has considered the comments received and made appropriate modifications to this design certification rule, as discussed in Sections II and III, and revised the numbering system used in the proposed rule. With these modifications, the Commission adopts as final this design certification rule, Appendix B to 10 CFR Part 52, for the System 80+ design.

II. Public Comment Summary and Resolution

The public comment period for the proposed design certification rule, the design control document, and the environmental assessment for the System 80+ design expired on August 7, 1995. The NRC received twenty letters containing public comments on the proposed rule. The most extensive comments were provided by the Nuclear Energy Institute (NEI), in a letter dated August 4, 1995, which provided comments on behalf of the nuclear industry. In general, NEI commended the NRC for its efforts to provide standard design certifications but expressed serious concerns about aspects of the proposed rule that would, in NEI's view, undermine the goals of design certification. These concerns are addressed in the following responses to the public comments. Fourteen utilities and three vendors also provided comments. All of these comment letters endorsed the NEI comments of August 4, 1995, and some provided additional comments. The Department of Energy and the Ohio Citizens for Responsible Energy, Inc. (OCRE) also submitted comment letters.

The NRC received other letters that were entered into the docket and are part of the record of the rulemaking proceeding, including an August 4, 1995 letter from NEI to the Chairman of the NRC, which submitted a copy of the Executive Summary of their public comment letter, and a May 11, 1995 letter, which provided suggestions on finality, secondary references, and other explanatory material. Also, the NRC received a second letter from Combustion Engineering, Inc., which provided proposed SOC that conformed with its comments.

On February 6, 1996, the NRC staff issued SECY–96–028, ''Two Issues for Design Certification Rules,'' which requested the Commission's approval of the staff's position on two major issues raised by NEI in its comments on the proposed design certification rules. The NRC staff issued this paper because of fundamental disagreements with the nuclear industry on the need for applicable regulations and the matters to be considered in verifying inspections, tests, analyses, and acceptance criteria (ITAAC). Both NEI and DOE commented on SECY–96–028 in letters dated March 5 and 13, 1996, respectively.

On March 8, 1996, the Commission conducted a public meeting in which industry representatives and NRC staff presented their views on SECY–96–028. During this meeting, NEI and the NRC staff both indicated agreement on the ITAAC verification issue. Subsequently, in a staff requirements memorandum (SRM) dated March 21, 1996, the Commission requested the NRC staff to meet again with industry to try to resolve the issue of applicable regulations. The NRC staff met with representatives of ABB–CE, GE Nuclear Energy, and NEI in a public meeting on March 25, 1996 and were unable to reach agreement. As a result, the NRC staff provided revised resolutions of applicable regulations and ITAAC determinations in SECY–96–077, ''Certification of Two Evolutionary Designs,'' dated April 15, 1996, that superseded the proposals in SECY–96–028. SECY–96–077 addressed the comments on the proposed design certification rules and provided final design certification rules for the Commission's consideration. Subsequently, notice of a 30 day comment period for SECY–96–077 was published in the **Federal Register** (61 FR 18099), and the comment period was extended for an additional 60 days (61 FR 27027) at the request of NEI.

In response to the supplementary comment period, ABB–CE, GE Nuclear Energy, and NEI submitted additional comments on the final design certification rules in letters dated July 23, 1996. Westinghouse also submitted comments in a letter dated July 24, 1996. NEI sent an unsolicited letter, dated September 23, 1996, to the Director of the Office of Nuclear Reactor Regulation on three design certification issues. NEI also sent a letter, dated September 16, 1996, to Chairman Jackson that provided additional information in response to questions that were asked by the Commission in its August 27, 1996 briefing on design certification rulemaking.

The following discussion is separated into three groups: (1) Resolution of the principal issues raised by the commenters, (2) resolution of the NRC's specific requests for comment from the proposed rule, and (3) resolution of other issues raised by the commenters.

A. Principal Issues

1. Finality

Comment Summary. The applicant and NEI submitted extensive comments on the scope of issues that were proposed to be accorded finality under 10 CFR 52.63(a)(4), i.e. are not subject to re-review by the NRC or re-litigation in hearings. In summary, both commenters argued that:

- The scope of issues accorded finality is too narrow;
- Changes made in accordance with the change process are not accorded finality;
- Changes approved by the NRC should have protection under 10 CFR 52.63(a)(4);
- The rule does not provide finality in all subsequent proceedings;
- The rule should be clarified regarding finality of SAMDA evaluations;
- A *de novo* review is not required for design certification renewal;
- Finality for Technical Specifications; and
- Finality for Operational Requirements.

These comments are found in ABB–CE Comment, B.1; NEI Comments dated August 4, 1995, Attachment B, pp. 1–23; NEI Comments dated July 23, 1996, pp. 1–21; and NEI letter dated September 16, 1996.

Response: Scope of issues accorded finality.

The applicant and NEI took issue with the proposed rule's language limiting the scope of nuclear safety issues resolved to those issues ''associated with'' the information in the FSER or Design Control Document (DCD). Each argued that there were many other documents which included and/or addressed issues whose status should be regarded as ''resolved in connection with'' this design certification rulemaking. These additional documents include ''secondary references'' (*i.e.,* DCD references to documents and information which are not contained in the DCD, including secondary references containing proprietary and safeguards information), docketed material, and the entire rulemaking record (refer to NEI Comments dated August 4, 1995, Attachment B, pp. 6–9).

The Commission has reconsidered its position and decided that the ambit of issues resolved by this rulemaking should be the information that is reviewed and approved in the design certification rulemaking, which includes the rulemaking record for the standard design. This position reflects the Commission's SRM on SECY–90–377, dated February 15, 1991. Also, the Commission concludes that the set of issues resolved should be those that were addressed (or could have been addressed if they were considered significant) as part of the design certification rulemaking process. However, the Commission does not agree that all matters submitted on the docket for design certification should be accorded finality under 10 CFR 52.63(a)(4). Some of this information was neither reviewed nor approved and

some was not directly related to the scope of issues resolved by this rulemaking. Therefore, the final rule provides finality for all nuclear safety issues associated with the information in the FSER and Supplement No. 1, the generic DCD, including referenced information that is intended as requirements, and the rulemaking record.

In adopting this final design certification rulemaking, the Commission also finds that the design certification does not require any additional or alternative design criteria, design features, structures, systems, components, testing, analyses, acceptance criteria, or additional justifications in support of these matters. Inherent in the concept of design certification by rulemaking is that all these issues which were addressed, or could have been addressed, in this rulemaking are resolved and therefore, may not be raised in a subsequent NRC proceeding. If this were not the case and one could always argue in a subsequent proceeding that an additional, alternative, or modified system, structure or component of a previously-certified design was needed, or additional justification was necessary, or a modification to the testing and acceptance criteria is necessary, there would be little regulatory certainty and stability associated with a design certification. The underlying benefits of certification of individual designs by rulemaking, e.g., early Commission consideration and resolution of design issues and early Commission consideration and agreement on the methods and criteria for demonstrating completion of detailed design and construction in compliance with the certified design, would be virtually negated. Thus, in accord with the views of the applicant and NEI, the Commission clarifies and makes explicit its previously implicit determination that the scope of issues resolved in connection with the design certification rulemaking includes the lack of need for alternative, additional or modified design criteria, design features, structures, systems, components, or inspections, tests, analyses, acceptance criteria or justifications, and such matters may not be raised in subsequent NRC proceedings.

In the statements of consideration (SOC) for the proposed rule, the Commission proposed that issues associated with ''requirements'' in secondary references, not specifically approved for incorporation by reference by the Office of the Federal Register (OFR) because they contained proprietary information, would not be considered resolved in the design certification rulemaking within the meaning of 10 CFR 52.63(a)(4) (*See* 60 FR 17924, 17934). NEI took exception to this position, arguing that issues arising from secondary references should be included in the set of issues resolved (*See* NEI Comments dated August 4, 1995, Attachment B, pp. 6–9). The Commission has determined that the set of issues resolved by this rulemaking embraces those issues arising from secondary references that are requirements for the certified design, including those containing proprietary information. This is consistent with the intent of 10 CFR part 52 that issues related to the design certification should be considered and resolved in the design certification rulemaking. However, since OFR does not approve of ''incorporation by reference'' of proprietary information, even though it was available to potential commenters on this proposed design certification rule (see 60 FR 17924; April 7, 1995), the Commission has included in VI.E of this appendix, a process for obtaining proprietary information at the time that notice of a hearing in connection with issuance of a combined license is published in the **Federal Register**. Such persons will have actual notice of the requirements contained in the proprietary information and, therefore, will be subject to the issue finality provisions of Section VI of this appendix.

Changes made in accordance with the ''50.59-like'' change process. The proposed design certification rule included a change process similar to that provided in 10 CFR 50.59. Specifically, proposed Section 8(b)(5) provided ''that such changes open the possibility for challenge in a hearing'' for Tier 2 changes in accordance with the Commission's guidance in its SRM on SECY–90–377, dated February 15, 1991. The NRC also believed that providing an opportunity for a hearing would serve to discourage changes that could erode the benefits of standardization. The applicant and NEI argued that Tier 2 departures under the ''§ 50.59-like'' process should not be subject to any opportunity for hearing but may only be challenged via a 10 CFR 2.206 petition; and, therefore, should be subject to the special backfit restrictions of 10 CFR 52.63(a). For purposes of brevity, this discussion refers to both generic changes and plant-specific departures as ''changes.''

The Commission has reconsidered and revised its position on issue resolution in connection with Tier 2 departures under the ''§ 50.59-like'' process. Section 50.59 was originally adopted by the Commission to afford a Part 50 operating license holder greater flexibility in changing the facility as described in the FSAR while still assuring that safety-significant changes of the facility would be subject to prior NRC review and approval [refer to 27 FR 5491, 5492 (first column); June 9, 1962]. The ''unreviewed safety question'' definition was intended by the Commission to exclude from prior regulatory consideration those licensee-initiated changes from the previously NRC-approved FSAR that could not be viewed as having safety significance sufficient to warrant prior NRC licensing review and approval. To put it another way, any change properly implemented pursuant to § 50.59 should continue to be regarded as within the envelope of the original safety finding by the NRC. Moreover, the departure process for Tier 2 information, as specified in VIII.B of this appendix, includes additional restrictions derived from 10 CFR 52.63(b)(2), *viz.,* the Tier 2 change must not involve a change to Tier 1 information. Thus, the departure process (VIII.B.5), if properly implemented by an applicant or licensee, must logically result in departures which are both ''within the envelope'' of the Commission's safety finding for the design certification rule and for which the Commission has no safety concern. Therefore, it follows that properly implemented departures from Tier 2 should continue to be accorded the same extent of issue resolution as that of the original Tier 2 information from which it was ''derived.'' As a result, Section VI of this appendix has been amended to reflect the Commission's determination on issue resolution for Tier 2 changes made in accordance with the departure process and to provide backfit protection for changes made in accordance with the processes of Section VIII of this appendix.

However, the converse of this reasoning leads the Commission to reject the applicant's and NEI's contention that no part of the applicant's or licensee's implementation of the departure process (VIII.B.5) should be open to challenge in a subsequent licensing proceeding, but instead should be raised as a petition for enforcement action under 10 CFR 2.206. Because § 2.206 applies to holders of licenses and is considered a request for enforcement action (thereby presenting some potential difficulties when attempting to apply this in the context of a combined license applicant), it is unclear why an applicant or licensee

who departs from the design certification rule in noncompliance with the process (VIII.B.5) should nonetheless reap the benefits of issue resolution stemming from the design certification rule. An incorrect departure from the requirements of this appendix essentially places the departure outside of the scope of the Commission's safety finding in the design certification rulemaking. It follows that properly-founded contentions alleging such incorrectly-implemented departures cannot be considered ''resolved'' by this rulemaking. The industry also appears to oppose an opportunity for a hearing on the basis that there is no ''remedy'' available to the Commission in a licensing proceeding that would not also constitute a violation of the Tier 2 backfitting restrictions applicable to the Commission and that in a comparable situation with an operating plant the proper remedy is enforcement action. However, for purposes of issue finality the focus should be on the initial licensing proceeding where the result of an improper change evaluation would simply be that the change is not considered resolved and no enforcement action is needed. Neither the applicant nor NEI provided compelling reasons why contentions alleging that applicants or licensees have not properly implemented the departure process (VIII.B.5) should be entirely precluded from consideration in an appropriate licensing proceeding where they are relevant to the subject of the proceeding.

Although the Commission disagrees with the applicant and NEI over the admissibility of contentions alleging incorrect implementation of the departure process, the Commission acknowledges that they have a valid concern regarding whether the scope of the contentions will incorrectly focus on the substance of correctly-performed departures and the possible lengthened time necessary to litigate such matters in a hearing (*see, e.g.,* Transcript of December 4, 1995, Public Meeting, p. 47). Therefore, the Commission has included an expedited review process (VIII.B.5.f), similar to that provided in 10 CFR 2.758, for considering the admissibility of such contentions. Persons who seek a hearing on whether an applicant has departed from Tier 2 information in noncompliance with the applicable requirements must submit a petition, together with information required by 10 CFR 2.714(b)(2), to the presiding officer. If the presiding officer concludes that a prima facie case has been presented, he or she shall certify the petition and the responses to the Commission for final determination as to admissibility.

Subsequently, in its comments dated July 23, 1996, NEI requested the Commission to modify VIII.B.5.f to clarify that a ''50.59-like'' change is not subject to a hearing under § 52.103 or § 50.90 unless the change bears directly on an asserted ITAAC noncompliance or the requested amendment, respectively. The Commission determined that NEI's proposed wording correctly stated its intention regarding the opportunity for a hearing on ''50.59-like'' departures after a license is issued and, therefore, VIII.B.5.f of this appendix has been appropriately modified.

Changes approved by the NRC should have protection under Section 52.63. NEI, in its comments dated July 23, 1996, requested the Commission to provide the special backfit protection of § 52.63 to all changes to Tier 1, Tier 2*, and changes to Tier 2 that involve an unreviewed safety question or a change in the technical specifications. The special provision in § 52.63(a)(4) states that ''* * * the Commission shall treat as resolved those matters resolved in connection with the issuance or renewal of a design certification.'' The Commission stated, in its SRM on SECY–90–377, that ''* * * the process provides issue finality on all information provided in the application that is reviewed and approved in the design certification rulemaking.'' The Commission also stated that ''* * * changes to the design reviewed and approved by the staff should be minimized * * *.'' Based on this guidance, the Commission decided that the special backfit provision should be extended to generic changes made to the DCD that are approved by rulemaking. Also, for departures that are approved by license amendment or exemption, the Commission decided that the licensee of that plant should receive the special backfit protection. However, any other licensee that references the same DCD should not have finality for that plant-specific departure, unless it was again approved by license amendment or exemption for that licensee.

Finality in all subsequent proceedings. NEI requested that Section 6 of the proposed rule be expanded to include a more detailed statement regarding the findings, issues resolved, and restrictions on the Commission's ability to ''backfit'' this appendix. The Commission agrees that the industry's proposal has some merit, and has revised Section VI of this appendix, beginning with the general subjects embodied in NEI's proposed redraft, but restructured the NEI proposal into three sections to reflect the scope of issues resolved, change process, and rulemaking findings, thereby conforming the language to reflect the conventions of the appendix (e.g., generic changes versus plant-specific departures), and making minor editorial changes for clarity and consistency. However, one area in which the Commission declines to adopt the industry's proposal is the inclusion of a statement that extends issue finality to all subsequent proceedings.

Section 52.63(a)(4) explicitly states that issues resolved in a design certification rulemaking have finality in combined license proceedings, proceedings under § 52.103, and operating license proceedings. There are other NRC proceedings not mentioned in § 52.63(a)(4), *e.g.,* combined license amendment proceedings and enforcement proceedings, in which the design certification should logically be afforded issue resolution and, therefore, are included in Section VI of this appendix. However, NEI listed NRC proceedings such as design certification renewal proceedings, for which issue finality would not be appropriate. Moreover, it should be understood that to say that this design certification rule is accorded ''issue finality'' does not eliminate changes properly made under the change restrictions in Section VIII of this appendix. Therefore, the Commission declines to adopt in its entirety the industry proposal that issue finality should extend to all subsequent NRC proceedings.

In its comments dated July 23, 1996, NEI requested the Commission to modify the last phrase of Section 6(b), of SECY–96–077, to reflect the NRC staff's intent regarding finality in enforcement proceedings. Section 6(b) stated that the DCD has finality in enforcement proceedings ''where these proceedings reference this appendix.'' NEI was concerned that this phrase could be construed as depriving finality to plants that reference the design certification rules in enforcement proceedings that do not explicitly reference the design certification rule. The intent of the phrase was to limit finality of the information in the design certification rule to enforcement proceedings involving a plant referencing the rule. Therefore, the Commission replaced the wording, ''where these proceedings reference this appendix,'' with ''involving plants referencing this appendix'' in Section VI.B of the final rules.

Finality regarding SAMDA evaluations. In its comments dated July 23, 1996, NEI requested the Commission to extend finality for the SAMDA evaluation when an exemption from a

site parameter specified in the evaluation has been approved. Section VI.B.7 of this appendix accords finality to severe accident mitigation design alternatives (SAMDAs) for plants referencing the design certification rules ''whose site parameters are within those specified in the Technical Support Document'' (TSD). NEI is concerned that the last phrase could open all SAMDAs to re-review and re-litigation during a subsequent proceeding where the licensee has requested an exemption from a site parameter specified in the DCD, even though the exemption has no impact on the SAMDAs. NEI also stated that a clarification to the SOC was not sufficient and believed that a modification to the rule language was needed.

The NRC staff agrees that it was not the intent to re-litigate SAMDA issues under such circumstances. The intent was that an intervenor in any subsequent proceeding could challenge a SAMDA based on an exemption to a TSD site parameter only after bringing forward evidence demonstrating that the SAMDA analysis was invalidated. However, the NRC staff does not agree that the wording should be changed. NEI's proposed modification would shift the burden of demonstrating the acceptability of the exemption from the licensee. Moreover, it would be difficult to extend the NEPA review to all available sites without any qualification. Therefore, the Commission decided not to change Section VI.B.7 of this appendix but did explain in section III.F of this SOC that requests for litigation must meet § 2.714 requirements.

A de novo review is not required for design certification renewal. In its comments dated July 23, 1996, NEI requested the Commission to extend finality to design certification renewal proceedings and to define a review procedure for renewal applications that would limit the scope of review. Subsequently, NEI stated in a letter dated September 23, 1996, that principles for renewal reviews can and should be established in the design certification rules. The extension of finality to a renewal proceeding would produce the illogical result that the NRC's conclusion in the original design certification rulemaking, that the design provided adequate protection and was in compliance with the applicable regulations, would also apply to the renewal review even though the regulations in Part 52 require another review and finding at the renewal stage 15 years later. The effect of this extension would be to extend the design certification for another 15 years (for a total of 30 years) instead of the intended 15 years.

The NRC staff agrees with NEI that the renewal review must be conducted against the Commission's regulations applicable and in effect at the time of the original certification, and that the backfit limitations in § 52.59 must be satisfied in order to require a change to the certified design. However, the NRC staff disagrees with NEI's position that the information to be considered in the renewal review is limited to ''an evaluation of experience between the time of certification and the renewal application,'' as well as NEI's implication that the scope of the design for which new information can be considered is limited to those areas which the design certification applicant concedes there is new information or proposes a modification. The effect of NEI's position would be to preclude the NRC from considering new information which could have altered the Commission's consideration and approval of the design had it been known at the time of the original certification review, and to cede control of the scope of the renewal review to the design certification applicant. Furthermore, the review procedure for a renewal application is *not* dependent on whether the applicant proposed changes to the previously certified design. The underlying philosophy was that new safety requirements and issues that arose during the duration of the design certification rule could *not* be applied to the certified design (unless the adequate protection standard was met). However, these issues could be raised for consideration at the renewal stage and applied to the application for renewal if the backfit standard in § 52.59 was met. Therefore, any portion of the certified design could be reviewed (subject to § 52.59) to ensure that the applicable regulations for the certified design are being met based on consideration of new information (e.g. operating experience, research, or analysis) resulting from the previous 15 years of experience with the design.

The Commission rejects NEI's proposal to apply the finality provision of § 52.63 to the review of renewal applications because this would suggest improperly that NRC, in its renewal review, is bound by previous safety conclusions in the initial certification review. The type of renewal review was resolved by the Commission during the development of 10 CFR Part 52. At that time, the Commission determined that the backfit standard in § 52.59(a) controls the development of new requirements during the review of applications for renewal. Therefore, the Commission disagrees with NEI's proposed revision to Section 6(b), in its letter dated September 23, 1996, and NEI's proposal for a new Section 6(e) is unnecessary because this process is already correctly covered in § 52.59.

The Commission does not plan or expect to be able to conduct a de-novo review of the entire design if a certification renewal application is filed under § 52.59. It expects that the review focus would be on changes to the design that are proposed by the applicant and insights from relevant operating experience with the certified design or other designs, or other material new information arising after the NRC staff's review of the design certification. The Commission will defer consideration of specific design certification renewal procedures until after it has issued this appendix.

Finality for Technical Specifications. In its comments dated August 4, 1995, Attachment B (pp. 124–129), NEI requested that the NRC establish a single set of integrated technical specifications governing the operation of each plant that references this design certification and that the technical specifications be controlled by a single change process. In the proposed rule, the NRC included the technical specifications for the standard designs in the generic DCD in order to maximize the standardization of the technical specifications for plants that reference this design certification. As a result, a plant that references this design certification would have two sets of technical specifications associated with its license: (1) Technical specifications from Chapter 16 of Tier 2 of the generic DCD and applicable to the standardized portion of the plant, and (2) those technical specifications applicable to the site-specific portion for the plant. While each portion of the technical specifications would be subject to a different change process, the substantive aspects of the change processes would be essentially the same.

In the design certification rule that was attached to SECY–96–077, the technical specifications were removed from Tier 2 for two reasons. First, the removal from Tier 2 responded to NEI's comment regarding a single change process. NEI's proposal to include the technical specifications in Tier 2 prior to issuance of a combined license (COL), and then remove them after COL issuance is not acceptable. If the technical specifications are included in Tier 2 by the design certification rulemaking, they would remain there and be controlled by the Tier 2 change process for the life of the facility. Second, the NRC staff wanted the ability

to impose future operational requirements and standards (distinct from design matters) on the technical specifications for a plant that referenced the certified design and Section 4(c) of the rule in SECY–96–077 provided that ability. However, Section 4(c) would not be used to backfit design features (i.e., hardware changes) unless the criteria of § 52.63 were met.

In its comments dated July 23, 1996, NEI requested the Commission to extend finality to the technical specifications in Chapter 16 of the DCD. NEI stated that the technical specifications in the DCDs should remain part of the design certification and be accorded finality because they have been reviewed and approved by the NRC. NEI also proposed that, after the license is granted, the technical specifications in the DCD would no longer have any relevance to the license and there would be a single set of technical specifications that will be controlled by the 10 CFR 50.90 license amendment process and subject to the backfit provisions in 10 CFR 50.109.

The Commission does not support extension of the special backfit provisions of § 52.63 to technical specifications and other operational requirements as requested by NEI, rather the Commission supports the proposal to treat the technical specifications in Chapter 16 of the DCD as a special category of information, as described in the NRC staff's comment analyses dated August 13 and October 21, 1996. The purpose of design certification is to review and approve design information. There is no provision in Subpart B of 10 CFR Part 52 for review and approval of purely operational matters. The Commission approves a revised Section VIII.C of this appendix that would apply to the technical specifications, bases for the technical specifications, and other operational requirements in the DCD; that would provide for use of § 52.63 only to the extent the design is changed; and that would use § 2.758 and § 50.109 to the extent an NRC safety conclusion is being modified or changed but no design change is required. In applying § 2.758 and § 50.109, it will be necessary to determine from the certification rulemaking record what safety issues were considered and resolved. This is because § 2.758 will not bar review of a safety matter that was not considered and resolved in the design certification rulemaking. There would be no backfit restriction under § 50.109 because no prior position was taken on this safety matter. After the COL is issued, the set of technical specifications for the COL (the combination of plant-specific and DCD derived) would be subject to the backfit provisions in § 50.109 (assuming no Tier 1 or Tier 2 changes are involved).

Finality for operational requirements. A new provision was included in the design certification rules, set forth in Section 4(c), that were attached to SECY–96–077. The reason for this provision was that the operational requirements in the DCD had not received a complete and comprehensive review. Therefore, the new Section 4(c) was needed to reserve the right of the Commission to impose operational requirements on plants referencing this appendix, such as license conditions for portions of the plant within the scope of this design certification, e.g., start-up and power ascension testing. NEI claimed, in its comments dated July 23, 1996, that the backfit provisions in Section 4(c) contradicted 10 CFR 52.63 and were incompatible with the purpose of 10 CFR part 52.

NEI's claim that Section 4(c) contradicts 10 CFR 52.63 and enables the NRC to impose changes to the design information in the DCD without regard to the special backfit provisions of § 52.63 is wrong. Section 4(c) clearly referred to ''facility operation'' not ''facility design.'' The purpose of Section 4(c) was to ensure that any necessary operational requirements could be applied to plants that reference these certified designs because plant operational matters were not finalized in the design certification review. It was also clear that the NRC staff considered resolved design matters to be final. Refer to SECY–96–077 which states: ''Most importantly, a provision has been included in Section 4 to provide that the final rules do not resolve any issues regarding conditions needed for safe operation (as opposed to safe design).'' This is consistent with the goal of design certification, which is to preserve the resolution of design features, which are explicitly discussed or inferred from the DCD. The backfit provisions in Sections VIII.A and VIII.B of this appendix control design changes.

Subsequently, in its comments of September 23, 1996, NEI requested that all DCD requirements, including operational-related and other non-hardware requirements, be accorded finality under § 52.63. The Commission has determined that NEI's proposal to assign finality to operational requirements is unacceptable, because operational matters were not comprehensively reviewed and finalized for design certification (refer to section III.F of this SOC). Although the information in the DCD that is related to operational requirements was necessary to support the NRC's safety review of the standard designs, the review of this information was not sufficient to conclude that the operational requirements are fully resolved and ready to be assigned finality under § 52.63. Therefore, the Commission retained the former Section 4(c), but reworded this provision on operational requirements and placed it in Section VI.C of this appendix with the other provisions on finality (also refer to Section VIII.C of this appendix).

2. Tier 2 Change Process

Comment Summary. NEI submitted many comments on the following aspects of the Tier 2 change process:

- Scope of the change process in VIII.B.5;
- Post-design certification rulemaking changes to Tier 2 information;
- Restrictions on Tier 2* information; and
- Additional aspects of the change process.

Response. The proposed design certification rule provided a change process for Tier 2 information that had the same elements as the Tier 1 change process in order to implement the two-tiered rule structure that was requested by industry. Specifically, the Tier 2 change process in Section 8(b) of the proposed rule provided for generic changes, plant-specific changes, and exemptions similar to the provisions in 10 CFR 52.63, except that some of the standards for plant-specific orders and exemptions are different. Section 8(b) also had a provision similar to 10 CFR 50.59 that allows for departures from Tier 2 information by an applicant or licensee, without prior NRC approval, subject to certain restrictions, in accordance with the Commission's SRM on SECY–90–377, dated February 15, 1991.

Scope of the change process in VIII.B.5. In its comments dated August 4, 1995, Attachment B, pp. 67–82, NEI raised a concern regarding application of the § 50.59-like change process to severe accident information, and stated:

> Instead of applying the § 50.59-like process to all of Chapter 19, we propose (1) that the process be applied only to those sections that identify features that contribute significantly to the mitigation or prevention of severe accidents (i.e., Section 19.8 for the ABWR and Section 19.15 for the System 80+), and (2) that changes in these sections should constitute unreviewed safety questions only if they would result in a substantial increase in the probability or consequences of a severe accident.

The Commission agrees that departures from Tier 2 information that describe the resolution of severe accident issues should use criteria that

is different from the criteria in 10 CFR 50.59 for determining if a departure constitutes an unreviewed safety question (USQ). Because of the increased uncertainty in severe accident issue resolutions, the NRC has included ''substantial increase'' criteria in VIII.B.5.c of this appendix for Tier 2 information that is associated with the resolution of severe accident issues. The (§ 50.59-like) criteria in VIII.B.5.b of this appendix, for determining if a departure constitutes a USQ, will apply to the remaining Tier 2 information. If the proposed departure from Tier 2 information involves the resolution of other safety issues in addition to the severe accident issues, then the USQ determination must be based on the criteria in VIII.B.5.b of this appendix.

However, NEI misidentified the sections of the DCD that describe the resolutions of the severe accident issues. Section 19.8 for the U.S. ABWR and Section 19.15 for the System 80+ design identify important features that were derived from various analyses of the design, such as seismic analyses, fire analyses, and the probabilistic risk assessment. This information was used in preparation of the Tier 1 information and, as stated in the proposed rule, it should be used to ensure that departures from Tier 2 information do not impact Tier 1 information. For these reasons, the Commission rejects the contention that the severe accident resolutions are contained in Section 19.15 of the generic DCD.

Subsequently, in its comments dated July 23, 1996, NEI requested the Commission to expand the scope of design information that is controlled by the special change process for severe accident issues to all of the information in Chapter 19 of the DCD. The NRC staff intended that this special change process be limited to severe accident design features, where the intended function of the design feature is relied upon to resolve postulated accidents when the reactor core has melted and exited the reactor vessel and the containment is being challenged (severe accidents). These design features are identified in Section 19.11 of the System 80+ DCD and Section 19E of the ABWR DCD. This special change process was not intended for design features that are discussed in Chapter 19 for other reasons, such as resolution of generic safety issues. However, the NRC staff recognizes that the severe accident design features identified in Section 19.11 are described in other areas of the DCD. Therefore, the location of design information is not important to the application of the special change process for severe accident issues and it is not specified in Section VIII.B.5. The importance of this provision is that it be limited to the severe accident design features. In addition, the Commission is cognizant of certain design features that have intended functions to meet ''design basis'' requirements and to resolve ''severe accidents.'' These design features will be reviewed under either VIII.B.5.b or VIII.B.5.c depending upon the design function being changed. Finally, the Commission rejects NEI's request to expand the scope of design information that is controlled by the special change process for severe accident issues.

Post-design certification rulemaking changes to Tier 2 information. In its comments dated August 4, 1995, Attachment B, pp. 83–89, NEI requested that the NRC add a § 50.59-like provision to the change process that would allow design certification applicants to make generic changes to Tier 2 information prior to the first license application. These applicant-initiated, post-certification Tier 2 changes would be binding upon all referencing applicants and licensees (i.e., referencing applicants and licensees must comply with all such changes) and would continue to enjoy ''issue preclusion'' (i.e., issues with respect to the adequacy of the change could not be raised in a subsequent proceeding as a matter of right). However, the changes would not be subject to public notice and comment. Instead NEI proposed that the changes would be considered resolved and final (not subject to further NRC review) six months after submission, unless the NRC staff informs the design certification applicant that it disagrees with the determination that no unreviewed safety question exists.

The Commission declines to adopt the NEI proposal. The applicant-initiated Tier 2 changes proposed by NEI have the essential attributes of a ''rule,'' and the process of NRC review and ''approval'' (negative consent) would appear to be ''rulemaking,'' as these terms are defined in Section 551 of the APA. Section 553(b) of the APA requires public notice in the **Federal Register** and an opportunity for public comment for all rulemakings, except in certain situations delineated in Section 553(b) (A) and (B) which are not applicable to applicant-initiated changes. The NEI proposal conflicts with the rulemaking requirements of the APA. If the NEI proposal is based upon a desire to permit the applicant to disseminate worthwhile Tier 2 changes, there are three alternatives already afforded by Part 52 and this appendix. The applicant (as any member of the public) may submit a petition for rulemaking pursuant to Subpart H of 10 CFR Part 2, to modify this design certification rule to incorporate the proposed changes to Tier 2. If the Commission grants the petition and adopts a final rule, the change is binding on all referencing applicants and licensees in accordance with VIII.B.2 of this appendix. Also, the applicant could develop acceptable documentation to support a Tier 2 departure in accordance with VIII.B of this appendix. This documentation could be submitted for NRC staff review and approval, similar to the manner in which the NRC staff reviews topical reports.[1] Finally, the applicant could provide its proposed changes to a COL applicant who could seek approval as part of its COL application review. The Commission regards these regulatory approaches to be preferable to the NEI proposal. However, if NEI is requesting that the Commission change its preliminary determination, as set forth in its February 15, 1991 SRM on SECY–90–377, that generic Tier 2 rulemaking changes be subject to the same restrictive standard as generic Tier 1 changes, the Commission declines to do so. The Commission believes that maintaining a high standard for generic changes to both Tier 1 and Tier 2 will ensure that the benefits of standardization are appropriately achieved.

Subsequently, in its comments dated July 23, 1996, NEI requested the Commission to modify this SOC to reflect NRC openness to discuss a post-design certification change process and related issues after the design certification rules are completed. The Commission has determined that vendors who submit a design, which is subsequently certified by rulemaking, may not make changes under a ''50.59-like'' process and that NEI's request is outside the scope of this rulemaking. The Commission believes that vendors should be limited in making changes to rulemaking to amend the certification and that this appendix provides an appropriate process for making generic

[1] Topical reports, which are usually submitted by vendors such as GE, Westinghouse, and Combustion Engineering, request NRC staff review and approval of generic information and approaches for addressing one or more of the Commission's requirements. If the topical report is approved by the NRC staff, it issues a safety evaluation setting forth the bases for the staff's approval together with any limitations on referencing by individual applicants and licensees. Applicants and licensees may incorporate by reference topical reports in their applications, in order to facilitate timely review and approval of their applications or responses to requests for information. However, limitations in NRC resources may affect review schedules for these topical reports.

changes to the DCD (refer to the SRM on SECY–90–377 and the SOC for 10 CFR Part 52, Section II.1.h). This process is available to everyone and the standard for changes is the same for NRC, the applicant, and the public. This restrictive change process is consistent with the NRC's goal of achieving and preserving resolutions of safety issues to provide a stable and predictable licensing process.

Restrictions on Tier 2 information.* In its comments dated August 4, 1995, Attachment B, pp. 119–123, and in subsequent comments dated July 23, 1996, pp. 50–54, NEI requested that the restriction on departures from all Tier 2* information expire at first full power and, in any event, the expiration of the restrictions should be consistent for both the U.S. ABWR and System 80+ designs. The Commission stated in the proposed design certification rule that the restriction on changing Tier 2* information resulted from the development of the Tier 1 information in the generic DCD. During the development of the Tier 1 information, the applicant for design certification requested that the amount of information in Tier 1 be minimized to provide additional flexibility for an applicant or licensee who references this design certification. Also, many codes, standards, and design processes, which were not specified in Tier 1, that are acceptable for meeting ITAAC were specified in Tier 2. The result of these actions is that certain significant information only exists in Tier 2 and the Commission does not want this significant information to be changed without prior NRC approval. This Tier 2* information is identified in the generic DCD with italicized text and brackets.

Although the Tier 2* designation was originally intended to last for the lifetime of the facility, like Tier 1 information, the NRC staff reevaluated the duration of the change restriction for Tier 2* information during the preparation of the proposed rule. The NRC staff determined that some of the Tier 2* information could expire when the plant first achieves full (100%) power, after the finding required by 10 CFR 52.103(g), while other Tier 2* information must remain in effect throughout the life of the plant that references this rule. The determining factors were the Tier 1 information that would govern these areas after first full power and the NRC staff's judgement on whether prior approval was required before implementation of the change due to the significance of the information.

As a result of NEI's comments, the NRC again reevaluated the duration of the Tier 2* change restrictions. The NRC agrees with NEI that expiration of Tier 2* information for the two evolutionary designs should be consistent, unless there is a design-specific reason for a different treatment. The NRC decided that the Tier 2* restrictions for equipment seismic qualification methods and piping design acceptance criteria could expire at first full power, because the approved versions of the ASME code provide sufficient control of Tier 2* changes for these two areas. However, for fuel and control rod design, the licensing criteria had not been developed sufficiently when the System 80+ DCD was prepared and, therefore, the Tier 2* designation was not applied to the licensing acceptance criteria for System 80+ but was applied to specific parameters of the initial core load. Consequently, many changes to ABB–CE fuel designs, including relatively minor changes and reload calculations, must be submitted to the NRC for review following the first fuel cycle. Also, the NRC decided that the Tier 2* change restriction for control room human factors engineering cannot expire for the System 80+ design at first full power because there is insufficient control over the implementation process in Tier 1.

Recent industry proposals for currently operating core fuel designs have indicated a desire to modify the fuel burnup limit design parameter. However, operational experience with fuel with extended fuel burnup has indicated that cores should not be allowed to operate beyond the burnup limits specified in the generic DCDs without NRC approval. This experience is summarized in a Commission memorandum from James M. Taylor, ''Reactivity Transients and High Burnup Fuel,'' dated September 13, 1994, including Information Notice (IN) 94–64, ''Reactivity Insertion Transient and Accident Limits for High Burnup Fuel,'' dated August 31, 1994. Experimental data on the performance of high burnup fuel under reactivity insertion conditions became available in mid-1993. The NRC issued IN 94–64 and IN 94–64, Supplement 1, on April 6, 1995, to inform industry of the data. The unexpectedly low energy deposition to initiation of fuel failure in the first test rod (at 62 GWd/MTU) led to a re-evaluation of the licensing basis assumptions in the NRC's standard review plan (SRP). The NRC performed a preliminary safety assessment and concluded that there was no immediate safety issue for currently operating cores because of the low to medium burnup status of the fuel (refer to Commission Memorandum from James M. Taylor, ''Reactivity Transients and Fuel Damage Criteria for High Burnup Fuel,'' dated November 9, 1994, including an NRR safety assessment and the joint NRR/RES action plan). Therefore, the NRC has determined that additional actions by industry are not needed to justify current burnup limits for operating reactor fuel designs. However, the NRC has determined that it needs to carefully consider any proposed changes to the fuel burnup parameter in the generic DCDs for these fuel designs until further experience is gained with extended fuel burnup characteristics. Requests for extension of these burnup limits will be evaluated based on supporting experimental data and analyses, as appropriate, for current and advanced fuel designs. Therefore, the NRC has determined that the Tier 2* designation for the fuel burnup parameters should not expire for the lifetime of a referencing facility.

NEI also stated in its comments dated July 23, 1996, that to the extent the Commission does not adopt its recommendation that all Tier 2* restrictions expire at first full power, the SOC should be modified to reflect the NRC staff's intent that Tier 2* material in the DCD may be superseded by information submitted with a license application or amendment. The Commission decided that, if certain Tier 2* information is changed in a generic rulemaking, the category of the new information (Tier 1, 2*, or 2) would also be determined in the rulemaking and the appropriate process for future changes would apply. If certain Tier 2* information is changed on a plant-specific basis, then the appropriate modification to the change process would apply only to that plant.

Additional aspects of the change process. In its comments dated August 4, 1995, Attachment B, pp. 109–118, NEI raised some additional concerns with the Tier 2 change process. The first concern was with the process for determining if a departure from Tier 2 information constituted an unreviewed safety question. Specifically, NEI identified the following statement in section III.H of the SOC for the proposed rule. ''* * * if the change involves an issue that the NRC staff has not previously approved, then NRC approval is required.'' A clarification of this statement was provided in the May 11, 1995 public meeting on design certification (pp. 12–14 of meeting transcript), when the NRC staff stated that the NRC was not creating a new criterion for determining unreviewed

safety questions but was explaining existing criteria. A further discussion of this statement took place between the staff and counsel to GE Nuclear Energy at the December 4, 1995 public meeting on design certification (pp. 53–56 of meeting transcript), in which counsel for GE Nuclear Energy agreed that a departure which creates an issue that was not previously reviewed by the NRC would be evaluated against the existing criteria for determining whether there was an unreviewed safety question. The Commission does not believe there is a need for a change to the language of this appendix. The statement above was not included in section III.H of this SOC.

NEI also requested that Section 8(b) of the proposed rule be revised to state that exemptions are not required for changes to the technical specifications or Tier 2* information that do not involve an unreviewed safety question. The Commission has determined that this is consistent with the Commission's intent that permitted departures from Tier 2* under VIII.B of this appendix should not also require an exemption, unless otherwise required by, or implied by 10 CFR part 52, Subpart B and, accordingly, has revised paragraph VIII.B.6 of this appendix. As discussed above, the technical specifications in Chapter 16 of the generic DCD are not in Tier 2 and, in its comments dated September 23, 1996, NEI proposed that requested departures from Chapter 16 by an applicant for a COL require an exemption. The Commission agrees with NEI's new position and included this provision in Section VIII.C of this appendix. NEI also raised a concern with the requirement for quarterly reporting of design changes during the construction period. This issue is discussed in section III.J of this SOC.

Finally, NEI raised a concern with the status of 10 CFR 52.63(b)(2) in the two-tiered rule structure that has been implemented in this appendix and claimed that 10 CFR 52.63(b) clearly embodies a two-tier structure. NEI's claim is not correct. The Commission adopted a two-tiered design certification rule structure (Commission SRM on SECY–90–377, dated February 15, 1991) and created a change process for Tier 2 information that has the same elements as the Tier 1 change process. In addition, the Tier 2 change process includes a provision that is similar to 10 CFR 50.59, namely VIII.B.5 of this appendix. Therefore, as stated in section II (Topic 6) of the proposed rule, there is no need for 10 CFR 52.63(b)(2) in the two-tiered change process that has been implemented for this appendix.

Subsequently, in its comments dated July 23, 1996, NEI requested the Commission to modify Section VIII.B.4 of this appendix so that exemption requests are only subject to an opportunity for a hearing. The Commission decided that NEI's proposal was consistent with the intent of this appendix and modified Section VIII.B.4, accordingly. Also, NEI requested the Commission to modify Section VIII.B.6.b of this appendix to restrict the need for a license amendment and an opportunity for a hearing to those Tier 2* changes involving unreviewed safety questions. NEI claimed that a hearing opportunity for Tier 2* changes was unnecessary and should be provided only if the change involves an unreviewed safety question. The Commission disagrees with NEI because of the safety significance of the Tier 2* information. The safety significance of the Tier 2* information was determined at the time that the Tier 1 information was selected. Any changes to Tier 2* information will require a license amendment with the appropriate hearing opportunity.

3. Need for Additional Applicable Regulations

Comment Summary. NEI and the other industry commenters criticized Section 5(c) of the proposed design certification rule, which designated additional applicable regulations for the purposes of 10 CFR 52.48, 52.54, 52.59, and 52.63 (refer to NEI Comments dated August 4, 1995, Attachment B, pp. 24–57; NEI Comments dated July 23, 1996, pp. 27–34; and NEI letter dated September 16, 1996).

Response. NEI raised many issues in its comments. These comments have been consolidated into the following groups to facilitate documentation of the NRC staff's responses.

NEI stated that there is no requirement in 10 CFR Part 52 that compels the Commission to adopt these new applicable regulations, that the new applicable regulations are not necessary for adequate protection or to improve the safety of the standard designs, and that the applicable regulations are inconsistent with the Commission's SRM, dated September 14, 1993. NEI also stated that the adoption of new applicable regulations is contrary to the purpose of design certification and Commission policy. The NRC staff developed the new applicable regulations in accordance with the goals of 10 CFR part 52, Commission guidance, and to achieve the purposes of 10 CFR 52.48, 52.54, 52.59, and 52.63 (refer to SECY–96–028, dated February 6, 1996, and the History of Applicable Regulations in Attachment 9 to SECY–96–077, dated April 15, 1996). The Commission chose design-specific rulemaking rather than generic rulemaking for the new technical and severe accident issues. The Commission adopted this approach early in the design certification review process because it was concerned that generic rulemakings would cause significant delay in the design certification reviews and it was thought that the new requirements would be design-specific (refer to SRMs on SECY–91–262 and SECY–93–226). Furthermore, the SOC discussion for Part 52, Section II.1.e, ''Applicability of Existing Standards,'' states that new standards may be required and that these new standards may be developed in a design-specific rulemaking.

NEI stated that the applicable regulations are unnecessary because the NRC staff has applied these technical positions in reviewing and approving the standard designs. In addition, each of these positions has corresponding NRC staff approved provisions in the respective design control documents (DCD) and these provisions already serve the purpose of applicable regulations for all of the situations identified by the NRC staff. In response, the NRC staff stated that NEI's statement that information in the DCD will constitute an applicable regulation confuses the difference between design descriptions approved by rulemaking and the regulations (safety standards) that are used as the basis to approve the design. Furthermore, during a meeting on April 25, 1994, and in a letter from Mr. Dennis Crutchfield (NRC) to Mr. William Rasin (NEI), dated July 25, 1994, the NRC staff stated that design information cannot function as a surrogate for the new (design-specific) applicable regulations because this information describes only one method for meeting the regulation and would not provide a basis for evaluating proposed changes to the previously approved design descriptions.

NEI was also concerned that ''broadly stated'' applicable regulations could be used in the future by the NRC staff to impose backfits on applicants and licensees that could not otherwise be justified on the basis of adequate protection of public health and safety, thereby eroding licensing stability. However, NEI acknowledged in its comments that the NRC staff did not intend to reinterpret the applicable regulations to impose compliance backfits and because implementation of the applicable regulations was approved in the DCD, the NRC staff could not impose a backfit on the approved

implementation without meeting the standards in the change process. Also, NEI claimed that the additional applicable regulations were vague and, in some cases, inconsistent with previous Commission directions. In response to NEI's comments, the NRC staff proposed revised wording and a special provision for compliance backfits to the additional applicable regulations (refer to SECY–96–077). However, in subsequent comments, NEI stated that the proposed wording changes and backfit provision did not mitigate its concerns.

NEI commented in 1995 that some of the additional applicable regulations are requirements on an applicant or licensee who references this appendix, and requested in 1996 that these requirements be deleted from the final rule. The NRC staff moved these requirements from Section 5 of the proposed rules to Section 4 of the rules set forth in SECY–96–077, in response to NEI's 1995 comment (refer to pp. 46–47 of Attachment 1 to SECY–96–077). The Commission has removed those requirements from Section IV and has reserved the right to impose these operational requirements on applicants and licensees who reference this appendix (refer to VI.C of this appendix). The additional applicable regulations that are applicable to applicants or licensees who reference this appendix are specified in the generic DCD as COL license information.

NEI stated that the proposed additional applicable regulations were viewed as penalizing advanced plants for incorporating design features that enhance safety and could impact the regulatory threshold for currently operating plants. NEI also stated that applicable regulations are not needed to permit the NRC to deny an exemption request for a design feature that is subject to an applicable regulation. The Commission decided not to codify the additional applicable regulations that were identified in section 5(c) of the proposed rule. Instead, the Commission adopted the following position relative to the proposed additional applicable regulations.

Although it is the Commission's intent in 10 CFR part 52 to promote standardization and design stability of power reactor designs, standardization and design stability are not exclusive goals. The Commission recognized that there may be special circumstances when it would be appropriate for applicants or licensees to depart from the referenced certified designs. However, there is a desire of the Commission to maintain standardization across a group of reactors of a given design. Nevertheless, Part 52 provides for changes to a certified design in carefully defined circumstances, and one of these circumstances is the option provided to applicants and licensees referencing certified designs to request an exemption from one or more elements of the certified design, e.g., 10 CFR 52.63(b)(1). The final design certification rule references this provision for Tier 1 and includes a similar provision for Tier 2. The criteria for NRC review of requests for an exemption from Tier 1 and Tier 2 in the final rule are the same as those for NRC review of rule exemption requests under 10 CFR part 50 directed at non-certified designs, except that the final rule requires consideration of an additional factor for Tier 1 exemptions—whether special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. It has been the practice of the Commission to require that there be no significant decrease in the level of safety provided by the regulations when exemptions from the regulations in Part 50 are requested. The Commission believes that a similar practice should be followed when exemptions from one or more elements of a certified design are requested, that is, the granting of an exemption under 10 CFR 50.12 or 52.63(b)(1) should not result in any significant decrease in the level of safety provided by the design (Tier 1 and Tier 2). The exemption standards in sections VIII.A.4 and VIII.B.4 of the final rule have been modified from the proposed rule to codify this practice.

In adopting this policy the Commission recognizes that the System 80+ design not only meets the Commission's safety goals for internal events, but also offers a substantial overall enhancement in safety as compared, generally, with the current generation of operating power reactors. *See*, e.g., NUREG–1462 at Section 19.1. The Commission recognizes that the safety enhancement is the result of many elements of the design, and that much but not all of it is reflected in the results of the probabilistic risk assessment (PRA) performed and documented for them. In adopting a rule that the safety enhancement should not be eroded significantly by exemption requests, the Commission recognizes and expects that this will require both careful analysis and sound judgment, especially considering uncertainties in the PRA and the lack of a precise, quantified definition of the enhancement which would be used as the standard. Also, in some cases scientific proof that a safety margin has or has not been eroded may be difficult or even impossible. For this reason, it is appropriate to express the Commission's policy preference regarding the grant of exemptions in the form of a qualitative, risk informed standard, in section VIII of the final rule, and inappropriate to express the policy in a quantitative legal standard as part of the additional applicable regulations.

There are three other circumstances where the enhanced safety associated with the System 80+ design could be eroded: By design changes introduced by ABB–CE at the certification renewal stage; by operational experience or other new information suggesting that safety margins believed to be achieved are not in fact present; and by applicant or licensee design changes under section VIII.B.5 of the final rule (for changes to Tier 2 only). In the first two cases Part 52 limits NRC's ability to require that the safety enhancement be restored, unless a question of adequate protection or compliance would be presented or, in the case of renewals, unless the restoration offers cost-justified, substantive additional protection. Thus, unlike the case of exemptions where a policy of maintaining enhanced safety can be enforced consistent with the basic structure of Part 52, in the case of renewals and new information, implementation of such a policy over industry objections would require changes to the basic structure of Part 52. The Commission has been and still is unwilling to make fundamental changes to Part 52 because this would introduce great uncertainty and defeat industry's reasonable expectation of a stable regulatory framework. Nevertheless, the Commission on its part also has a reasonable expectation that vendors and utilities will cooperate with the Commission in assuring that the level of enhanced safety believed to be achieved with this design will be reasonably maintained for the period of the certification (including renewal).

This expectation that industry will cooperate with NRC in maintaining the safety level of the certified designs applies to design changes suggested by new information, to renewals, and to changes under section VIII.B.5 of the final rule. If this reasonable expectation is not realized, the Commission would carefully review the underlying reasons and, if the circumstances were sufficiently persuasive, consider the need to reexamine the backfitting and renewal standards in Part 52 and the criteria for Tier 2 changes under section VIII.B.5. At this time there is no reason

to believe that cooperation will not be forthcoming and, therefore, no reason to change the regulations. With this belief and stated Commission policy (and the exemption standard discussed above), there is no need for the proposed additional applicable regulations to be embedded in the final rule because the objective of the additional applicable regulations—maintaining the enhanced level of safety—should be achieved without them.

B. Responses to Specific Requests for Comment From Proposed Rule

Only two commenters addressed the specific requests for comments that were set forth in section IV of the SOC for the proposed rule. These commenters were NEI and the Ohio Citizens for Responsible Energy, Inc. (OCRE). The following discussion provides a summary of the comments and the Commission's response.

1. Should the Requirements of 10 CFR 52.63(c) be Added to a New 10 CFR 52.79(e)?

Comment Summary. OCRE agreed that the requirements of 10 CFR 52.63(c) should be added to a new 10 CFR 52.79(e) and NEI had no objection, as long as the substantive requirements in § 52.63(c) were not changed.

Response. Because there is no objection to adding the requirements of 10 CFR 52.63(c) to Subpart C of part 52, as 10 CFR 52.79(e), the Commission will consider this amendment as part of a future review of Part 52. This future review will also consider lessons learned from this rulemaking and will determine if 10 CFR 52.63(c) should be deleted from Subpart B of Part 52.

2. Are There Other Words or Phrases That Should Be Defined in Section 2 of the Proposed Rule?

Comment Summary. Neither NEI nor OCRE suggested other words or phrases that need to be added to the definition section. However, NEI recommended expanded definitions for specific terms in Section 2 of the proposed rule.

Response. The Commission has revised Section II of this appendix as a result of comments from NEI and DOE. A discussion of these changes is provided in sections II.C.2 and II.C.3 of this SOC.

3. What Change Process Should Apply to Design-Related Information Developed by a Combined License (COL) Applicant or Holder That References This Design Certification Rule?

Comment Summary. OCRE recommended the change process in Section 8(b)(5)(i) of the proposed rule and stated that it is essential that any design-related COL information including the plant-specific PRA (and changes thereto) developed by the COL applicant or holder not have issue preclusion and be subject to litigation in any COL hearing. NEI recommended that the COL information be controlled by 10 CFR 50.54 and 50.59 but recognized that the COL applicant or holder must also consider impacts on Tier 1 and Tier 2 information. Subsequently, in its comments dated July 23, 1996, NEI requested the Commission to modify the response to this question that was set forth in SECY–96–077. Specifically, NEI stated that plant-specific changes should be implemented under § 50.59 or § 50.90, as appropriate. The Commission did not significantly modify its former response because the change process must consider the effect on information in the DCD, as NEI previously acknowledged.

Response. The Commission will develop a change process for the plant-specific information submitted in a COL application that references this appendix as part of a future review of Part 52. The Commission expects that the change process for the plant-specific portion of the COL application will be similar to VIII.B.5 of this appendix. This approach is generally consistent with the recommendations of OCRE and NEI.

The Commission agrees with OCRE that the plant-specific portion of the COL application will not have issue preclusion in the licensing hearing. A discussion of the information that will have issue preclusion is provided in sections II.A.1 and III.F of this SOC.

4. Are Each of the Applicable Regulations Set Forth in Section 5(c) of the Proposed Rule Justified?

Comment Summary. OCRE found each of the applicable regulations to be justified and stated that these requirements are responsive to issues arising from operating experience and will greatly reduce the risk of severe accidents for plants using these standard designs. NEI believes that none of the applicable regulations are justified and stated that they are legally and technically unnecessary, could give rise to unwarranted backfits, are destabilizing and, therefore, contrary to the purpose of 10 CFR part 52.

Response. The Commission has determined that it is not necessary to codify the new applicable regulations, as explained in section II.A.3 of this SOC.

5. Section 8(b)(5)(i) of the Proposed Rule Authorizes an Applicant or Licensee Who References the Design Certification To Depart From Tier 2 Information Without Prior NRC Approval if the Applicant or Licensee Makes a Determination That the Change Does Not Involve a Change to Tier 1 or Tier 2* Information, as Identified in the DCD; the Technical Specifications; or an Unreviewed Safety Question, as Defined in Sections 8(b)(5) (ii) and (iii). Where Section 8(b)(5)(i) States That a Change Made Pursuant to That Paragraph Will No Longer Be Considered as a Matter Resolved in Connection With the Issuance or Renewal of a Design Certification Within the Meaning of 10 CFR 52.63(a)(4), Should This Mean That the Determination May Be Challenged as Not Demonstrating That the Change May Be Made Without Prior NRC Approval or That the Change Itself May Be Challenged as Not Complying With the Commission's Requirements?

Comment Summary. OCRE believes that the process for plant-specific departures from Tier 2, as well as the substantive aspect of the change itself, should be open to challenge, although OCRE believes that the second aspect is the more important. By contrast, NEI argued that neither the departure process nor the change should be subject to litigation in any licensing hearing. Rather, NEI argued that any person who wished to challenge the change should raise the matter in a petition for an enforcement action under 10 CFR 2.206.

Response. The Commission has determined that an interested person should be provided the opportunity to challenge, in an appropriate licensing proceeding, whether the applicant or licensee properly complied with the Tier 2 departure process. Therefore, VIII.B.5 of this appendix has been modified to include a provision for challenging Tier 2 departures. The scope of finality for plant-specific departures is discussed in greater detail in section II.A.1 of this SOC.

6. How Should the Determinations Made by an Applicant or Licensee That Changes May Be Made Under Section 8(b)(5)(i) of the Proposed Rule, Without Prior NRC Approval, Be Made Available to the Public in Order for Those Determinations To Be Challenged or for the Changes Themselves To Be Challenged?

Comment Summary. OCRE recommends that the determinations and descriptions of the changes be set forth in the COL application and that they should be submitted to the NRC

after COL issuance. Any person wishing to challenge the determinations or changes should file a petition pursuant to 10 CFR 2.206. NEI recommends submitting periodic reports that summarize departures made under Section 8(b)(5) to the NRC pursuant to Section 9(b) of the proposed design certification rules, consistent with the existing process for NRC notifications by licensees under 10 CFR 50.59. These reports will be available in the NRC's Public Document Room.

Response. The Tier 2 departure process in Section 8(b)(5) and the respective reporting requirements in Section 9(b) of the proposed design certification rule (VIII.B.5 and X.B of this appendix) were based on 10 CFR 50.59. It therefore seems reasonable that the information collection and reporting requirements that should be used to control Tier 2 departures made in accordance with VIII.B.5 of this appendix should generally follow the regulatory scheme in 10 CFR 50.59 (except that the requirements should also be applied to COL applicants), absent countervailing considerations unique to the design certification and combined license regulatory scheme in Part 52. OCRE's proposal raises policy considerations which are not unique to this design certification, but are equally applicable to the Part 50 licensing scheme. In fact, OCRE has submitted a petition (see 59 FR 30308; June 13, 1994) which raises the generic matter of public access to licensee-held information. In view of the generic nature of OCRE's concern and the pendency of OCRE's petition, which independently raises this matter, the Commission concludes that this rulemaking should not address this matter.

7. What Is the Preferred Regulatory Process (Including Opportunities for Public Participation) for NRC Review of Proposed Changes to Tier 2* Information and the Commenter's Basis for Recommending a Particular Process?

Comment Summary. OCRE recommends either an amendment to the license application or an amendment to the license, with the requisite hearing rights. NEI recommends NRC approval by letter with an opportunity for public hearing only for those Tier 2* changes that also involve either a change in Tier 1 or technical specifications, or an unreviewed safety question.

Response. The Commission has developed a change process for Tier 2* information, as described in sections II.A.2 and III.H of this SOC, which essentially treats the proposed departure as a request for a license amendment with an opportunity for hearing. Since Tier 2* departures require NRC review and approval, and involve a licensee departing from the requirements of this appendix, the Commission regards such requests for departures as analogous to license amendments. Accordingly, VIII.B.6 of this appendix specifies that such requests will be treated as requests for license amendments after the license is issued, and that the Tier 2* departure shall not be considered to be matters resolved by this rulemaking prior to a license being issued.

8. Should Determinations of Whether Proposed Changes to Severe Accident Issues Constitute an Unreviewed Safety Question Use Different Criteria Than for Other Safety Issues Resolved in the Design Certification Review and, If So, What Should Those Criteria Be?

Comment Summary. OCRE supports the concept behind the criteria in the proposed rule for determining if a proposed change to severe accident issues constitutes an unreviewed safety question, but proposes changes to the criteria. NEI agrees with the criteria in the proposed rule but recommends an expansion of the scope of information that would come under the special criteria for determining an unreviewed safety question.

Response. The Commission disagrees with the recommendations of both NEI and OCRE. The Commission has decided to retain the special change process for severe accident information, as described in sections II.A.2 and III.H of this SOC.

9. (a)(1) Should Construction Permit Applicants Under 10 CFR Part 50 Be Allowed to Reference Design Certification Rules To Satisfy the Relevant Requirements of 10 CFR Part 50?

(2) What, if any, issue preclusion exists in a subsequent operating license stage and NRC enforcement, after the Commission authorizes a construction permit applicant to reference a design certification rule?

(3) Should construction permit applicants referencing a design certification rule be either permitted or required to reference the ITAAC? If so, what are the legal consequences, in terms of the scope of NRC review and approval and the scope of admissible contentions, at the subsequent operating license proceeding?

(4) What would distinguish the "old" 10 CFR Part 50 2-step process from the 10 CFR Part 52 combined license process if a construction permit applicant is permitted to reference a design certification rule and the final design and ITAAC are given full issue preclusion in the operating license proceeding? To the extent this circumstance approximates a combined license, without being one, is it inconsistent with Section 189(b) of the Atomic Energy Act (added by the Energy Policy Act of 1992) providing specifically for combined licenses?

(b)(1) Should operating license applicants under 10 CFR Part 50 be allowed to reference design certification rules to satisfy the relevant requirements of 10 CFR Part 50?

(2) What should be the legal consequences, from the standpoints of issue resolution in the operating license proceeding, NRC enforcement, and licensee operation if a design certification rule is referenced by an applicant for an operating license under 10 CFR Part 50?

(c) Is it necessary to resolve these issues as part of this design certification, or may resolution of these issues be deferred without adverse consequence (*e.g.,* without foreclosing alternatives for future resolution).

Comment Summary. OCRE proposed that a construction permit applicant should be allowed to reference design certifications and that the applicant be required to reference ITAAC because they are Tier 1. OCRE indicated that in a construction permit hearing, those issues representing a challenge to the design certification rule would be prohibited pursuant to 10 CFR 2.758. At the operating license stage, only an applicant whose construction permit referenced a design certification rule should be allowed to reference the design certification. In the operating license hearing, issues would be limited to whether the ITAAC have been met. Requiring a construction permit applicant to reference the ITAAC would not be the same as a combined license applicant under 10 CFR part 52, in OCRE's view, apparently because the specific hearing provisions of 10 CFR 52.103 would not be employed. Finally, OCRE argued that resolution of these issues could be safely deferred because the circumstances with which these issues attend are not likely to be faced.

NEI also argued that a construction permit applicant should be allowed to reference design certifications. However, NEI believed that the applicant should be permitted, but not required, to reference the ITAAC. If the applicant did not reference the ITAAC, then "construction-related issues" would be subject to both NRC review and an opportunity for hearing at the operating license stage in the same manner as construction-related issues in

current Part 50 operating license proceedings. NEI reiterated its view that design certification issues should be considered resolved in all subsequent NRC proceedings. With respect to deferring a Commission decision on the matter, NEI suggested that these issues be resolved now because the industry wishes to ''reinforce'' the permissibility of using a design certification in a Part 50 proceeding. Further, NEI argues that deletion of all mention of construction permits and operating licenses in the design certification rule could be construed as indicating the Commission's desire to preclude a construction permit or operating license applicant from referencing a design certification.

Response. Although 10 CFR Part 52 provides for referencing of design certification rules in Part 50 applications and licenses, the Commission wishes to reserve for future consideration the manner in which a Part 50 applicant could be permitted to reference this design certification and whether it should be permitted or required to reference the ITAAC. This decision is due to the manner in which ITAAC were developed for this appendix and recognition of the lack of experience with design certifications in combined licenses, in particular the implementation of ITAAC. Therefore, the Commission has decided that it is appropriate for the final rule to have some uncertainty regarding the manner in which this appendix could be referenced in a Part 50 proceeding, as set forth in Section IV.B of this appendix.

C. Other Issues

1. NRC Verification of ITAAC Determinations

Comment Summary. In Attachment B of its comments dated August 4, 1995 (pp. 58–66), NEI raised an industry concern regarding the matters to be considered by the NRC in verifying inspections, tests, analyses, and acceptance criteria (ITAAC) determinations pursuant to 10 CFR 52.99, specifically citing quality assurance and quality control (QA/QC) deficiencies. Although this issue was not specifically addressed in the proposed rule, the following response is provided because of its importance relative to future considerations of the successful performance of ITAAC for a nuclear power facility. Subsequently, in its comments dated July 23, 1996, NEI requested the Commission to delete significant portions of the NRC's response, which was originally set forth in SECY–96–077 (refer to pages 33–36 of Attachment 1).

Response. The Commission decided to delete the responses in SECY–96–077 on licensee documentation of ITAAC verification; NRC inspection; and facility ITAAC verification; because they do not directly relate to the design certification rulemakings. However, the NRC disagrees with NEI's assertion that QA/QC deficiencies have no relevance to the NRC determination of whether ITAAC have been successfully completed. Simply confirming that an ITAAC had been performed in some manner and a result obtained apparently showing that the acceptance criteria had been met would not be sufficient to support a determination that the ITAAC had been successfully completed. The *manner* in which an ITAAC is performed can be relevant and material to the results of the ITAAC. For example, in conducting an ITAAC to verify a pump's flow rate, it is logical, even if not explicitly specified in the ITAAC, that the gauge used to verify the pump flow rate must be calibrated in accordance with relevant QA/QC requirements and that the test configuration is representative of the final as-built plant conditions (i.e. valve or system line-ups, gauge locations, system pressures or temperatures). Otherwise, the acceptance criteria for pump flow rate in the ITAAC could apparently be met while the actual flow rate in the system could be much less than that required by the approved design.

The NRC has determined that a QA/QC deficiency may be considered in determining whether an ITAAC has been successfully completed if: (1) The QA/QC deficiency is directly and materially related to one or more aspects of the relevant ITAAC (or supporting Tier 2 information); and (2) the deficiency (considered by itself, with other deficiencies, or with other information known to the NRC) leads the NRC to question whether there is a reasonable basis for concluding that the relevant aspect of the ITAAC has been successfully completed. This approach is consistent with the NRC's current methods for verifying initial test programs. The NRC recognizes that there may be programmatic QA/QC deficiencies that are not relevant to one or more aspects of a given ITAAC under review and, therefore, should not be relevant to or considered in the NRC's determination as to whether an ITAAC has been successfully completed. Similarly, individual QA/QC deficiencies unrelated to an aspect of the ITAAC in question would not form the basis for an NRC determination that an ITAAC has not been met. Using the ITAAC for pump flow rate example, a specific QA deficiency in the calibration of pump gauges would not preclude an NRC determination of successful ITAAC completion if the licensee could demonstrate that the original deficiency was properly corrected (e.g., analysis, scope of effect, root cause determination, and corrective actions as appropriate), or that the deficiency could not have materially affected the test in question.

Furthermore, although Tier 1 information was developed to focus on the performance of the structures, systems, and components of the design, the information contains implicit quality standards. For example, the design descriptions for reactor and fluid systems describe which systems are ''safety-related;'' important piping systems are classified as ''Seismic Category I'' and identify the ASME Code Class; and important electrical and instrumentation and control systems are classified as ''Class 1E.'' The use of these terms by the evolutionary plant designers was meant to ensure that the systems would be built and maintained to the appropriate standards. Quality assurance deficiencies for these systems would be assessed for their impact on the performance of the ITAAC, based on their safety significance to the system. The QA requirements of 10 CFR Part 50, Appendix B, apply to safety-related activities. Therefore, the Commission anticipates that, because of the special significance of ITAAC related to verification of the facility, the licensee will implement similar QA processes for ITAAC activities that are not safety-related.

During the ITAAC development, the design certification applicants determined that it was impossible (or extremely burdensome) to provide all details relevant to verifying all aspects of ITAAC (e.g., QA/QC) in Tier 1 or Tier 2. Therefore, the NRC staff accepted the applicants' proposal that top-level design information be stated in the ITAAC to ensure that it was verified, with an emphasis on verification of the design and construction details in the ''as-built'' facility. To argue that consideration of underlying information which is relevant and material to determining whether ITAAC have been successfully completed, ignores the history of ITAAC development. In summary, the Commission concludes that information such as QA/QC deficiencies which are relevant and material to ITAAC may be considered by the NRC in determining whether the ITAAC have been successfully completed. Despite this conclusion, the

Commission has decided to add a provision to this appendix (IX.B.1), which was requested by NEI. This provision requires the NRC's findings (that the prescribed acceptance criteria have been met) to be based solely on the inspections, tests, and analyses. The Commission has added this provision, which is fully consistent with 10 CFR Part 52, with the understanding that it does not affect the manner in which the NRC intends to implement 10 CFR 52.99 and 52.103(g), as described above.

2. DCD Introduction

Comment Summary. The proposed rule incorporated Tier 1 and Tier 2 information into the DCD but did not include the introduction to the DCD. The SOC for the proposed rule indicated that this was a deliberate decision, stating:

> The introduction to the DCD is neither Tier 1 nor Tier 2 information, and is not part of the information in the DCD that is incorporated by reference into this design certification rule. Rather, the DCD introduction constitutes an explanation of requirements and other provisions of this design certification rule. If there is a conflict between the explanations in the DCD introduction and the explanations of this design certification rule in these statements of consideration (SOC), then this SOC is controlling.

Both the applicant and NEI took strong exception to this statement. They both argued that the language of the DCD introduction was the subject of careful discussion and negotiation between the NRC staff, NRC's Office of the General Counsel, and representatives of the applicant and NEI. They, therefore, suggested that the definition of the DCD in Section 2(a) of the proposed rule be amended to explicitly include the DCD Introduction and that Section 4(a) of the proposed rule be amended to generally require that applicants or licensees comply with the entire DCD. However, in the event that the Commission rejected their suggestion, NEI alternatively argued that the substantive provisions of the DCD Introduction be directly incorporated into the design certification rule's language (refer to NEI Comments dated August 4, 1995, Attachment B, pp. 90–108, and July 23, 1996, pp. 43–49; ABB–CE Comments, Attachment A).

Response. The DCD Introduction was created to be a convenient explanation of some provisions of the design certification rule and was not intended to become rule language itself. Therefore, the Commission declines the suggestion to incorporate the DCD introduction, but adopted NEI's alternative suggestion of incorporating substantive procedural and administrative requirements into the design certification rule. It is the Commission's view that the procedural and administrative provisions described in the DCD Introduction should be included in, and be an integrated part of, the design certification rule. As a result, Sections II, III, IV, VI, VIII, and X of this appendix have been revised and Section IX was created to adopt appropriate provisions from the DCD Introduction. In some cases, the wording of these provisions has been modified, as appropriate, to achieve clarity or to conform with the final design certification rule language.

In section C.2 of its comments, dated August 4, 1995, ABB–CE stated that all tables within Section 19.7, ''External Events Analysis,'' of the System 80+ DCD should be deleted. ABB–CE stated that the probabilistic numerical results in these tables were included in its DCD as a result of a printing error. The Commission decided that the deletion of these tables from Section 19.7 of the DCD is acceptable because a site-specific version of this information will be created by an applicant that references this appendix.

3. Duplicate Documentation in Design Certification Rule

Comment Summary. On page 4 of its comments, dated August 7, 1995, the Department of Energy (DOE) recommended that the process for preparing the design certification rule be simplified by eliminating the DCD, which DOE claims is essentially a repetition of the Standard Safety Analysis Report (SSAR). DOE's concern, which was further clarified during a public meeting on December 4, 1995, is that the NRC will require separate copies of the DCD and SSAR to be maintained. During the public meeting, DOE also expressed a concern that § 52.79(b) could be confusing to an applicant for a combined license because it currently states: ''The final safety analysis report and other required information may incorporate by reference the final safety analysis report for a certified standard design.''

Response. The NRC does not require duplicate documentation for this design certification rule. The DCD is the only document that is incorporated by reference into this appendix in order to meet the requirements of Subpart B of Part 52. The SSAR supports the final design approval (FDA) that was issued under Appendix O to 10 CFR Part 52. The DCD was developed to meet the requirements for incorporation by reference and to conform with requests from the industry such as deletion of the quantitative portions of the design-specific probabilistic risk assessment. Because the DCD terminology was not envisioned at the time that Part 52 was developed, the Commission will consider modifying § 52.79(b), as part of its future review of Part 52, in order to clarify the use of the term ''final safety analysis report.'' In the records and reporting requirements in Section X of this appendix, additional terms were used to distinguish between the documents to be maintained by the applicant for this design certification rule and the document to be maintained by an applicant or licensee who references this appendix. These new terms are defined in Section II of this appendix and further described in the section-by-section discussion on records and reporting in section III.J of this SOC. The applicant chose to continue to reference the SSAR as the supporting document for its FDA. As a result, the applicant must maintain the SSAR for the duration of the FDA.

III. Section-by-Section Discussion

A. Introduction

The purpose of Section I of Appendix B to 10 CFR Part 52 (''this appendix'') is to identify the standard plant design that is approved by this design certification rule and the applicant for certification of the standard design. Identification of the design certification applicant is necessary to implement this appendix, for two reasons. First, the implementation of 10 CFR 52.63(c) depends on whether an applicant for a combined license (COL) contracts with the design certification applicant to provide the generic DCD and supporting design information. If the COL applicant does not use the design certification applicant to provide this information, then the COL applicant must meet the requirements in 10 CFR 52.63(c). Also, X.A.1 of this appendix imposes a requirement on the design certification applicant to maintain the generic DCD throughout the time period in which this appendix may be referenced.

B. Definitions

The terms Tier 1, Tier 2, Tier 2*, and COL action items (license information) are defined in this appendix because these concepts were not envisioned when 10 CFR Part 52 was developed. The design certification applicants and the NRC staff used these terms in implementing the two-tiered rule structure that was proposed by industry after the issuance of 10 CFR Part 52. ABB–CE used the terms ''certified design material'' and ''approved design material'' for Tier 1 and Tier 2

information, respectively, in the System 80+ DCD. During consideration of the comments received on the proposed rule, the Commission determined that it would be useful to distinguish between the ''plant-specific DCD'' and the ''generic DCD,'' the latter of which is incorporated by reference into this appendix and remains unaffected by plant-specific departures. This distinction is necessary in order to clarify the obligations of applicants and licensees that reference this appendix. Also, the technical specifications that are located in Chapter 16 of the generic DCD were designated as ''generic technical specifications'' to facilitate the special treatment of this information in the final rule (refer to section II.A.1 of this SOC). Therefore, appropriate definitions for these additional terms are included in the final rule.

The Tier 1 portion of the design-related information contained in the DCD is certified by this appendix and, therefore, subject to the special backfit provisions in VIII.A of this appendix. An applicant who references this appendix is required to incorporate by reference and comply with Tier 1, under III.B and IV.A.1 of this appendix. This information consists of an introduction to Tier 1, the design descriptions and corresponding ITAAC for systems and structures of the design, design material applicable to multiple systems of the design, significant interface requirements, and significant site parameters for the design. The design descriptions, interface requirements, and site parameters in Tier 1 were derived entirely from Tier 2, but may be more general than the Tier 2 information. The NRC staff's evaluation of the Tier 1 information, including a description of how this information was developed is provided in Section 14.3 of the FSER. Changes to or departures from the Tier 1 information must comply with VIII.A of this appendix.

The Tier 1 design descriptions serve as design commitments for the lifetime of a facility referencing the design certification. The ITAAC verify that the as-built facility conforms with the approved design and applicable regulations. In accordance with 10 CFR 52.103(g), the Commission must find that the acceptance criteria in the ITAAC are met before operation. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not constitute regulatory requirements for licensees or for renewal of the COL. However, subsequent modifications to the facility must comply with the design descriptions in the plant-specific DCD unless changes are made in accordance with the change process in Section VIII of this appendix. The Tier 1 interface requirements are the most significant of the interface requirements for systems that are wholly or partially outside the scope of the standard design, which were submitted in response to 10 CFR 52.47(a)(1)(vii) and must be met by the site-specific design features of a facility that references the design certification. The Tier 1 site parameters are the most significant site parameters, which were submitted in response to 10 CFR 52.47(a)(1)(iii). An application that references this appendix must demonstrate that the site parameters (both Tier 1 and Tier 2) are met at the proposed site (refer to discussion in III.D of this SOC).

Tier 2 is the portion of the design-related information contained in the DCD that is approved by this appendix but is not certified. Tier 2 information is subject to the backfit provisions in VIII.B of this appendix. Tier 2 includes the information required by 10 CFR 52.47, with the exception of generic technical specifications and conceptual design information, and supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met. As with Tier 1, III.B and IV.A.1 of this appendix require an applicant who references this appendix to incorporate Tier 2 by reference and to comply with Tier 2 (except for the COL action items and conceptual design information). The definition of Tier 2 makes clear that Tier 2 information has been determined by the Commission, by virtue of its inclusion in this appendix and its designation as Tier 2 information, to be an approved (''sufficient'') method for meeting Tier 1 requirements. However, there may be other acceptable ways of complying with Tier 1. The appropriate criteria for departing from Tier 2 information are set forth in Section VIII of this appendix. Departures from Tier 2 do not negate the requirement in Section III.B to reference Tier 2. NEI requested the Commission, in its comments dated July 23, 1996, to include several statements on compliance with Tier 2 in the definitions of Tier 1 and Tier 2. The Commission determined that inclusion of those statements in the Tier 2 definition was appropriate, but to also include them in the Tier 1 definition would be unnecessarily redundant.

Certain Tier 2 information has been designated in the generic DCD with brackets and italicized text as ''Tier 2*'' information and, as discussed in greater detail in the section-by-section explanation for Section VIII, a plant-specific departure from Tier 2* information requires prior NRC approval. However, the Tier 2* designation expires for some of this information when the facility first achieves full power after the finding required by 10 CFR 52.103(g). The process for changing Tier 2* information and the time at which its status as Tier 2* expires is set forth in VIII.B.6 of this appendix.

A definition of ''combined license (COL) action items'' (COL license information) has been added to clarify that COL applicants are required to address these matters in their license application, but the COL action items are not the only acceptable set of information. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in its FSAR.

In developing the proposed design certification rule, the Commission contemplated that there would be both generic (master) DCDs maintained by the NRC and the design certification applicant, as well as individual plant-specific DCDs, maintained by each applicant and licensee who references this design certification rule. The generic DCDs (identical to each other) would reflect generic changes to the version of the DCD approved in this design certification rulemaking. The generic changes would occur as the result of generic rulemaking by the Commission (subject to the change criteria in Section VIII of this appendix). In addition, the Commission understood that each applicant and licensee referencing this Appendix would be required to submit and maintain a plant-specific DCD. This plant-specific DCD would contain (not just incorporate by reference) the information in the generic DCD. The plant-specific DCD would be updated as necessary to reflect the generic changes to the DCD that the Commission may adopt through rulemaking, any plant-specific departures from the generic DCD that the Commission imposed on the licensee by order, and any plant-specific departures that the licensee chose to make in accordance with the relevant processes in Section VIII of this appendix. Thus, the plant-specific DCD would function akin to an updated Final Safety Analysis Report, in the since that it would provide the most complete and accurate information on a plant's licensing basis for that part of the plant within the scope of this appendix. However, the proposed rule defined

only the concept of the ''master'' DCD. The Commission continues to believe that there should be both a generic DCD and plant-specific DCDs. To clarify this matter, the proposed rule's definition of DCD has been redesignated as the ''generic DCD,'' a new definition of ''plant-specific DCD'' has been added, and conforming changes have been made to the remainder of the rule. Further information on exemptions or departures from information in the DCD is provided in section III.H below. The Final Safety Analysis Report (FSAR) that is required by § 52.79(b) will consist of the plant-specific DCD, the site-specific portion of the FSAR, and the plant-specific technical specifications.

During the resolution of comments on the final rules in SECY–96–077, the Commission decided to treat the technical specifications in Chapter 16 of the DCD as a special category of information and to designate them as generic technical specifications (refer to II.A.1 of SOC). A COL applicant must submit plant-specific technical specifications that consist of the generic technical specifications, which may be modified under Section VIII.C of this appendix, and the remaining plant-specific information needed to complete the technical specifications, including bracketed values.

C. Scope and Contents

The purpose of Section III of this appendix is to describe and define the scope and contents of this design certification and to set forth how documentation discrepancies or inconsistencies are to be resolved. Paragraph A is the required statement of the Office of the Federal Register (OFR) for approval of the incorporation by reference of Tier 1, Tier 2, and the generic technical specifications into this appendix and paragraph B requires COL applicants and licensees to comply with the requirements of this appendix. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly-issued regulation, has the force and effect of law. Tier 1 and Tier 2 information, as well as the generic technical specifications have been combined into a single document, called the generic design control document (DCD), in order to effectively control this information and facilitate its incorporation by reference into the rule. The generic DCD was prepared to meet the requirements of the OFR for incorporation by reference (1 CFR Part 51). One of the requirements of OFR for incorporation by reference is that the design certification applicant must make the DCD available upon request after the final rule becomes effective. The applicant requested the National Technical Information Service (NTIS) to distribute the generic DCD for them. Therefore, paragraph A states that copies of the DCD can be obtained from NTIS, 5285 Port Royal Road, Springfield, VA 22161. The NTIS order numbers for paper or CD–ROM copies of the System 80+ DCD are PB97–147854 or PB97–502108, respectively.

The generic DCD (master copy) for this design certification will be archived at NRC's central file with a matching copy at OFR. Copies of the up-to-date DCD will also be available at the NRC's Public Document Room. Questions concerning the accuracy of information in an application that references this appendix will be resolved by checking the generic DCD in NRC's central file. If a generic change (rulemaking) is made to the DCD pursuant to the change process in Section VIII of this appendix, then at the completion of the rulemaking the NRC will request approval of the Director, OFR for the changed incorporation by reference and change its copies of the generic DCD and notify the OFR and the design certification applicant to change their copies. The Commission is requiring that the design certification applicant maintain an up-to-date copy under X.A.1 of this appendix because it is likely that most applicants intending to reference the standard design will obtain the generic DCD from the design certification applicant. Plant-specific changes to and departures from the generic DCD will be maintained by the applicant or licensee that references this appendix in a plant-specific DCD, under X.A.2 of this appendix.

In addition to requiring compliance with this appendix, paragraph B clarifies that the conceptual design information and the ''Technical Support Document'' are not considered to be part of this appendix. The conceptual design information is for those portions of the plant that are outside the scope of the standard design and are intermingled throughout Tier 2. As provided by 10 CFR 52.47(a)(1)(ix), these conceptual designs are not part of this appendix and, therefore, are not applicable to an application that references this appendix. Therefore, the applicant does not need to conform with the conceptual design information that was provided by the design certification applicant. The conceptual design information, which consists of site-specific design features, was required to facilitate the design certification review. Conceptual design information is neither Tier 1 nor Tier 2. The introduction to Tier 2 identifies the location of the conceptual design information. The Technical Support Document provides ABB–CE's evaluation of various design alternatives to prevent and mitigate severe accidents, and does not constitute design requirements. The Commission's assessment of this information is discussed in section IV of this SOC on environmental impacts. The detailed methodology and quantitative portions of the design-specific probabilistic risk assessment (PRA), as required by 10 CFR 52.47(a)(1)(v), were not included in the DCD, as requested by NEI and the applicant for design certification. The NRC agreed with the request to delete this information because conformance with the deleted portions of the PRA is not necessary. Also, the NRC's position is predicated in part upon NEI's acceptance, in conceptual form, of a future generic rulemaking that will require a COL applicant or licensee to have a plant-specific PRA that updates and supersedes the design-specific PRA supporting this rulemaking and maintain it throughout the operational life of the facility.

Paragraphs C and D set forth the manner in which potential conflicts are to be resolved. Paragraph C establishes the Tier 1 description in the DCD as controlling in the event of an inconsistency between the Tier 1 and Tier 2 information in the DCD. Paragraph D establishes the generic DCD as the controlling document in the event of an inconsistency between the DCD and either the application for certification of the standard design, referred to as the Standard Safety Analysis Report, or the final safety evaluation report for the certified design and its supplement.

Paragraph E makes it clear that design activities that are wholly outside the scope of this design certification may be performed using site-specific design parameters, provided the design activities do not affect Tier 1 or Tier 2, or conflict with the interface requirements in the DCD. This provision applies to site-specific portions of the plant, such as the service water intake structure. NEI requested insertion of this clarification into the final rule (refer to its comments on the Tier 1 definition dated July 23, 1996). Because this statement is not a definition, the Commission decided that the appropriate location is in Section III of the final rule.

D. Additional Requirements and Restrictions.

Section IV of this appendix sets forth additional requirements and restrictions imposed upon an applicant who references this appendix. Paragraph IV.A sets forth the information requirements for these applicants. This appendix distinguishes between information and/or documents which must actually be included in the application or the DCD, versus those which may be incorporated by reference (i.e., referenced in the application as if the information or documents were actually included in the application), thereby reducing the physical bulk of the application. Any incorporation by reference in the application should be clear and should specify the title, date, edition, or version of a document, and the page number(s) and table(s) containing the relevant information to be incorporated by reference.

Paragraph A.1 requires an applicant who references this appendix to incorporate by reference this appendix in its application. The legal effect of such incorporation by reference is that this appendix is legally binding on the applicant or licensee. Paragraph A.2.a is intended to make clear that the initial application must include a plant-specific DCD. This assures, among other things, that the applicant commits to complying with the DCD. This paragraph also requires the plant-specific DCD to use the same format as the generic DCD and to reflect the applicant's proposed departures and exemptions from the generic DCD as of the time of submission of the application. The Commission expects that the plant-specific DCD will become the plant's final safety analysis report (FSAR), by including within its pages, at the appropriate points, information such as site-specific information for the portions of the plant outside the scope of the referenced design, including related ITAAC, and other matters required to be included in an FSAR by 10 CFR 50.34. Integration of the plant-specific DCD and remaining site-specific information into the plant's FSAR, will result in an application that is easier to use and should minimize ''duplicate documentation'' and the attendant possibility for confusion (refer to sections II.C.3 and III.J of this SOC). Paragraph A.2.a is also intended to make clear that the initial application must include the reports on departures and exemptions as of the time of submission of the application.

Paragraph A.2.b requires that the application include the reports required by paragraph X.B of this appendix for exemptions and departures proposed by the applicant as of the date of submission of its application. Paragraph A.2.c requires submission of plant-specific technical specifications for the plant that consists of the generic technical specifications from Chapter 16 of the DCD, with any changes made under Section VIII.C of this appendix, and the technical specifications for the site-specific portions of the plant that are either partially or wholly outside the scope of this design certification, such as the ultimate heat sink. The applicant must also provide the plant-specific information designated in the generic technical specifications, such as bracketed values. Paragraph A.2.d makes it clear that the applicant must provide information demonstrating that the proposed site falls within the site parameters for this appendix and that the plant-specific design complies with the interface requirements, as required by 10 CFR 52.79(b).

If the proposed site has a characteristic that exceeds one or more of the site parameters in the DCD, then the proposed site is unacceptable for this design unless the applicant seeks an exemption under Section VIII of this appendix and justifies why the certified design should be found acceptable on the proposed site. Paragraph A.2.e requires submission of information addressing COL Action Items, which are identified in the generic DCD as COL License Information, in the application. The COL Action Items (COL License Information) identify matters that need to be addressed by an applicant that references this appendix, as required by Subpart C of 10 CFR Part 52. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in its application (FSAR). Paragraph A.2.f requires that the application include the information required by 10 CFR 52.47(a) that is not within the scope of this rule, such as generic issues that must be addressed by an applicant that references this rule. Paragraph A.3 requires the applicant to physically include, not simply reference, the proprietary information referenced in the System 80+ DCD, or its equivalent, to assure that the applicant has actual notice of these requirements.

Paragraph IV.B reserves to the Commission the right to determine in what manner this design certification may be referenced by an applicant for a construction permit or operating license under 10 CFR Part 50. This determination may occur in the context of a subsequent rulemaking modifying 10 CFR Part 52 or this design certification rule, or on a case-by-case basis in the context of a specific application for a Part 50 construction permit or operating license. This provision was necessary because the evolutionary design certifications were not implemented in the manner that was originally envisioned at the time that Part 52 was created. The Commission's concern is with the manner in which ITAAC were developed and the lack of experience with design certifications in license proceedings (refer to section II.B.9 of this SOC). Therefore, it is appropriate for the final rule to have some uncertainty regarding the manner in which this appendix could be referenced in a Part 50 licensing proceeding.

E. Applicable Regulations

The purpose of Section V of this appendix is to specify the regulations that were applicable and in effect at the time that this design certification was approved. These regulations consist of the technically relevant regulations identified in paragraph A, except for the regulations in paragraph B that are not applicable to this certified design.

Paragraph A identifies the regulations in 10 CFR Parts 20, 50, 73, and 100 that are applicable to the System 80+ design. After the NRC staff completed its FSER for the System 80+ design (August 1994), the Commission amended several existing regulations and adopted several new regulations in those Parts of Title 10 of the Code of Federal Regulations. The Commission has reviewed these regulations to determine if they are applicable to this design and, if so, to determine if the design meets these regulations. The Commission finds that the System 80+ design either meets the requirements of these regulations or that these regulations are not applicable to the design, as discussed below. The Commission's determination of the applicable regulations was made as of the date specified in paragraph V.A of this appendix. The specified date is the date that this appendix was approved by the Commission and signed by the Secretary of the Commission.

10 CFR Part 73, Protection Against Malevolent Use of Vehicles at Nuclear Power Plants (59 FR 38889; August 1, 1994)

The objective of this regulation is to modify the design basis threat for radiological sabotage to include use of a land vehicle by adversaries for transporting personnel and their hand-carried equipment to the proximity of vital areas and to include a land vehicle bomb. This regulation also requires reactor licensees to install vehicle

control measures, including vehicle barrier systems, to protect against the malevolent use of a land vehicle. The Commission has determined that this regulation will be addressed in the COL applicant's site-specific security plan. Therefore, no additional actions are required for this design.

10 CFR 19 and 20, Radiation Protection Requirements: Amended Definitions and Criteria (60 FR 36038; July 13, 1995)

The objective of this regulation is to revise the radiation protection training requirement so that it applies to workers who are likely to receive, in a year, an occupational dose in excess of 100 mrem (1 mSv); revise the definition of the ''Member of the public'' to include anyone who is not a worker receiving an occupational dose; revise the definition of ''Occupational Dose'' to delete reference to location so that the occupational dose limit applies only to workers whose assigned duties involve exposure to radiation and not to members of the public; revise the definition of the ''Public Dose'' to apply to doses received by members of the public from material released by a licensee or from any other source of radiation under control of the licensee; assure that prior dose is determined for anyone subject to the monitoring requirements in 10 CFR Part 20, or in other words, anyone likely to receive, in a year, 10 percent of the annual occupational dose limit; and retain a requirement that known overexposed individuals receive copies of any reports of the exposure that are required to be submitted to the NRC. The Commission has determined that these requirements will be addressed in the COL applicant's operational radiation protection program. Therefore, no additional actions are required for this design.

10 CFR 50, Technical Specifications (60 FR 36953; July 19, 1995)

The objective of this revised regulation is to codify criteria for determining the content of technical specification (TS). The four criteria were first adopted and discussed in detail in the Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (58 FR 39132; July 22, 1993). The Commission has determined that these requirements will be addressed in the COL applicant's technical specifications. Therefore, no additional actions are required for this design.

10 CFR 73, Changes to Nuclear Power Plant Security Requirements Associated With Containment Access Control (60 FR 46497; September 7, 1995)

The objective of this revised regulation is to delete certain security requirements for controlling the access of personnel and materials into reactor containment during periods of high traffic such as refueling and major maintenance. This action relieves nuclear power plant licensees of requirement to separately control access to reactor containments during these periods. The Commission has determined that this regulation will be addressed in the COL applicant's site-specific security plan. Therefore, no additional actions are required for this design.

10 CFR Part 50, Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors (60 FR 49495; September 26, 1995)

The objective of this revised regulation is to provide a performance-based option for leakage-rate testing of containments of light-water-cooled nuclear power plants. This performance-based option, option B to Appendix J, is available for voluntary adoption by licensees in lieu of compliance with the prescriptive requirements contained in the current regulation. Appendix J includes two options, A and B, either of which can be chosen for meeting the requirements of this appendix. The Commission has determined that option B to Appendix J has no impact on the System 80+ design because ABB–CE elected to comply with option A. However, the System 80+ design addresses primary reactor containment leakage testing in a manner different from that provided in option A, as described in the discussion on exemptions to Appendix J below. Therefore, no additional actions are required by this design.

10 CFR Parts 50, 70, and 72, Physical Security Plan Format (60 FR 53507; October 16, 1995)

The objective of this revised regulation is to eliminate the requirement for applicants for power reactor, Category I fuel cycle, and spent fuel storage licenses to submit physical security plans in two parts. This action is necessary to allow for a quicker and more efficient review of the physical security plans. The Commission has determined that this revised regulation will be addressed in the COL applicant's site-specific security plan. Therefore, no additional action is required for this design.

10 CFR Part 50, Fracture Toughness Requirements for Light Water Reactor Pressure Vessels (60 FR 65456; December 19, 1995)

The objective of this revised regulation is to clarify several items related to fracture toughness requirements for reactor pressure vessels (RPV). This regulation clarifies the pressurized thermal shock (PTS) requirements, makes changes to the fractures toughness requirements and the reactor vessel material surveillance program requirements, and provides new requirements for thermal annealing of a reactor pressure vessel. The Commission has determined that 10 CFR 50.61 only applies to pressurized water reactors for which an operating license has been issued. Likewise, 10 CFR 50.66 applies only to those light-water reactors where neutron radiation has reduced the fracture toughness of the reactor vessel materials. Therefore, no additional actions are required by this design.

10 CFR Parts 21, 50, 52, 54, and 100, Reactor Site Criteria Including Seismic and Earthquake Engineering Criteria for Nuclear Power Plants (61 FR 65157; December 11, 1996)

The objective of this regulation is to update the criteria used in decisions regarding power reactor siting, including geologic, seismic, and earthquake engineering considerations for future nuclear power plants. Two sections of this regulation apply to applications for design certification. With regard to the revised design basis accident radiation dose acceptance criteria in 10 CFR 50.34, the Commission has determined that the System 80+ design meets the new dose criteria, based on the NRC staff's radiological consequence analyses, provided that the site parameters are not revised. With regard to the revised earthquake engineering criteria for nuclear power plants in Appendix S to 10 CFR Part 50, the Commission has determined that the System 80+ design meets the new single earthquake design requirements based on the NRC staff's evaluation in NUREG–1462. Therefore, the Commission has determined that this design meets the applicable requirements of this new regulation.

10 CFR Parts 20 and 35, Criteria for the Release of Individuals Administered Radioactive Material (62 FR 4120; January 29, 1997)

The objective of this revised regulation is to specifically state that the limitation on dose to individual members of the public in 10 CFR Part

20 does not include doses received by individuals exposed to patients who were administered radioactive materials and released under the new criteria in 10 CFR Part 35. This revision to Part 20 is not applicable to the design or operation of nuclear power plants and, therefore, does not affect the safety findings for this design.

In paragraph V.B of this appendix, the Commission identified the regulations that do not apply to the System 80+ design. The Commission has determined that the System 80+ design should be exempt from portions of 10 CFR 50.34(f) and Appendix J to Part 50, as described in the FSER (NUREG–1462) and summarized below:

(1) Paragraph (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console.

10 CFR 50.34(f)(2)(iv) requires that an application provide a plant safety parameter display console that will display to operators a minimum set of parameters defining the safety status of the plant, be capable of displaying a full range of important plant parameters and data trends on demand, and be capable of indicating when process limits are being approached or exceeded.

The purpose of the requirement for a safety parameter display system (SPDS), as stated in NUREG–0737, ''Clarification of TMI Action Plan Requirements,'' Supplement 1, is to ''* * * provide a concise display of critical plant variables to the control room operators to aid them in rapidly and reliably determining the safety status of the plant. * * * and in assessing whether abnormal conditions warrant corrective action by operators to avoid a degraded core.''

ABB–CE committed to meet the intent of this requirement. However, the functions of the SPDS will be integrated into the control room design rather than on a separate ''console.'' ABB–CE has made the following commitments in the generic DCD:

- Section 18.7.1.8.1, Safety-Related Data, states that the Nuplex 80+ Advanced Control Complex provides a concise display of critical function and success path performance indications to control room operators via the Data Processing System (DPS),
- Section 18.7.1.8.1 states that the integrated process status overview (IPSO) big board display is a dedicated display which continuously shows all critical function alarms and key critical function and success path parameters,
- Section 18.7.1.8.1 describes the SPDS for the System 80+ and states that all five of the safety function elements are included in the DPS critical function hierarchy which forms the basis of the Nuplex 80+ SPDS function:

(a) Reactivity control.

(b) Reactor core cooling and heat removal from the primary system.

(c) Reactor coolant system integrity.

(d) Radioactivity control.

(e) Containment conditions, and

- Section 18.7.1.8.2 states that the critical function and success path monitoring application in conjunction with the continuous IPSO display and the DPS CRTs meet SPDS requirements for Nuplex 80+ without using stand-alone monitoring and display systems.

In view of the above, the Commission has determined that an exemption from the requirement for an SPDS ''console'' is justified based upon (1) the description in the generic DCD of the intent to incorporate the SPDS function as part of the plant status summary information which is continuously displayed on the fixed-position displays on the large display panel; and (2) a separate ''console'' is not necessary to achieve the underlying purpose of the SPDS rule which is to display to operators a minimum set of parameters defining the safety status of the plant. Therefore, the Commission concludes that an exemption from 10 CFR 50.34(f)(2)(iv) is justified by the special circumstances set forth in 10 CFR 50.12(a)(2)(ii).

(2) Paragraphs (f)(2) (vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Terms

10 CFR 50.34(f)(2)(xxviii) requires the evaluation of pathways that may lead to control room habitability problems ''under accident conditions resulting in a TID 14844 source term release.'' Similar wording appears in subparagraphs (vii), (viii), and (xxvi). ABB–CE has implemented the new source term technology summarized in Draft NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants,'' dated June 1992, not the old TID 14844 source term cited in 10 CFR Part 50.

The NRC staff has encouraged the development and implementation of the new source term technology. The use of the revised source term technology is an important departure from previous practice. The new approach generally yields lower estimates of fission product releases to the environment and will employ a physically-based source term based on substantial research and experience gained over two decades. The TID–14844 non-mechanistic methodology intentionally employed conservative assumptions that were intended to ensure that future plants would provide sufficient safety margins even with the recognized uncertainties associated with accident sequences and equipment reliability. Although the new source term technology may lead to relaxation in some aspects of the design, it also provides safety benefits by removing unrealistically stringent testing requirements.

Based on the NRC staff's review and ABB–CE's commitments in Chapter 15 of the generic DCD, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(ii) exist in that the regulation need not be applied in this particular circumstance to achieve the underlying purpose because ABB–CE has proposed acceptable alternatives that accomplish the intent of the regulation. On this basis, the Commission concludes that an exemption from the requirements of paragraphs (f)(2) (vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34 is justified.

(3) Paragraph (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Hydrogen, Boron, Chloride, and Dissolved Gases.

In SECY–93–087, the NRC staff recommended that the Commission approve its position for evolutionary and passive ALWRs of the pressurized water reactor (PWR) type that they be required to have the capability to analyze for dissolved gases in the reactor coolant and for hydrogen in the containment atmosphere in accordance with the requirements of 10 CFR 50.34(f)(2)(viii) and Item III.B.3 of NUREG–0737. The NRC staff acknowledged that determination of chloride concentrations, although helpful in ensuring that plant personnel take appropriate actions to minimize the likelihood of accelerated primary system corrosion following the accident, is a secondary consideration because long-term samples could likely be taken at a low pressure. Therefore, it does not constitute a mandatory requirement of the post-accident sampling system (PASS). The time for taking these samples can be extended to 24 hours following the accident. The NRC staff also recommended that the Commission approve the deviation from the requirements of Item II.B.3 of NUREG–0737 with regard to the requirements for sampling reactor coolant for boron concentration and activity measurements using the PASS in evolutionary and passive ALWRs.

The rationale is that both of these measurements are used only to confirm the accident mitigation measures and conditions of the core obtained by other methods and do not need to be performed in an early phase of an accident. Neutron flux monitoring instrumentation that complies with Category I criteria of RG 1.97, will have

fully qualified, redundant channels that monitor neutron flux over the required power range. Therefore, sampling for boron concentration will not be needed for the first eight hours after an accident. Samples for activity measurements provide the information used in evaluating the condition of the core. However, this information will be made available during the accident management phase by monitoring other pertinent variables. Accordingly, sampling for activity measurement could be postponed until 24 hours following an accident.

In its July 21, 1993, Staff Requirements Memorandum (SRM), the Commission approved the recommendation to exempt the PASS for ALWRs of PWR design from determining the concentration of hydrogen in the containment atmosphere in accordance with the requirements of 10 CFR 50.34(f)(2)(viii) and Item III.B.3 of NUREG–0737. It also approved extending the time limit for analysis of the coolant for boron and activity to eight hours and 24 hours, respectively. The Commission modified the recommendations regarding evolutionary and passive ALWRs of the PWR type to have the capability to determine the gross amount of dissolved gases (not necessarily pressurized) as a means to meet the intent of 10 CFR 50.34(f)(2)(viii) and Item II.B.3 of NUREG–0737.

Accordingly, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that the regulation need not be applied in this particular circumstance to achieve the underlying purpose because ABB–CE has proposed acceptable alternatives that accomplish the intent of the regulation. On this basis, the Commission concludes an exemption from the requirements of Paragraph (f)(2)(viii) of 10 CFR 50.34 is justified.

(4) Paragraph (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration.

Paragraph (3)(iv) of 10 CFR 50.34(f) requires one or more dedicated containment penetrations, equivalent in size to a single 0.91 m (3 ft) diameter opening, in order not to preclude future installation of systems to prevent containment failure such as a filtered containment vent system. This requirement is intended to ensure provision of a containment vent design feature with sufficient safety margin well ahead of a need that may be perceived in the future to mitigate the consequences of a severe accident situation.

In the generic DCD, ABB–CE shows that the containment is sufficiently robust to not require venting before 24 hours. However, to further improve containment performance, the System 80+ containment is equipped with two 7.6-cm (3.0-in.) diameter hydrogen purge vents that can be used to relieve containment pressure before containment pressure reaches ASME Code Service Level C. With respect to core concrete interaction (CCI), the vent could be used to prevent catastrophic overpressurization failure of the containment for severe-accident sequences involving prolonged periods of CCI. The hydrogen purge vents are capable of opening when exposed to an internal pressure corresponding to ASME Code Service Level C, of 972 kPa (141 psia) at a temperature of 177 °C (350 °F), and can be powered by the alternate AC source.

ABB–CE has provided this venting capability; however, they have demonstrated that venting is not needed for most of the severe-accident events. For those sequences in which venting would aid in limiting the containment pressure below ASME Code Service Level C limits, venting would not be needed before 24 hours after the onset of core damage.

Based on the NRC staff's review and ABB–CE's commitments in Chapter 19 of the generic DCD, the Commission determined that the special circumstances described in 10 CFR 50.12(a)(ii) exist in that the regulation need not be applied in this particular circumstance to achieve the underlying purpose because ABB–CE has proposed acceptable alternatives that accomplish the intent of the regulation. On this basis, the Commission concludes that an exemption from the requirement of 10 CFR 50.34(f)(iv) is justified.

(5) Paragraphs III.A.1(a) and III.C.3(b) of Appendix J to 10 CFR 50—Containment Leakage Testing.

(a) *Paragraph III.A.1(a)*

ABB–CE committed to containment leakage testing for the System 80+ design, in accordance with option A to the new Appendix J to 10 CFR Part 50, with the following exceptions:

- The COL applicant may use the mass point leak rate test method in ANSI/ANS 56.8–1987 as an alternative to Type A testing method specified in ANSI 45.4–1972, and
- Leaks occurring during the Type A test that could affect the test results will not prevent completion of this test if: (a) The leaks are isolated for the balance of the test; (b) the leaking component had a ''pre-maintenance'' local leak rate test whose results, when added to those from the Type A test, are in conformance with the acceptance criteria of Appendix J; or (c) a ''post-maintenance'' local leak rate test of the leaking component(s) is performed and the results, when added to those from the Type A test, conform to the acceptance criteria of Appendix J.

The first exception is acceptable because the current version of Section III.A.3 of Appendix J to 10 CFR Part 50 includes the ANSI/ANS 56.8–1987 method (mass point method) as an acceptable alternative. The second exception does not conform to the requirements of Appendix J to 10 CFR Part 50. Section III.A.1.(a) of Appendix J requires that a Type A test, defined as a test to measure the primary containment overall integrated leakage rate be terminated if, during this test, potentially excessive leakage paths are identified which would either interface with satisfactory completion of the test or which would result in the Type A tests not meeting the applicable acceptance criteria of Section III.A.4(b) or III.A.5(b). Section III.A.1(a) further requires that, after terminating a Type A test due to potentially excessive leakage, the leakage through the potentially excessive leakage paths be measured using local leakage testing methods and repairs and/or adjustments to the affected equipment be made. The Type A test shall then be conducted. ABB–CE proposed that the test not be terminated when leakage is found during a Type A test. Instead, ABB–CE proposed that leaks be isolated and the Type A test continued. After completion of the modified Type A test (i.e., a Type A test with the leakage paths isolated), local leakage rates of those paths isolated during the modified Type A test will be measured before or after the maintenance to those paths.

ABB–CE proposed that the adjusted ''as-found'' leakage rate for the Type A test be determined by adding the local leakage rates measured before maintenance to those previously isolated leakage paths, to the containment integrated leakage rate determined in the modified Type A test. This adjusted ''as-found'' leakage rate is to be used in determining the scheduling of the periodic Type A tests in accordance with Section III.A.6 of Appendix J.

Finally, ABB–CE proposed that the acceptability of the modified Type A test be determined by calculating the adjusted ''as-left'' containment overall integrated leakage rate and comparing this to the acceptance criteria of Appendix J. The adjusted ''as-left'' Type A leakage rate is determined by adding the local leakage rates measured after

any maintenance to those previously isolated leakage paths, to the leakage rate determined in the modified Type A test.

The differences between the proposed leak testing and the requirements in Section III.A.1(a) of Appendix J are that: (1) The potentially excessive leakage paths will be repaired and/or adjusted after completion of the Type A test rather than before the test; and (2) the Type A test leakage rate is partially determined by calculation rather than by direct measurement. With respect to the first issue, the NRC staff does not identify any significant difference in the end result (i.e., the ''as-left'' local leakage rates will be maintained within an acceptable range). With respect to the second issue, the measured ''as-left'' local leakage rates will represent a relatively small correction to the containment overall integrated leakage rate measured in the modified Type A test. Accordingly, there will be insignificant differences between the calculated ''as-left'' containment leakage rate (i.e., a modified Type A test) and one that would be directly measured in compliance with the requirements of Section III.A.1.(a).

In view of the above, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that the regulation need not be applied in this particular circumstance to achieve the underlying purpose because ABB–CE has proposed acceptable alternatives that accomplish the intent of the regulation. On this basis, the Commission concludes that a partial exemption from the requirements of Paragraph III.A.1.(a) of Appendix J to 10 CFR Part 50 is justified.

(b) *Paragraph III.C.3(b)*

In Section 6.2.6 and Table 6.2.4–1 of the generic DCD, ABB–CE presented information on the System 80+ containment leakage testing program, including the planned leak test data for specific containment isolation valves (CIVs). In Table 6.2.4–1, ABB–CE lists those CIVs which are vented and drained for the Type A test and those CIVs which are subject to the Type C test, and justifies those CIVs not included in the Type C test program. ABB–CE presented the following justifications for not performing CIV Type C tests:

1. CIVs on piping connected to the secondary side of the steam generator would leak into the containment because, during a design-basis LOCA, the secondary side pressure is higher than the primary-side pressure.

2. The water always present in the in-containment refueling water storage tank (IRWST) seals CIVs on piping connected directly to the IRWST.

3. The discharge pressure from the safety injection pump effectively seals against leakage for CIVs on pump discharge (or injection) lines.

4. The shutdown cooling system (SCS) with these CIVs must maintain safe shutdown conditions. These CIVs cannot be tested without compromising safety and therefore will be separately water tested as part of the RCS pressure boundary.

The NRC staff did not find justifications 3 and 4 acceptable because multiple systems would allow the CIVs on one loop to be tested while the others are available. The two 100-percent redundant SCS would ensure safe shutdown with one system operating while the CIVs in the other are being leak tested. If the safety injection pump fails and the system switches from cold-leg to hot-leg injection, any leakage from the system safety injection pump CIVs would pass to the environment. Therefore, the NRC staff concluded that both the SCS and safety injection pump system CIVs should be tested for leaks in accordance with 10 CFR Part 50, Appendix J.

ABB–CE rearranged valve elevations so that safety injection system (SIS) valves SI–602, 603, 616, 626, 636, and 646 are approximately 1.2 m (4 ft) below the minimum IRWST water level and SCS valves SI–600 and 601 are approximately 0.44 m (1.5 ft) below the minimum water level. The minimum IRWST water level is at elevation 24.5 m (80.5 ft) which is determined by the calculated minimum IRWST water level following a large LOCA. By using this valve re-arrangement, the IRWST will provide a manometer effect to establish a water seal at the valves because the containment pressure is exerted on the surface of the IRWST liquid and the SIS forms a closed loop with containment following a pipe break. ABB–CE states that it complies with the intent of the regulation in 10 CFR Part 50, Appendix J, in maintaining water-sealed valves.

The NRC staff has reviewed the proposed alternative. Appendix J to 10 CFR Part 50, Section III.C.3(b) states that the installed isolation valve seal water system fluid inventory is sufficient to assure the sealing function for at least 30 days at a pressure of 1.1 Pa. The proposed design of water-sealed isolation valves conforms to the requirement of 30-day water inventory but not on the sealing pressure of 1.1 Pa. However, the NRC staff finds that the closed loop and the manometer effect provide sufficient water sealing as long as the integrity of the closed loop and the elevation differential between the valves and the water level are maintained. As a result of the review, ABB –CE has committed to provide: (1) Periodic pressure testing as described in DCD Sections 3.9.6 and 6.6 to ensure the integrity of the closed loop SIS outside containment is being maintained; and (2) a pre-operational test as described in DCD Section 14.2 to ensure the existence of the water seal.

Based on the NRC staff review and ABB–CE's commitment to the above periodic and pre-operational tests, the Commission has determined that the special circumstances described in 10 CFR 50.12(a)(2)(ii) exist in that the regulation need not be applied in this particular circumstance to achieve the underlying purpose because ABB–CE has proposed acceptable alternatives that accomplish the intent of the regulation. On this basis, the Commission concludes that a partial exemption from the requirements of Section III.C.3(b) is justified because the alternative water-sealed-valve design accomplishes the objectives of the regulatory requirement of sealing pressure of 1.1 Pa.

Paragraph (b)(3) of 10 CFR 50.49—Environmental Qualification of Post-Accident Monitoring Equipment.

In the generic DCD, ABB–CE stated that the design of the information systems important to safety will be in conformance with the guidelines of Regulatory Guide (RG) 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident,'' Revision 3. The footnote for § 50.49(b)(3) references Revision 2 of RG 1.97 for selection of the types of post-accident monitoring equipment. As a result, the proposed design certification rule provided an exemption to this requirement. In section C.1 of its comments, dated August 4, 1995, ABB–CE stated that it did not believe that an exemption from paragraph (b)(3) of 10 CFR 50.49 is needed or required. The Commission agrees with ABB–CE's assertion that Revision 2 of RG 1.97 is identified in footnote 4 of 10 CFR 50.49 and should not be viewed as binding in this instance. Therefore, the Commission has determined that there is no need for an exemption from paragraph (b)(3) of 10 CFR 50.49 and has removed it from V.B of this appendix.

F. Issue Resolution

The purpose of Section VI of this appendix is to identify the scope of issues that are resolved by the Commission in this rulemaking and; therefore, are ''matters resolved'' within

the meaning and intent of 10 CFR 52.63(a)(4). The section is divided into five parts: (A) The Commission's safety findings in adopting this appendix, (B) the scope and nature of issues which are resolved by this rulemaking, (C) issues which are not resolved by this rulemaking, (D) the backfit restrictions applicable to the Commission with respect to this appendix, and (E) availability of secondary references.

Paragraph A describes in general terms the nature of the Commission's findings, and makes the finding required by 10 CFR 52.54 for the Commission's approval of this final design certification rule. Furthermore, paragraph A explicitly states the Commission's determination that this design provides adequate protection to the public health and safety.

Paragraph B sets forth the scope of issues which may not be challenged as a matter of right in subsequent proceedings. The introductory phrase of paragraph B clarifies that issue resolution as described in the remainder of the paragraph extends to the delineated NRC proceedings referencing this appendix. The remaining portion of paragraph B describes the general categories of information for which there is issue resolution.

Specifically, paragraph B.1 provides that all nuclear safety issues arising from the Atomic Energy Act of 1954, as amended, that are associated with the information in the NRC staff's FSER (NUREG–1503) and Supplement No. 1, the Tier 1 and Tier 2 information, and the rulemaking record for this appendix are resolved within the meaning of § 52.63(a)(4). These issues include the information referenced in the DCD that are requirements (i.e., ''secondary references''), as well as all issues arising from proprietary information which are intended to be requirements. Paragraph B.2 provides for issue preclusion of proprietary information. As discussed in section II.A.1 of this SOC, the inclusion of proprietary information within the scope of issues resolved within the meaning of § 52.63(a)(4) represents a change from the Commission's intent during the proposed rule. Paragraphs B.3, B.4, B.5, and B.6 clarify that approved changes to and departures from the DCD which are accomplished in compliance with the relevant procedures and criteria in Section VIII of this appendix continue to be matters resolved in connection with this rulemaking (refer to the discussion in section II.A.1 of this SOC). Paragraph B.7 provides that, for those plants located on sites whose site parameters do not exceed those assumed in the Technical Support Document (January 1995), all issues with respect to severe accident mitigation design alternatives (SAMDAs) arising under the National Environmental Policy Act of 1969 associated with the information in the Environmental Assessment for this design and the information regarding SAMDAs in the applicant's Technical Support Document (January 1995) are also resolved within the meaning and intent of § 52.63(a)(4). Refer to the discussion in section II.A.1 of this SOC regarding finality of SAMDAs in the event an exemption from a site parameter is granted. The exemption applicant has the initial burden of demonstrating that the original SAMDA analysis still applies to the actual site parameters but, if the exemption is approved, requests for litigation at the COL stage must meet the requirements of § 2.714 and present sufficient information to create a genuine controversy in order to obtain a hearing on the site parameter exemption.

Paragraph C reserves the right of the Commission to impose operational requirements on applicants that reference this appendix. This provision reflects the fact that operational requirements, including technical specifications, were not completely or comprehensively reviewed at the design certification stage. Therefore, the special backfit provisions of § 52.63 do not apply to operational requirements. However, all design changes would be restricted by the appropriate provision in Section VIII of this appendix (refer to section III.H of this SOC). Although the information in the DCD that is related to operational requirements was necessary to support the NRC staff's safety review of this design, the review of this information was not sufficient to conclude that the operational requirements are fully resolved and ready to be assigned finality under § 52.63. As a result, if the NRC wanted to change a temperature limit and that operational change required a consequential change to a design feature, then the temperature limit backfit would be restricted by § 52.63. However, changes to other operational issues, such as in-service testing and in-service inspection programs, post-fuel load verification activities, and shutdown risk that do not require a design change would not be restricted by § 52.63.

Paragraph C allows the NRC to impose future operational requirements (distinct from design matters) on applicants who reference this design certification. Also, license conditions for portions of the plant within the scope of this design certification, e.g. start-up and power ascension testing, are not restricted by § 52.63. The requirement to perform these testing programs is contained in Tier 1 information. However, ITAAC cannot be specified for these subjects because the matters to be addressed in these license conditions cannot be verified prior to fuel load and operation, when the ITAAC are satisfied. Therefore, another regulatory vehicle is necessary to ensure that licensees comply with the matters contained in the license conditions. License conditions for these areas cannot be developed now because this requires the type of detailed design information that will be developed after design certification. In the absence of detailed design information to evaluate the need for and develop specific post-fuel load verifications for these matters, the Commission is reserving the right to impose license conditions by rule for post-fuel load verification activities for portions of the plant within the scope of this design certification.

Paragraph D reiterates the restrictions (contained in 10 CFR 52.63 and Section VIII of this appendix) placed upon the Commission when ordering generic or plant-specific modifications, changes or additions to structures, systems or components, design features, design criteria, and ITAAC (VI.D.3 addresses ITAAC) within the scope of the certified design. Although the Commission does not believe that this language is necessary, the Commission has included this language to provide a concise statement of the scope and finality of this rule in response to comments from NEI.

Paragraph E provides the procedure for an interested member of the public to obtain access to proprietary information for the System 80+ design, in order to request and participate in proceedings identified in VI.B of this appendix, viz., proceedings involving licenses and applications which reference this appendix. As set forth in paragraph E, access must first be sought from the design certification applicant. If ABB–CE refuses to provide the information, the person seeking access shall request access from the Commission or the presiding officer, as applicable. Access to the proprietary information may be ordered by the Commission, but must be subject to an appropriate non-disclosure agreement.

G. Duration of This Appendix

The purpose of Section VII of this appendix is in part to specify the time period during which this design certification may be referenced by an applicant for a combined license, pursuant to 10 CFR 52.55. This section also states that the design certification

remains valid for an applicant or licensee that references the design certification until the application is withdrawn or the license expires. Therefore, if an application references this design certification during the 15-year period, then the design certification continues in effect until the application is withdrawn or the license issued on that application expires. Also, the design certification continues in effect for the referencing license if the license is renewed. The Commission intends for this appendix to remain valid for the life of the plant that references the design certification to achieve the benefits of standardization and licensing stability. This means that changes to or plant-specific departures from information in the plant-specific DCD must be made pursuant to the change processes in Section VIII of this appendix for the life of the plant.

H. Processes for Changes and Departures

The purpose of Section VIII of this appendix is to set forth the processes for generic changes to or plant-specific departures (including exemptions) from the DCD. The Commission adopted this restrictive change process in order to achieve a more stable licensing process for applicants and licensees that reference this design certification rule. Section VIII is divided into three paragraphs, which correspond to Tier 1, Tier 2, and Operational requirements. The language of Section VIII distinguishes between generic changes to the DCD versus plant-specific departures from the DCD. Generic changes must be accomplished by rulemaking because the intended subject of the change is the design certification rule itself, as is contemplated by 10 CFR 52.63(a)(1). Consistent with 10 CFR 52.63(a)(2), any generic rulemaking changes are applicable to all plants, absent circumstances which render the change (''modification'' in the language of § 52.63(a)(2)) ''technically irrelevant.'' By contrast, plant-specific departures could be either a Commission-issued order to one or more applicants or licensees; or an applicant or licensee-initiated departure applicable only to that applicant's or licensee's plant(s), i.e., a § 50.59-like departure or an exemption. Because these plant-specific departures will result in a DCD that is unique for that plant, Section X of this appendix requires an applicant or licensee to maintain a plant-specific DCD. For purposes of brevity, this discussion refers to both generic changes and plant-specific departures as ''change processes.''

Both Section VIII of this appendix and this SOC refer to an ''exemption'' from one or more requirements of this appendix and the criteria for granting an exemption. The Commission cautions that where the exemption involves an underlying substantive requirement (applicable regulation), then the applicant or licensee requesting the exemption must also show that an exemption from the underlying applicable requirement meets the criteria of 10 CFR 50.12.

Tier 1

The change processes for Tier 1 information are covered in paragraph VIII.A. Generic changes to Tier 1 are accomplished by rulemaking that amends the generic DCD and are governed by the standards in 10 CFR 52.63(a)(1). This provision provides that the Commission may not modify, change, rescind, or impose new requirements by rulemaking except where necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security. The rulemakings must include an opportunity for hearing with respect to the proposed change, as required by 10 CFR 52.63(a)(1), and the Commission expects such hearings to be conducted in accordance with 10 CFR Part 2, Subpart H. Departures from Tier 1 may occur in two ways: (1) The Commission may order a licensee to depart from Tier 1, as provided in paragraph A.3; or (2) an applicant or licensee may request an exemption from Tier 1, as provided in paragraph A.4. If the Commission seeks to order a licensee to depart from Tier 1, paragraph A.3 requires that the Commission find both that the departure is necessary for adequate protection or for compliance, and that special circumstances are present. Paragraph A.4 provides that exemptions from Tier 1 requested by an applicant or licensee are governed by the requirements of 10 CFR 52.63(b)(1) and 52.97(b), which provide an opportunity for a hearing. In addition, the Commission will not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design (refer to discussion in II.A.3 of this SOC).

Tier 2

The change processes for the three different categories of Tier 2 information, viz., Tier 2, Tier 2*, and Tier 2* with a time of expiration are set forth in paragraph VIII.B. The change process for Tier 2 has the same elements as the Tier 1 change process, but some of the standards for plant-specific orders and exemptions are different. The Commission also adopted a ''§ 50.59-like'' change process in accordance with its SRMs on SECY–90–377 and SECY–92–287A.

The process for generic Tier 2 changes (including changes to Tier 2* and Tier 2* with a time of expiration) tracks the process for generic Tier 1 changes. As set forth in paragraph B.1, generic Tier 2 changes are accomplished by rulemaking amending the generic DCD, and are governed by the standards in 10 CFR 52.63(a)(1). This provision provides that the Commission may not modify, change, rescind or impose new requirements by rulemaking except where necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to assure adequate protection of the public health and safety or common defense and security. If a generic change is made to Tier 2* information, then the category and expiration, if necessary, of the new information would also be determined in the rulemaking and the appropriate change process for that new information would apply (refer to II.A.2 of this SOC).

Departures from Tier 2 may occur in five ways: (1) The Commission may order a plant-specific departure, as set forth in paragraph B.3; (2) an applicant or licensee may request an exemption from a Tier 2 requirement as set forth in paragraph B.4; (3) a licensee may make a departure without prior NRC approval in accordance with paragraph B.5 [the ''§ 50.59-like'' process]; (4) the licensee may request NRC approval for proposed departures which do not meet the requirements in paragraph B.5 as provided in paragraph B.5.d; and (5) the licensee may request NRC approval for a departure from Tier 2* information, in accordance with paragraph B.6.

Similar to Commission-ordered Tier 1 departures and generic Tier 2 changes, Commission-ordered Tier 2 departures cannot be imposed except where necessary either to bring the certification into compliance with the Commission's regulations applicable and in effect at the time of approval of the design certification or to ensure adequate protection of the public health and safety or common defense and security, as set forth in paragraph B.3. However, the special circumstances for the Commission-ordered Tier 2 departures do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the plant-specific order, as required

by 10 CFR 52.63(a)(3). The Commission determined that it was not necessary to impose an additional limitation similar to that imposed on Tier 1 departures by 10 CFR 52.63 (a)(3) and (b)(1). This type of additional limitation for standardization would unnecessarily restrict the flexibility of applicants and licensees with respect to Tier 2, which by its nature is not as safety significant as Tier 1.

An applicant or licensee may request an exemption from Tier 2 information as set forth in paragraph B.4. The applicant or licensee must demonstrate that the exemption complies with one of the special circumstances in 10 CFR 50.12(a). In addition, the Commission will not grant requests for exemptions that may result in a significant decrease in the level of safety otherwise provided by the design (refer to discussion in II.A.3 of this SOC). However, the special circumstances for the exemption do not have to outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption. If the exemption is requested by an applicant for a license, the exemption is subject to litigation in the same manner as other issues in the license hearing, consistent with 10 CFR 52.63(b)(1). If the exemption is requested by a licensee, then the exemption is subject to litigation in the same manner as a license amendment.

Paragraph B.5 allows an applicant or licensee to depart from Tier 2 information, without prior NRC approval, if the proposed departure does not involve a change to or departure from Tier 1 or Tier 2* information, technical specifications, or involves an unreviewed safety question (USQ) as defined in B.5.b and B.5.c of this paragraph. The technical specifications referred to in B.5.a and B.5.b of this paragraph are the technical specifications in Chapter 16 of the generic DCD, including bases, for departures made prior to issuance of the COL. After issuance of the COL, the plant-specific technical specifications are controlling under paragraph B.5 (refer to discussion in II.A.1 of this SOC on Finality for Technical Specifications). The bases for the plant-specific technical specifications will be controlled by the bases control procedures for the plant-specific technical specifications (analogous to the bases control provision in the Improved Standard Technical Specifications). The definition of a USQ in paragraph B.5.b is similar to the definition in 10 CFR 50.59 and it applies to all information in Tier 2 except for the information that resolves the severe accident issues. The process for evaluating proposed tests or experiments not described in Tier 2 will be incorporated into the change process for the portion of the design that is outside the scope of this design certification. Although paragraph B.5 does not specifically state, the Commission has determined that departures must also comply with all applicable regulations unless an exemption or other relief is obtained.

The Commission believes that it is important to preserve and maintain the resolution of severe accident issues just like all other safety issues that were resolved during the design certification review (refer to SRM on SECY–90–377). However, because of the increased uncertainty in severe accident issue resolutions, the Commission has adopted separate criteria in B.5.c for determining whether a departure from information that resolves severe accident issues constitutes a USQ. For purposes of applying the special criteria in B.5.c, severe accident resolutions are limited to design features when the intended function of the design feature is relied upon to resolve postulated accidents where the reactor core has melted and exited the reactor vessel and the containment is being challenged (refer to discussion in II.A.2 of this SOC). These design features are identified in Section 19.11 of the System 80+ DCD and Section 19E of the ABWR DCD, but may be described in other sections of the DCD. Therefore, the location of design information in the DCD is not important to the application of this special procedure for severe accident issues. However, the special procedure in B.5.c does not apply to design features that resolve so-called beyond design basis accidents or other low probability events. The important aspect of this special procedure is that it is limited solely to severe accident design features, as defined above. Some design features of the evolutionary designs have intended functions to meet both ''design basis'' requirements and to resolve ''severe accidents.'' If these design features are reviewed under paragraph VIII.B.5, then the appropriate criteria from either B.5.b or B.5.c are selected depending upon the design function being changed.

An applicant or licensee that plans to depart from Tier 2 information, under VIII.B.5, must prepare a safety evaluation which provides the bases for the determination that the proposed change does not involve an unreviewed safety question, a change to Tier 1 or Tier 2* information, or a change to the technical specifications, as explained above. In order to achieve the Commission's goals for design certification, the evaluation needs to consider all of the matters that were resolved in the DCD, such as generic issue resolutions that are relevant to the proposed departure. The benefits of the early resolution of safety issues would be lost if departures from the DCD were made that violated these resolutions without appropriate review. The evaluation of the relevant matters needs to consider the proposed departure over the full range of power operation from startup to shutdown, as it relates to anticipated operational occurrences, transients, design basis accidents, and severe accidents. The evaluation must also include a review of all relevant secondary references from the DCD because Tier 2 information intended to be treated as requirements is contained in the secondary references. The evaluation should consider the tables in Sections 14.3 and 19.8 of the DCD to ensure that the proposed change does not impact Tier 1. These tables contain various cross-references from the plant safety analyses in Tier 2 to the important parameters that were included in Tier 1. Although many issues and analyses could have been cross-referenced, the listings in these tables were developed only for key plant safety analyses for the design. ABB–CE provided more detailed cross-references to Tier 1 for these analyses in a letter dated June 10, 1994.

If a proposed departure from Tier 2 involves a change to or departure from Tier 1 or Tier 2* information, technical specifications, or otherwise constitutes a USQ, then the applicant or licensee must obtain NRC approval through the appropriate process set forth in this appendix before implementing the proposed departure. The NRC does not endorse NSAC–125, ''Guidelines for 10 CFR 50.59 Safety Evaluations,'' for performing safety evaluations required by VIII.B.5 of this appendix. However, the NRC will work with industry, if it is desired, to develop an appropriate guidance document for processing proposed changes under VIII.B of this appendix.

A party to an adjudicatory proceeding (e.g., for issuance of a combined license) who believes that an applicant or licensee has not complied with VIII.B.5 when departing from Tier 2 information, may petition to admit such a contention into the proceeding. As set forth in B.5.f, the petition must comply with the requirements of § 2.714(b)(2) and show that the departure does not comply with paragraph B.5. Any other party may file a response to the petition. If on the basis of the petition and any responses, the presiding officer in the proceeding determines that the required showing

has been made, the matter shall be certified to the Commission for its final determination. In the absence of a proceeding, petitions alleging non-conformance with paragraph B.5 requirements applicable to Tier 2 departures will be treated as petitions for enforcement action under 10 CFR 2.206.

Paragraph B.6 provides a process for departing from Tier 2* information. This provision is bifurcated because of the expiration of some Tier 2* information. The Commission determined that the Tier 2* designation should expire for some Tier 2* information in response to comments from NEI (refer to section II.A.2 of this SOC). Therefore, certain Tier 2* information listed in B.6.c is no longer designated as Tier 2* information after full power operation is first achieved following the Commission finding in 10 CFR 52.103(g). Thereafter, that information is deemed to be Tier 2 information that is subject to the departure requirements in paragraph B.5. By contrast, the Tier 2* information identified in B.6.b retains its Tier 2* designation throughout the duration of the license, including any period of renewal. Any requests for departures from Tier 2* information that affect Tier 1 must also comply with the requirements in VIII.A of this appendix.

If Tier 2* information is changed in a generic rulemaking, the designation of the new information (Tier 1, 2*, or 2) would also be determined in the rulemaking and the appropriate process for future changes would apply. If a plant-specific departure is made from Tier 2* information, then the new designation would apply only to that plant. If an applicant who references this design certification makes a departure from Tier 2* information, the new information is subject to litigation in the same manner as other plant-specific issues in the licensing hearing (refer to B.6.a). If a licensee makes a departure, it will be treated as a license amendment under 10 CFR 50.90 and the finality is in accordance with paragraph VI.B.5 of this appendix.

Operational Requirements

The change process for technical specifications and other operational requirements is set forth in paragraph VIII.C. This change process has elements similar to the Tier 1 and Tier 2 change process in paragraphs VIII.A and VIII.B, but with significantly different change standards (refer to the explanation in II.A.1 of this SOC). The Commission did not support NEI's request to extend the special backfit provisions of 10 CFR 52.63 to technical specifications and other operational requirements (refer to explanation in III.F of this SOC). Rather, the Commission decided to designate a special category of information, consisting of the technical specifications and other operational requirements, with its own change process in paragraph VIII.C. The key to using the change processes in Section VIII is to determine if the proposed change or departure requires a change to a design feature described in the generic DCD. If a design change is required, then the appropriate change process in paragraph VIII.A or VIII.B applies. However, if a proposed change to the technical specifications or other operational requirements does not require a change to a design feature in the generic DCD, then paragraph VIII.C applies. The language in paragraph VIII.C also distinguishes between generic and plant-specific technical specifications to account for the different treatment and finality accorded technical specifications before and after a license is issued.

The process in C.1 for making generic changes to the generic technical specifications in Chapter 16 of the DCD or other operational requirements in the generic DCD is accomplished by rulemaking and governed by the backfit standards in 10 CFR 50.109. The determination of whether the generic technical specifications and other operational requirements were completely reviewed and approved in the design certification rulemaking is based upon the extent to which an NRC safety conclusion in the FSER or its supplement is being modified or changed. If it cannot be determined that the technical specification or operational requirement was comprehensively reviewed and finalized in the design certification rulemaking, then there is no backfit restriction under 10 CFR 50.109 because no prior position was taken on this safety matter. Some generic technical specifications contain bracketed values, which clearly indicate that the NRC staff's review was not complete. Generic changes made under VIII.C.1 are applicable to all applicants or licensees, unless the change is irrelevant because of a plant-specific departure (refer to VIII.C.2).

Plant-specific departures may occur by either a Commission order under VIII.C.3 or an applicant's exemption request under VIII.C.4. The basis for determining if the technical specification or operational requirement was completely reviewed and approved is the same as for VIII.C.1 above. If the technical specification or operational requirement was comprehensively reviewed and finalized in the design certification rulemaking, then the Commission must demonstrate that special circumstances are present before ordering a plant-specific departure. If not, there is no restriction on plant-specific changes to the technical specifications or operational requirements, prior to issuance of a license, provided a design change is not required. Although the generic technical specifications were reviewed by the NRC staff to facilitate the design certification review, the Commission intends to consider the lessons learned from subsequent operating experience during its licensing review of the plant-specific technical specifications. The process for petitioning to intervene on a technical specification or operational requirement is similar to other issues in a licensing hearing, except that the petitioner must also demonstrate why special circumstances are present (refer to VIII.C.5).

Finally, the generic technical specifications will have no further effect on the plant-specific technical specifications after the issuance of a license that references this appendix (refer to sections II.A.1 and II.B.3 of this SOC). The bases for the generic technical specifications will be controlled by the change process in Section VIII.C of this appendix. After a license is issued, the bases will be controlled by the bases change provision set forth in the administrative controls section of the plant-specific technical specifications.

I. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

The purpose of Section IX of this appendix is to set forth how the ITAAC in Tier 1 of this design certification rule are to be treated in a license proceeding. Paragraph A restates the responsibilities of an applicant or licensee for performing and successfully completing ITAAC, and notifying the NRC of such completion. Paragraph A.1 makes it clear that an applicant may proceed at its own risk with design and procurement activities subject to ITAAC, and that a licensee may proceed at its own risk with design, procurement, construction, and preoperational testing activities subject to an ITAAC, even though the NRC may not have found that any particular ITAAC has been successfully completed. Paragraph A.2 requires the licensee to notify the NRC that the required inspections, tests, and analyses in the ITAAC have been completed and that the acceptance criteria have been met.

Paragraphs B.1 and B.2 essentially reiterate the NRC's responsibilities with respect to ITAAC as set forth in 10 CFR 52.99 and 52.103(g) [refer to explanation in section II.C.1 of this SOC]. Finally, paragraph B.3 states that ITAAC do not, by virtue of their inclusion in the DCD, constitute regulatory requirements after the licensee has received authorization to load fuel or for renewal of the license. However, subsequent modifications must comply with the design descriptions in the DCD unless the applicable requirements in 10 CFR 52.97 and Section VIII of this appendix have been complied with. As discussed in sections II.B.9 and III.D of this SOC, the Commission will defer a determination of the applicability of ITAAC and their effect in terms of issue resolution in 10 CFR Part 50 licensing proceedings to such time that a Part 50 applicant decides to reference this appendix.

J. Records and Reporting

The purpose of Section X of this appendix is to set forth the requirements for maintaining records of changes to and departures from the generic DCD, which are to be reflected in the plant-specific DCD. Section X also sets forth the requirements for submitting reports (including updates to the plant-specific DCD) to the NRC. This section of the appendix is similar to the requirements for records and reports in 10 CFR Part 50, except for minor differences in information collection and reporting requirements, as discussed in section V of this SOC. Paragraph X.A.1 of this appendix requires that a generic DCD and the proprietary information referenced in the generic DCD be maintained by the applicant for this rule. The generic DCD was developed, in part, to meet the requirements for incorporation by reference, including availability requirements. Therefore, the proprietary information could not be included in the generic DCD because it is not publicly available. However, the proprietary information was reviewed by the NRC and, as stated in paragraph VI.B.2 of this appendix, the Commission considers the information to be resolved within the meaning of 10 CFR 52.63(a)(4). Because this information is not in the generic DCD, the proprietary information, or its equivalent, is required to be provided by an applicant for a license. Therefore, to ensure that this information will be available, a requirement for the design certification applicant to maintain the proprietary information was added to paragraph X.A.1 of this appendix. The acceptable version of the proprietary information is identified in the version of the DCD that is incorporated into this rule. The generic DCD and the acceptable version of the proprietary information must be maintained for the period of time that this appendix may be referenced.

Paragraphs A.2 and A.3 place record-keeping requirements on the applicant or licensee that references this design certification to maintain its plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made pursuant to Section VIII of this appendix. The term ''plant-specific'' was added to paragraph A.2 and other Sections of this appendix to distinguish between the generic DCD that is incorporated by reference into this appendix, and the plant-specific DCD that the applicant is required to submit under IV.A of this appendix. The requirement to maintain the generic changes to the generic DCD is explicitly stated to ensure that these changes are not only reflected in the generic DCD, which will be maintained by the applicant for design certification, but that the changes are also reflected in the plant-specific DCD. Therefore, records of generic changes to the DCD will be required to be maintained by both entities to ensure that both entities have up-to-date DCDs.

Section X.A of this appendix does not place record-keeping requirements on site-specific information that is outside the scope of this rule. As discussed in section III.D of this SOC, the final safety analysis report required by 10 CFR 52.79 will contain the plant-specific DCD and the site-specific information for a facility that references this rule. The phrase ''site-specific portion of the final safety analysis report'' in paragraph X.B.3.d of this appendix refers to the information that is contained in the final safety analysis report for a facility (required by 10 CFR 52.79) but is not part of the plant-specific DCD (required by IV.A of this appendix). Therefore, this rule does not require that duplicate documentation be maintained by an applicant or licensee that references this rule, because the plant-specific DCD is part of the final safety analysis report for the facility (refer to section II.C.3 of this SOC).

Paragraphs B.1 and B.2 establish reporting requirements for applicants or licensees that reference this rule that are similar to the reporting requirements in 10 CFR Part 50. For currently operating plants, a licensee is required to maintain records of the basis for any design changes to the facility made under 10 CFR 50.59. Section 50.59(b)(2) requires a licensee to provide a summary report of these changes to the NRC annually, or along with updates to the facility final safety analysis report under 10 CFR 50.71(e). Section 50.71(e)(4) requires that these updates be submitted annually, or 6 months after each refueling outage if the interval between successive updates does not exceed 24 months.

The reporting requirements vary according to four different time periods during a facilities' lifetime as specified in paragraph B.3. Paragraph B.3.a requires that if an applicant that references this rule decides to make departures from the generic DCD, then the departures and any updates to the plant-specific DCD must be submitted with the initial application for a license. Under B.3.b, the applicant may submit any subsequent reports and updates along with its amendments to the application provided that the submittals are made at least once per year. Because amendments to an application are typically made more frequently than once a year, this should not be an excessive burden on the applicant.

Paragraph B.3.c requires that the reports be submitted quarterly during the period of facility construction. This increase in frequency of summary reports of departures from the plant-specific DCD is in response to the Commission's guidance on reporting frequency in its SRM on SECY–90–377, dated February 15, 1991. NEI stated in its comments dated August 4, 1995 (Attachment B, p. 116) that * * * ''the requirement for quarterly reporting imposes unnecessary additional burdens on licensees and the NRC.'' NEI recommended that the Commission adopt a ''less onerous'' requirement (e.g., semi-annual reports). The Commission disagrees with the NEI request because it does not provide for sufficiently timely notification of design changes during the critical period of facility construction. Also, the Commission disagrees that the reports are an onerous burden because they are only summary reports, which describe the design changes, rather than detailed evaluations of the changes and determinations. The detailed evaluations remain available for audit on site, consistent with the requirements of 10 CFR Part 50.

Quarterly reporting of design changes during the period of construction is necessary to closely monitor the status and progress of the construction of the plant. To make its finding under 10 CFR 52.99, the NRC must monitor the design changes made in accordance with Section VIII of this appendix. The ITAAC verify that the as-built facility conforms with the approved design and emphasizes design reconciliation and design verification. Quarterly reporting of design changes is particularly

important in times where the number of design changes could be significant, such as during the procurement of components and equipment, detailed design of the plant at the start of construction, and during pre-operational testing. The frequency of updates to the plant-specific DCD is not increased during facility construction. After the facility begins operation, the frequency of reporting reverts to the requirement in paragraph X.B.3.d, which is consistent with the requirement for plants licensed under 10 CFR Part 50.

IV. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended (NEPA), and the Commission's regulations in 10 CFR Part 51, Subpart A, that this design certification rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. The basis for this determination, as documented in the final environmental assessment, is that this amendment to 10 CFR Part 52 does not authorize the siting, construction, or operation of a facility using the System 80+ design; it only codifies the System 80+ design in a rule. The NRC will evaluate the environmental impacts and issue an EIS as appropriate in accordance with NEPA as part of the application(s) for the construction and operation of a facility.

In addition, as part of the final environmental assessment for the System 80+ design, the NRC reviewed ABB–CE's evaluation of various design alternatives to prevent and mitigate severe accidents that was submitted in its ''Technical Support Document,'' dated January 1995. The Commission finds that ABB–CE's evaluation provides a sufficient basis to conclude that there are no additional severe accident design alternatives beyond those currently incorporated into the System 80+ design which are cost-beneficial, whether considered at the time of the approval of the design certification or in connection with the licensing of a future facility referencing the System 80+ design certification, where the plant referencing this appendix is located on a site whose site parameters are within those specified in the Technical Support Document. These issues are considered resolved for the System 80+ design.

The final environmental assessment, upon which the Commission's finding of no significant impact is based, and the Technical Support Document for the System 80+ design are available for examination and copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Single copies are also available from Mr. Dino C. Scaletti, Mailstop O–11 H3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–1104.

V. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval number 3150–0151. Should an application be received, the additional public reporting burden for this collection of information, above those contained in Part 52, is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on any aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0151), Office of Management and Budget, Washington, DC 20503.

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.

VI. Regulatory Analysis

The NRC has not prepared a regulatory analysis for this final rule. The NRC prepares regulatory analyses for rulemakings that establish generic regulatory requirements applicable to all licensees. Design certifications are not generic rulemakings in the sense that design certifications do not establish standards or requirements with which all licensees must comply. Rather, design certifications are Commission approvals of specific nuclear power plant designs by rulemaking. Furthermore, design certification rulemakings are initiated by an applicant for a design certification, rather than the NRC. Preparation of a regulatory analysis in this circumstance would not be useful because the design to be certified is proposed by the applicant rather than the NRC. For these reasons, the Commission concludes that preparation of a regulatory analysis is neither required nor appropriate.

VII. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rulemaking will not have a significant economic impact upon a substantial number of small entities. The rule provides certification for a nuclear power plant design. Neither the design certification applicant nor prospective nuclear power plant licensees who reference this design certification rule fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, 15 U.S.C. 632, or the Small Business Size Standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121. Thus, this rule does not fall within the purview of the act.

VIII. Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because these amendments do not impose requirements on existing 10 CFR Part 50 licensees. Therefore, a backfit analysis was not prepared for this rule.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Incorporation by reference, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 52.

1. The authority citation for 10 CFR part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1243, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. In § 52.8, paragraph (b) is revised to read as follows:

§ 52.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 52.15, 52.17, 52.29, 52.45, 52.47, 52.57, 52.75, 52.77, 52.78, 52.79, Appendix A, and Appendix B.

3. A new appendix B to 10 CFR part 52 is added to read as follows:

Appendix B To Part 52—Design Certification Rule for the System 80+ Design

I. Introduction

Appendix B constitutes design certification for the System 80+ [1] standard plant design, in accordance with 10 CFR part 52, subpart B. The applicant for certification of the System 80+ design was Combustion Engineering, Inc. (ABB–CE).

II. Definitions

A. Generic design control document (generic DCD) means the document containing the Tier 1 and Tier 2 information and generic technical specifications that is incorporated by reference into this appendix.

B. Generic technical specifications means the information, required by 10 CFR 50.36 and 50.36a, for the portion of the plant that is within the scope of this appendix.

C. Plant-specific DCD means the document, maintained by an applicant or licensee who references this appendix, consisting of the information in the generic DCD, as modified and supplemented by the plant-specific departures and exemptions made under Section VIII of this appendix.

D. Tier 1 means the portion of the design-related information contained in the generic DCD that is approved and certified by this appendix (hereinafter Tier 1 information). The design descriptions, interface requirements, and site parameters are derived from Tier 2 information. Tier 1 information includes:

1. Definitions and general provisions;
2. Design descriptions;
3. Inspections, tests, analyses, and acceptance criteria (ITAAC);
4. Significant site parameters; and
5. Significant interface requirements.

E. Tier 2 means the portion of the design-related information contained in the generic DCD that is approved but not certified by this appendix (hereinafter Tier 2 information). Compliance with Tier 2 is required, but generic changes to and plant-specific departures from Tier 2 are governed by Section VIII of this appendix. Compliance with Tier 2 provides a sufficient, but not the only acceptable, method for complying with Tier 1. Compliance methods differing from Tier 2 must satisfy the change process in Section VIII of this appendix. Regardless of these differences, an applicant or licensee must meet the requirement in Section III.B to reference Tier 2 when referencing Tier 1. Tier 2 information includes:

1. Information required by 10 CFR 52.47, with the exception of generic technical specifications and conceptual design information;
2. Information required for a final safety analysis report under 10 CFR 50.34;
3. Supporting information on the inspections, tests, and analyses that will be performed to demonstrate that the acceptance criteria in the ITAAC have been met; and
4. Combined license (COL) action items (COL license information), which identify certain matters that shall be addressed in the site-specific portion of the final safety analysis report (FSAR) by an applicant who references this appendix. These items constitute information requirements but are not the only acceptable set of information in the FSAR. An applicant may depart from or omit these items, provided that the departure or omission is identified and justified in the FSAR. After issuance of a construction permit or COL, these items are not requirements for the licensee unless such items are restated in the FSAR.

F. Tier 2* means the portion of the Tier 2 information, designated as such in the generic DCD, which is subject to the change process in VIII.B.6 of this appendix. This designation expires for some Tier 2* information under VIII.B.6.

G. All other terms in this appendix have the meaning set out in 10 CFR 50.2, 10 CFR 52.3, or Section 11 of the Atomic Energy Act of 1954, as amended, as applicable.

III. Scope and Contents

A. Tier 1, Tier 2, and the generic technical specifications in the System 80+ Design Control Document, ABB–CE, with revisions dated January 1997, are approved for incorporation by reference by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the generic DCD may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for examination and copying at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555. Copies are also available for examination at the NRC Library, 11545 Rockville Pike, Rockville, Maryland 20582 and the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

B. An applicant or licensee referencing this appendix, in accordance with Section IV of this appendix, shall incorporate by reference and comply with the requirements of this appendix, including Tier 1, Tier 2, and the generic technical specifications except as otherwise provided in this appendix. Conceptual design information, as set forth in the generic DCD, and the Technical Support Document for the System 80+ design are not part of this appendix.

C. If there is a conflict between Tier 1 and Tier 2 of the DCD, then Tier 1 controls.

D. If there is a conflict between the generic DCD and either the application for design certification of the System 80+ design or NUREG–1462, ''Final Safety Evaluation Report related to the Certification of the System 80+ Design,'' (FSER) and Supplement No. 1, then the generic DCD controls.

E. Design activities for structures, systems, and components that are wholly outside the scope of this appendix may be performed using site-specific design parameters, provided the design activities do not affect the DCD or conflict with the interface requirements.

IV. Additional Requirements and Restrictions

A. An applicant for a license that wishes to reference this appendix shall, in addition to complying with the requirements of 10 CFR 52.77, 52.78, and 52.79, comply with the following requirements:

1. Incorporate by reference, as part of its application, this appendix;
2. Include, as part of its application:

a. A plant-specific DCD containing the same information and utilizing the same organization and numbering as the generic DCD for the System 80+ design, as modified and supplemented by the applicant's exemptions and departures;

b. The reports on departures from and updates to the plant-specific DCD required by X.B of this appendix;

c. Plant-specific technical specifications, consisting of the generic and site-specific technical specifications, that are required by 10 CFR 50.36 and 50.36a;

d. Information demonstrating compliance with the site parameters and interface requirements;

e. Information that addresses the COL action items; and

f. Information required by 10 CFR 52.47(a) that is not within the scope of this appendix.

3. Physically include, in the plant-specific DCD, the proprietary information referenced in the System 80+ DCD.

B. The Commission reserves the right to determine in what manner this appendix may be referenced by an applicant for a construction permit or operating license under 10 CFR Part 50.

V. Applicable Regulations

A. Except as indicated in paragraph B of this section, the regulations that apply to the System 80+ design are in 10 CFR Parts 20, 50, 73, and 100, codified as of May 9, 1997, that are applicable and technically relevant, as described in the FSER (NUREG–1462) and Supplement No. 1.

B. The System 80+ design is exempt from portions of the following regulations:

1. Paragraph (f)(2)(iv) of 10 CFR 50.34—Separate Plant Safety Parameter Display Console;
2. Paragraphs (f)(2) (vii), (viii), (xxvi), and (xxviii) of 10 CFR 50.34—Accident Source Terms;
3. Paragraph (f)(2)(viii) of 10 CFR 50.34—Post-Accident Sampling for Hydrogen, Boron, Chloride, and Dissolved Gases;
4. Paragraph (f)(3)(iv) of 10 CFR 50.34—Dedicated Containment Penetration; and
5. Paragraphs III.A.1(a) and III.C.3(b) of Appendix J to 10 CFR 50—Containment Leakage Testing.

VI. Issue Resolution

A. The Commission has determined that the structures, systems, components, and design features of the System 80+ design comply with the provisions of the Atomic Energy Act of 1954, as amended, and the applicable regulations identified in Section V of this appendix; and therefore, provide

[1] ''System 80+'' is a trademark of Combustion Engineering, Inc.

adequate protection to the health and safety of the public. A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, components, design features, design criteria, testing, analyses, acceptance criteria, or justifications are not necessary for the System 80+ design.

B. The Commission considers the following matters resolved within the meaning of 10 CFR 52.63(a)(4) in subsequent proceedings for issuance of a combined license, amendment of a combined license, or renewal of a combined license, proceedings held pursuant to 10 CFR 52.103, and enforcement proceedings involving plants referencing this appendix:

1. All nuclear safety issues, except for the generic technical specifications and other operational requirements, associated with the information in the FSER and Supplement No. 1, Tier 1, Tier 2 (including referenced information which the context indicates is intended as requirements), and the rulemaking record for certification of the System 80+ design;

2. All nuclear safety issues associated with the information in proprietary documents, referenced and in context, are intended as requirements in the generic DCD for the System 80+ design;

3. All generic changes to the DCD pursuant to and in compliance with the change processes in Sections VIII.A.1 and VIII.B.1 of this appendix;

4. All exemptions from the DCD pursuant to and in compliance with the change processes in Sections VIII.A.4 and VIII.B.4 of this appendix, but only for that proceeding;

5. All departures from the DCD that are approved by license amendment, but only for that proceeding;

6. Except as provided in VIII.B.5.f of this appendix, all departures from Tier 2 pursuant to and in compliance with the change processes in VIII.B.5 of this appendix that do not require prior NRC approval;

7. All environmental issues concerning severe accident mitigation design alternatives associated with the information in the NRC's final environmental assessment for the System 80+ design and the Technical Support Document for the System 80+ design, dated January 1995, for plants referencing this appendix whose site parameters are within those specified in the Technical Support Document.

C. The Commission does not consider operational requirements for an applicant or licensee who references this appendix to be matters resolved within the meaning of 10 CFR 52.63(a)(4). The Commission reserves the right to require operational requirements for an applicant or licensee who references this appendix by rule, regulation, order, or license condition.

D. Except in accordance with the change processes in Section VIII of this appendix, the Commission may not require an applicant or licensee who references this appendix to:

1. Modify structures, systems, components, or design features as described in the generic DCD;

2. Provide additional or alternative structures, systems, components, or design features not discussed in the generic DCD; or

3. Provide additional or alternative design criteria, testing, analyses, acceptance criteria, or justification for structures, systems, components, or design features discussed in the generic DCD.

E.1. Persons who wish to review proprietary information or other secondary references in the DCD for the System 80+ design, in order to request or participate in the hearing required by 10 CFR 52.85 or the hearing provided under 10 CFR 52.103, or to request or participate in any other hearing relating to this appendix in which interested persons have adjudicatory hearing rights, shall first request access to such information from ABB–CE. The request must state with particularity:

a. The nature of the proprietary or other information sought;

b. The reason why the information currently available to the public in the NRC's public document room is insufficient;

c. The relevance of the requested information to the hearing issue(s) which the person proposes to raise; and

d. A showing that the requesting person has the capability to understand and utilize the requested information.

2. If a person claims that the information is necessary to prepare a request for hearing, the request must be filed no later than 15 days after publication in the **Federal Register** of the notice required either by 10 CFR 52.85 or 10 CFR 52.103. If ABB–CE declines to provide the information sought, ABB–CE shall send a written response within ten (10) days of receiving the request to the requesting person setting forth with particularity the reasons for its refusal. The person may then request the Commission (or presiding officer, if a proceeding has been established) to order disclosure. The person shall include copies of the original request (and any subsequent clarifying information provided by the requesting party to the applicant) and the applicant's response. The Commission and presiding officer shall base their decisions solely on the person's original request (including any clarifying information provided by the requesting person to ABB–CE), and ABB–CE's response. The Commission and presiding officer may order ABB–CE to provide access to some or all of the requested information, subject to an appropriate nondisclosure agreement.

VII. Duration of This Appendix

This appendix may be referenced for a period of 15 years from June 20, 1997, except as provided for in 10 CFR 52.55(b) and 52.57(b). This appendix remains valid for an applicant or licensee who references this appendix until the application is withdrawn or the license expires, including any period of extended operation under a renewed license.

VIII. Processes for Changes and Departures

A. Tier 1 information.

1. Generic changes to Tier 1 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 1 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs A.3 or A.4 of this section.

3. Departures from Tier 1 information that are required by the Commission through plant-specific orders are governed by the requirements in 10 CFR 52.63(a)(3).

4. Exemptions from Tier 1 information are governed by the requirements in 10 CFR 52.63(b)(1) and § 52.97(b). The Commission will deny a request for an exemption from Tier 1, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design.

B. Tier 2 information.

1. Generic changes to Tier 2 information are governed by the requirements in 10 CFR 52.63(a)(1).

2. Generic changes to Tier 2 information are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs B.3, B.4, B.5, or B.6 of this section.

3. The Commission may not require new requirements on Tier 2 information by plant-specific order while this appendix is in effect under §§ 52.55 or 52.61, unless:

a. A modification is necessary to secure compliance with the Commission's regulations applicable and in effect at the time this appendix was approved, as set forth in Section V of this appendix, or to assure adequate protection of the public health and safety or the common defense and security; and

b. Special circumstances as defined in 10 CFR 50.12(a) are present.

4. An applicant or licensee who references this appendix may request an exemption from Tier 2 information. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The Commission will deny a request for an exemption from Tier 2, if it finds that the design change will result in a significant decrease in the level of safety otherwise provided by the design. The grant of an exemption to an applicant must be subject to litigation in the same manner as other issues material to the license hearing. The grant of an exemption to a licensee must be subject to an opportunity for a hearing in the same manner as license amendments.

5.a. An applicant or licensee who references this appendix may depart from Tier 2 information, without prior NRC approval, unless the proposed departure involves a change to or departure from Tier 1 information, Tier 2* information, or the technical specifications, or involves an unreviewed safety question as defined in paragraphs B.5.b and B.5.c of this section. When evaluating the proposed departure, an applicant or licensee shall consider all matters described in the plant-specific DCD.

b. A proposed departure from Tier 2, other than one affecting resolution of a severe accident issue identified in the plant-specific DCD, involves an unreviewed safety question if—

(1) The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the plant-specific DCD may be increased;

(2) A possibility for an accident or malfunction of a different type than any evaluated previously in the plant-specific DCD may be created; or

(3) The margin of safety as defined in the basis for any technical specification is reduced.

c. A proposed departure from Tier 2 affecting resolution of a severe accident issue identified in the plant-specific DCD, involves an unreviewed safety question if—

(1) There is a substantial increase in the probability of a severe accident such that a particular severe accident previously reviewed and determined to be not credible could become credible; or

(2) There is a substantial increase in the consequences to the public of a particular severe accident previously reviewed.

d. If a departure involves an unreviewed safety question as defined in paragraph B.5 of this section, it is governed by 10 CFR 50.90.

e. A departure from Tier 2 information that is made under paragraph B.5 of this section does not require an exemption from this appendix.

f. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an applicant or licensee who references this appendix has not complied with VIII.B.5 of this appendix when departing from Tier 2 information, may petition to admit into the proceeding such a contention. In addition to compliance with the general requirements of 10 CFR 2.714(b)(2), the petition must demonstrate that the departure does not comply with VIII.B.5 of this appendix. Further, the petition must demonstrate that the change bears on an asserted noncompliance with an ITAAC acceptance criterion in the case of a 10 CFR 52.103 preoperational hearing, or that the change bears directly on the amendment request in the case of a hearing on a license amendment. Any other party may file a response. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. The Commission may admit such a contention if it determines the petition raises a genuine issue of fact regarding compliance with VIII.B.5 of this appendix.

6.a. An applicant who references this appendix may not depart from Tier 2* information, which is designated with italicized text or brackets and an asterisk in the generic DCD, without NRC approval. The departure will not be considered a resolved issue, within the meaning of Section VI of this appendix and 10 CFR 52.63(a)(4).

b. A licensee who references this appendix may not depart from the following Tier 2* matters without prior NRC approval. A request for a departure will be treated as a request for a license amendment under 10 CFR 50.90.

(1) Maximum fuel rod average burnup.

(2) Control room human factors engineering.

c. A licensee who references this appendix may not, before the plant first achieves full power following the finding required by 10 CFR 52.103(g), depart from the following Tier 2* matters except in accordance with paragraph B.6.b of this section. After the plant first achieves full power, the following Tier 2* matters revert to Tier 2 status and are thereafter subject to the departure provisions in paragraph B.5 of this section.

(1) ASME Boiler & Pressure Vessel Code, Section III.

(2) ACI 349 and ANSI/AISC N–690.

(3) Motor-operated valves.

(4) Equipment seismic qualification methods.

(5) Piping design acceptance criteria.

(6) Fuel and control rod design, except burnup limit.

(7) Instrumentation & controls setpoint methodology.

(8) Instrumentation & controls hardware and software changes.

(9) Instrumentation & controls environmental qualification.

(10) Seismic design criteria for non-seismic category I structures.

d. Departures from Tier 2* information that are made under paragraph B.6 of this section do not require an exemption from this appendix.

C. Operational requirements.

1. Generic changes to generic technical specifications and other operational requirements that were completely reviewed and approved in the design certification rulemaking and do not require a change to a design feature in the generic DCD are governed by the requirements in 10 CFR 50.109. Generic changes that do require a change to a design feature in the generic DCD are governed by the requirements in paragraphs A or B of this section.

2. Generic changes to generic technical specifications and other operational requirements are applicable to all applicants or licensees who reference this appendix, except those for which the change has been rendered technically irrelevant by action taken under paragraphs C.3 or C.4 of this section.

3. The Commission may require plant-specific departures on generic technical specifications and other operational requirements that were completely reviewed and approved, provided a change to a design feature in the generic DCD is not required and special circumstances as defined in 10 CFR 2.758(b) are present. The Commission may modify or supplement generic technical specifications and other operational requirements that were not completely reviewed and approved or require additional technical specifications and other operational requirements on a plant-specific basis, provided a change to a design feature in the generic DCD is not required.

4. An applicant who references this appendix may request an exemption from the generic technical specifications or other operational requirements. The Commission may grant such a request only if it determines that the exemption will comply with the requirements of 10 CFR 50.12(a). The grant of an exemption must be subject to litigation in the same manner as other issues material to the license hearing.

5. A party to an adjudicatory proceeding for either the issuance, amendment, or renewal of a license or for operation under 10 CFR 52.103(a), who believes that an operational requirement approved in the DCD or a technical specification derived from the generic technical specifications must be changed may petition to admit into the proceeding such a contention. Such petition must comply with the general requirements of 10 CFR 2.714(b)(2) and must demonstrate why special circumstances as defined in 10 CFR 2.758(b) are present, or for compliance with the Commission's regulations in effect at the time this appendix was approved, as set forth in Section V of this appendix. Any other party may file a response thereto. If, on the basis of the petition and any response, the presiding officer determines that a sufficient showing has been made, the presiding officer shall certify the matter directly to the Commission for determination of the admissibility of the contention. All other issues with respect to the plant-specific technical specifications or other operational requirements are subject to a hearing as part of the license proceeding.

6. After issuance of a license, the generic technical specifications have no further effect on the plant-specific technical specifications and changes to the plant-specific technical specifications will be treated as license amendments under 10 CFR 50.90.

IX. Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC)

A.1 An applicant or licensee who references this appendix shall perform and demonstrate conformance with the ITAAC before fuel load. With respect to activities subject to an ITAAC, an applicant for a license may proceed at its own risk with design and procurement activities, and a licensee may proceed at its own risk with design, procurement, construction, and preoperational activities, even though the NRC may not have found that any particular ITAAC has been satisfied.

2. The licensee who references this appendix shall notify the NRC that the required inspections, tests, and analyses in the ITAAC have been successfully completed and that the corresponding acceptance criteria have been met.

3. In the event that an activity is subject to an ITAAC, and the applicant or licensee who references this appendix has not demonstrated that the ITAAC has been satisfied, the applicant or licensee may either take corrective actions to successfully complete that ITAAC, request an exemption from the ITAAC in accordance with Section VIII of this appendix and 10 CFR 52.97(b), or petition for rulemaking to amend this appendix by changing the requirements of the ITAAC, under 10 CFR 2.802 and 52.97(b). Such rulemaking changes to the ITAAC must meet the requirements of paragraph VIII.A.1 of this appendix.

B.1 The NRC shall ensure that the required inspections, tests, and analyses in the ITAAC are performed. The NRC shall verify that the inspections, tests, and analyses referenced by the licensee have been successfully completed and, based solely thereon, find the prescribed acceptance criteria have been met. At appropriate intervals during construction, the NRC shall

publish notices of the successful completion of ITAAC in the **Federal Register**.

2. In accordance with 10 CFR 52.99 and 52.103(g), the Commission shall find that the acceptance criteria in the ITAAC for the license are met before fuel load.

3. After the Commission has made the finding required by 10 CFR 52.103(g), the ITAAC do not, by virtue of their inclusion within the DCD, constitute regulatory requirements either for licensees or for renewal of the license; except for specific ITAAC, which are the subject of a Section 103(a) hearing, their expiration will occur upon final Commission action in such proceeding. However, subsequent modifications must comply with the Tier 1 and Tier 2 design descriptions in the plant-specific DCD unless the licensee has complied with the applicable requirements of 10 CFR 52.97 and Section VIII of this appendix.

X. Records and Reporting

A. Records

1. The applicant for this appendix shall maintain a copy of the generic DCD that includes all generic changes to Tier 1 and Tier 2. The applicant shall maintain the proprietary and safeguards information referenced in the generic DCD for the period that this appendix may be referenced, as specified in Section VII of this appendix.

2. An applicant or licensee who references this appendix shall maintain the plant-specific DCD to accurately reflect both generic changes to the generic DCD and plant-specific departures made pursuant to Section VIII of this appendix throughout the period of application and for the term of the license (including any period of renewal).

3. An applicant or licensee who references this appendix shall prepare and maintain written safety evaluations which provide the bases for the determinations required by Section VIII of this appendix. These evaluations must be retained throughout the period of application and for the term of the license (including any period of renewal).

B. Reporting

1. An applicant or licensee who references this appendix shall submit a report to the NRC containing a brief description of any departures from the plant-specific DCD, including a summary of the safety evaluation of each. This report must be filed in accordance with the filing requirements applicable to reports in 10 CFR 50.4.

2. An applicant or licensee who references this appendix shall submit updates to its plant-specific DCD, which reflect the generic changes to the generic DCD and the plant-specific departures made pursuant to Section VIII of this appendix. These updates shall be filed in accordance with the filing requirements applicable to final safety analysis report updates in 10 CFR 50.4 and 50.71(e).

3. The reports and updates required by paragraphs B.1 and B.2 of this section must be submitted as follows:

a. On the date that an application for a license referencing this appendix is submitted, the application shall include the report and any updates to the plant-specific DCD.

b. During the interval from the date of application to the date of issuance of a license, the report and any updates to the plant-specific DCD must be submitted annually and may be submitted along with amendments to the application.

c. During the interval from the date of issuance of a license to the date the Commission makes its findings under 10 CFR 52.103(g), the report must be submitted quarterly. Updates to the plant-specific DCD must be submitted annually.

d. After the Commission has made its finding under 10 CFR 52.103(g), reports and updates to the plant-specific DCD may be submitted annually or along with updates to the site-specific portion of the final safety analysis report for the facility at the intervals required by 10 CFR 50.71(e), or at shorter intervals as specified in the license.

Dated at Rockville, Maryland, this 9th day of May, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–12742 Filed 5–20–97; 8:45 am]

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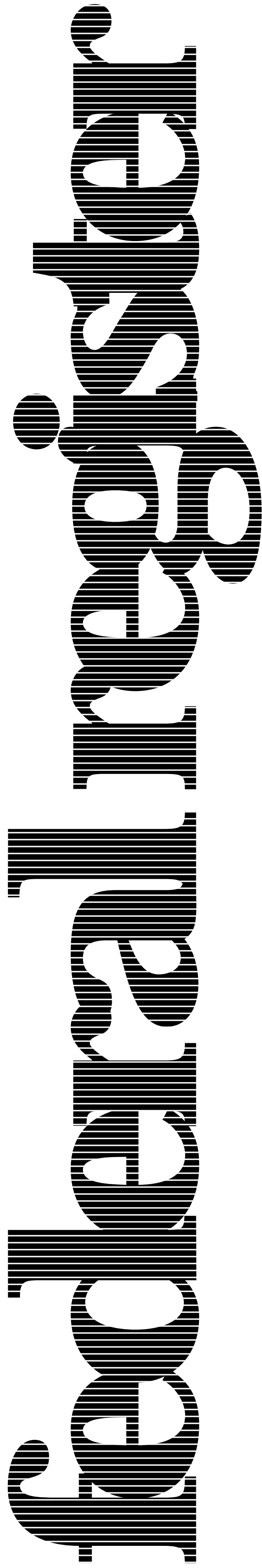

Wednesday
May 21, 1997

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 527

Transfer of Offenders To or From Foreign Countries; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 527

[BOP–1065–F]

RIN 1120–AA60

Transfer of Offenders To or From Foreign Countries

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is amending its regulations on the transfer of offenders to or from foreign countries to conform with revised procedures of the United States Parole Commission. When notifying the Parole Commission of the receipt of a transferee from a foreign country, the Bureau shall also provide the Commission with a projected release date in order that the Commission may make determinations without a hearing when necessary. Informational references in the Bureau's regulations to Commission procedures have been removed in order to eliminate unnecessary regulations.

EFFECTIVE DATE: May 21, 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 is amending its regulations on transfer of offenders to or from foreign countries. A final rule on this subject was published in the **Federal Register** on December 4, 1981 (46 FR 59507) and was amended on September 13, 1993 (58 FR 47976).

On October 17, 1996, the United States Parole Commission revised its regulations in 28 CFR 2.62(e) pertaining to special transferee hearings for prisoners transferred pursuant to treaty. The Commission extended the time within which it normally conducts a hearing for a prisoner who is transferred to the United States to serve a foreign sentence. The extension, which reflects the need for the preparation of postsentence reports supported by translations of foreign court documents and for completion of other procedures, is from four months to six months. The Commission also amended paragraph (e) to permit it to render a determination without a hearing in the case of a transferee who is given a release date by the Bureau that is less than six months from the date the transferee enters the United States. For a complete discussion of these changes, please refer to the Commission's interim rule published on October 17, 1996 (61 FR 54096).

The Bureau's regulations on receiving United States citizens from other countries (28 CFR 527.46) stipulate in paragraph (c)(3) that Bureau staff shall notify the Parole Commission of the inmate's arrival and restate some of the Commission's procedures, including a reference to the hearing deadline. In order to conform its regulations to the Commission's recent revisions, the Bureau has revised paragraph (c)(3) to state that Bureau staff shall notify the Parole Commission of the inmate's arrival and projected release date. This information is sufficient to allow the Commission to invoke its own procedures. Further information pertaining to Commission procedures and to institution transfer have been removed. The Commission's regulations are available in the law libraries of Bureau institutions. Consequently, restatement of these regulations in Bureau regulations is unnecessary. Procedures pertaining to institution transfer are generally contained in internal instructions to Bureau staff and do not need to be stated in the regulations.

Because this amendment conforms to the controlling regulations of the Parole Commission, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to 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. 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. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

List of Subjects in 28 CFR Part 527

Prisoners.

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), part 527 in subchapter B of 28 CFR, chapter V is amended as set forth below.

Subchapter B—Inmate Admission, Classification, and Transfer

PART 527—TRANSFERS

1. The authority citation for 28 CFR part 527 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3569, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4100–4115, 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 4201–4218, 5003, 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. In § 527.46, paragraph (c)(3) is revised to read as follows:

§ 527.46 Receiving United States citizens from other countries.

* * * * *

(c) * * *

(3) Notify the U.S. Parole Commission of the inmate's arrival and projected release date.

* * * * *

[FR Doc. 97–13224 Filed 5–20–97; 8:45 am]

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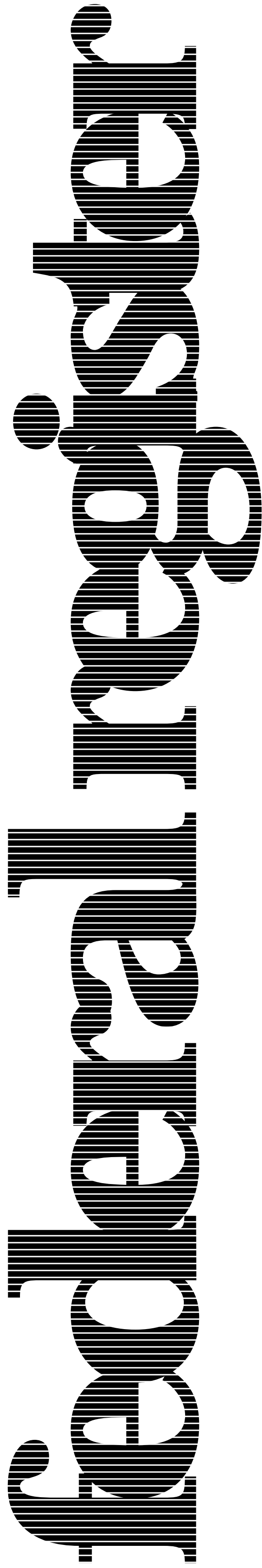

Wednesday
May 21, 1997

Part IV

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5827–2]

RIN 2060–AG12

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes restrictions or prohibitions on substitutes for ozone depleting substances (ODSs) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990, which requires EPA to evaluate substitutes for the ODSs to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone depleting compounds while avoiding a shift into substitutes posing other environmental problems.

On March 18, 1994, EPA promulgated a final rulemaking setting forth its plan for administering the SNAP program, and issued decisions on the acceptability and unacceptability of a number of substitutes. In this Notice of Proposed Rulemaking (NPRM), EPA is issuing its preliminary decisions on the acceptability of certain substitutes not previously reviewed by the Agency. To arrive at determinations on the acceptability of substitutes, the Agency completed a cross-media evaluation of risks to human health and the environment by sector end-use.

DATES: Written comments or data provided in response to this document must be submitted by June 20, 1997.

ADDRESSES: Written comments and data should be sent to Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. Telephone (202) 260–7549; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, a second copy of the comments should be sent to Carol Weisner, Stratospheric Protection Division, Office of Atmospheric Programs, U.S. EPA, 401 M Street, SW., 6205–J, Washington, DC 20460. Information designated as Confidential Business Information (CBI) under 40 CFR, part 2 subpart B must be sent directly to the contact person for this document. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: Carol Weisner at (202) 233–9193 or fax (202) 233–9665, Substitutes Analysis and Review Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), Washington, DC 20460. Overnight or courier deliveries should be sent to our 501–3rd Street, NW, Washington, DC 20001 location.

SUPPLEMENTARY INFORMATION:

I. Overview of This Action

This action is divided into six sections, including this overview:

I. Overview of This Action
II. Section 612 Program
  A. Statutory Requirements
  B. Regulatory History
III. Proposed Listing of Substitutes
IV. Administrative Requirements
V. Additional Information

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA is referring to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

Rulemaking—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) Reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

Petition Process—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

90-day Notification—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

Outreach—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

Clearinghouse—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: Refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consume large volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance.

Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

III. Proposed Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and

environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risks screens can be found in the public docket, as described above in the ADDRESSES portion of this document.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified five possible decision categories: Acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Fully acceptable substitutes (i.e. no restrictions) can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable. A pending listing represents substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. Use of such substitutes in ways that are inconsistent with such use conditions renders these substitutes unacceptable.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in application and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

In this Notice of Proposed Rulemaking (NPRM), EPA is issuing its preliminary decision on the acceptability of certain substitutes not previously reviewed by the Agency. As described in the final rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending lists are published as separate notices of acceptability in the **Federal Register**.

Parts A. through F. below present a detailed discussion of the proposed substitute listing determinations by major use sector. Tables summarizing listing decisions in this Notice of Proposed Rulemaking are in Appendix E. The comments contained in Appendix E to Subpart G of 40 CFR part 82 provide additional information on a substitute. Since comments are not part of the regulatory decision, they are not mandatory for use of a substitute. Nor should the comments be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments in their application of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning—Class I

1. *Acceptable Subject to Use Conditions.* a. CFC–12 Automobile and Non-automobile Motor Vehicle Air Conditioners, Retrofit and New (1) Notification Requirements for Existing Refrigerants.

In previous rulemakings, EPA has imposed conditions on the use of MVAC refrigerants, including the requirement that they be used with unique fittings and that vehicles be labeled when retrofitted to a new refrigerant. In addition, new refrigerants must be submitted with designs for fittings, and samples of both fittings and labels. EPA now proposes to apply these submission requirements to the following existing refrigerants: HFC–134a, FRIGC, Freezone, Ikon, R–406A, GHG–X4, Hot Shot, GHG–HP, and Freeze-12, each of which was previously listed as acceptable subject to use conditions. In accordance with the requirements for new refrigerants, EPA proposes that the manufacturers must submit, within 30 days of the effective date of the final rule resulting from this NPRM:

- Designs for service ports and hose connections, including both high-side and low-side fittings;
- Sample fittings of each type;
- Sample labels, printed in the unique color chosen by the manufacturer.

EPA will review the fittings and test for cross-connections between the new fitting and existing fittings for other refrigerants. At the same time, EPA will compare the background color of the sample label to those of other refrigerants. If the fittings are unique and cannot be mechanically cross-threaded, and the label color is unique to that refrigerant, EPA will issue a letter to the manufacturer confirming that the fittings and labels meet the use conditions. This confirmation letter will be sent within 30 days of receipt of the submission. EPA will then update a package of materials containing specifications for existing fittings. This package will be provided to manufacturers of new refrigerants and others who request it, to lower the risk of duplicating fittings already in use.

If the fittings or the label color are not, in fact, unique, EPA will issue a letter to the manufacturer indicating so. Continued use of the refrigerant with the non-unique fittings will constitute a violation of the unique fittings use condition.

EPA does not anticipate that these provisions will affect the majority of the existing refrigerants because the manufacturers have already submitted designs and sample labels and fittings for review. However, it is necessary to formalize these submission requirements to level the playing field and ensure that EPA has official submissions on which to base future actions. For example, EPA will rely on designs and samples to determine whether the submitted versions are actually being used on cars. Similarly, EPA will rely on the submissions to determine whether a given fitting satisfies the uniqueness criteria proposed below.

(2) Criteria for Uniqueness of Fittings. In previous rulemakings, EPA has relied on refrigerant manufacturers to design unique fittings with no further guidance. In this NPRM, EPA clarifies minimum criteria for uniqueness. EPA proposes that all fittings for alternative

refrigerants must meet the following requirements:

- High-side screw-on fittings for each refrigerant must differ from high-side screw-on fittings for all other refrigerants, including CFC–12;
- Low-side screw-on fittings for each refrigerant must differ from low-side screw-on fittings for all other refrigerants, including CFC–12;
- High-side screw-on fittings for a given refrigerant must differ from low-side screw-on fittings for that refrigerant, to protect against connecting a low-pressure system to a high-pressure one;
- High-side screw-on fittings for each alternative refrigerant must differ from low-side screw-on fittings for CFC–12;
- High-side quick-connect fittings for each refrigerant must differ from high-side quick-connect fittings for all other refrigerants, including CFC–12;
- Low-side quick-connect fittings for each refrigerant must differ from low-side quick-connect fittings for all other refrigerants, including CFC–12;
- High-side quick-connect fittings for a given refrigerant must differ from low-side quick-connect fittings for that refrigerant, to protect against connecting a low-pressure system to a high-pressure one;
- For each type of container, the fitting for each refrigerant must differ from the fitting for that type of container for all other refrigerants, including CFC–12.

For screw-on fittings, EPA proposes that ‘‘differ’’ means that either the diameter must differ by at least 1⁄16 inch or the thread direction must be reversed (i.e. right-handed vs. left-handed). Simply changing the thread pitch is not sufficient. An additional requirement for screw-on fittings, and the essential one for quick-connect fittings, is that a person using normal force and normal tools (including wrenches) must not be able to cross-connect fittings. Following are some examples:

- A 3⁄8 (6⁄16) inch outside diameter screw-on fitting with a right-hand thread differs from a 5⁄16 inch outside diameter screw-on fitting with a right-hand thread;
- A 3⁄8 inch outside diameter screw-on fitting with a left-hand thread differs from a 3⁄8 inch outside diameter screw-on fitting with a right-hand thread;
- A 3⁄8 inch outside diameter screw-on fitting with a right-hand thread pitch of 18 threads/inch does not differ from a 3⁄8 inch outside screw-on diameter fitting with a right-hand thread pitch of 24 threads/inch;
- A quick-connect fitting differs from another quick-connect fitting if all combinations of the same type male and female parts (high, low, small can, 30-lb. cylinder) will not connect using normal tools.

(i) All previously listed refrigerants and all future refrigerants. For refrigerants previously listed as acceptable subject to use conditions, and for refrigerants submitted in the future, the use conditions in force for retrofitted systems are proposed to apply to new vehicles. In addition, the criteria for uniqueness of fittings discussed above are proposed to apply, and all labels must meet UL Standard 969–1995.

Since only HFC–134a is currently being used in new cars, the use conditions were originally worded in such a way that a reasonable interpretation would exclude their applicability to new cars. This proposal extends the unique fittings and labels requirements to new cars. EPA does not anticipate that this clarification will result in any additional burden, since all new cars already use HFC–134a fittings and labels. However, EPA invites comment on this proposal. Note that the use conditions above replace only the fittings, labeling, and ‘‘top-off’’ conditions applicable to previously listed refrigerants. Other conditions, such as the requirement to replace existing hoses with barrier hoses, still apply to various refrigerants as listed in the original rule.

In addition, as explained above, EPA believes it is necessary to provide criteria for the uniqueness of fittings. This use condition will apply these criteria formally to existing refrigerants. Finally, the UL standard relates to permanence of labels, and is already part of the applicable Society of Automotive Engineers (SAE) standard.

(ii) HFC–134a, FRIGC FR–12, Freezone, Ikon, R–406A, GHG–X4, Hot Shot, GHG–HP, and Freeze-12. *For these refrigerants, all of which have previously been found acceptable subject to use conditions, the submission requirements discussed above are proposed to apply.*

As discussed above, EPA believes that applying these requirements formally will level the playing field between existing refrigerants and new submissions. In addition, formal submissions of designs and sample labels and fittings will allow EPA to monitor compliance with the other use conditions.

2. *Unacceptable Substitutes.* a. NARM–502.

NARM–502, which consists of HCFC–22, HFC–23, and HFC–152a, is proposed unacceptable as a substitute for R–502 in all new and retrofitted end-uses.

HFC–23 has a lifetime of 250 years, and its 100-year global warming potential (GWP) is 11,700. Both of these characteristics are considerably higher than other HFCS and HCFCS. Numerous other acceptable R–502 substitutes do not contain such high global warming components. The Climate Change Action Plan directs EPA to reduce the use of high global warming gases. Therefore, the use of this blend as an R–502 substitute is proposed unacceptable.

b. NARM–12. NARM–12, which consists of HCFC–22, HFC–23, and HFC–152a, is proposed unacceptable as a substitute for CFC–12 in all new and retrofitted end-uses.

HFC–23 has a lifetime of 250 years, and its 100-year GWP is 11,700. Both of these characteristics are considerably higher than other HFCs and HCFCs. Numerous other acceptable R–502 substitutes do not contain such high global warming components. The Climate Change Action Plan directs EPA to reduce the use of high global warming gases. Therefore, the use of this blend as an R–502 substitute is proposed unacceptable.

B. Refrigeration and Air Conditioning—Class II

1. *Unacceptable Substitutes.* a. NARM–22. NARM–22, which consists of HCFC–22, HFC–23, and HFC–152a, is proposed unacceptable as a substitute for HCFC–22 in all new and retrofitted end-uses.

NARM–22 contains HCFC–22. EPA does not believe it is appropriate to replace a class II refrigerant with a blend containing a class II refrigerant. Listing this blend as acceptable would be a barrier to a smooth transition away from ozone-depleting refrigerants. Other alternatives to HCFC–22 are already acceptable that do not contain any ozone-depleting refrigerants.

In addition, HFC–23 has a lifetime of 250 years, and its 100-year GWP is 11,700. Both of these characteristics are considerably higher than other HFCs and HCFCs. Other acceptable HCFC–22 substitutes do not contain such high global warming components. The 1993 Climate Change Action Plan directs EPA to reduce the use of high global warming gases. For this reason, and the fact that NARM–22 contains HCFC–22, the use of this blend as an HCFC–22 substitute is proposed unacceptable.

C. Solvents Cleaning

1. Chlorobromomethane. Chlorobromomethane (CBM) has been used as a fire suppressant and has the designation of Halon 1011. EPA has received notification that it can also be used as a solvent and a potential

substitute for the ozone depleting solvents CFC–113, methyl chloroform (MCF) and HCFC–141b. EPA received a SNAP submission requesting consideration of CBM as an acceptable substitute for CFC–113 and MCF in solvents cleaning of metals and electronics and in precision cleaning. Analysis of the available toxicity data base for CBM raises significant questions concerning its suitability as a solvent substitute for CFC–113, or methyl chloroform, or HCFC–141b in metals cleaning, electronics cleaning, and precision cleaning; and as a solvent agent in aerosols and in adhesives, coatings and inks. In a subchronic study, at a dose level of 500 parts per million (ppm), adverse effects were evident in the livers of rats. At 1000 ppm, both guinea pigs and rabbits showed decreased spermatogenesis, but no studies of reproductive or developmental effects have been conducted. In addition, mutagenicity tests with CBM in microorganisms yielded consistently positive results. In mammalian systems, CBM induced sister chromatid exchanges. Thus the mutagenic effects of CBM are unmistakable.

In 1989, EPA established a one day health advisory for water contaminated with CBM at 50 ppm. A longer term health advisory was established at 4.57 ppm for this compound in drinking water. OSHA established an occupational Permissible Exposure Limit (PEL) of 200 ppm based on the ''grandfathered'' Threshold Limit Value (TLV) which dates back to 1961. This compound was not reviewed by OSHA in the 1989 proposed revision process. In 1991, the only use noted for this chemical by American Conference of Governmental Industrial Hygienists (ACGIH) was as a liquid (streaming agent) fire suppressant. They recommended an 8 hour TLV of 200 ppm consistent with the PEL. The potential widespread use of CBM as a solvent substitute in the light of its toxicity profile and significant data gaps imply a much lower workplace limit. Based upon the lowest observed adverse effect level of 500 ppm in rats, the SNAP evaluation suggests a more appropriate occupational exposure limit (OEL) to lie in the range of 2 and 5 ppm, making this compound unsuitable for use as a solvent.

Recent authoritative research establishes an ozone depletion potential (ODP) range for CBM of 0.17 to 0.28. Other alternatives exist with much lower or no ODP and do not pose a comparable risk. As a result of these recent ODP findings and the potential widespread use of CBM in occupational settings unable to meet an OEL of 5 ppm, EPA proposes this agent as unacceptable. Relevant reports and analyses on these issues have been placed in the public docket for this SNAP submission.

2. Acceptable Subject to Use Conditions. a. Metals Cleaning.

(1) HFC–4310mee.

HFC–4310mee is proposed as an acceptable substitute for CFC–113 and methyl chloroform (MCF) in metals cleaning subject to a 200 ppm time-weighted average workplace exposure standard and a 400 ppm workplace exposure ceiling. This chemical does not deplete the ozone layer since it does not contain chlorine or bromine. Review under the SNAP program and the PMN program determined that a time-weighted average workplace exposure standard of 200 ppm and a workplace exposure ceiling of 400 ppm would be adequately protective of human health and that companies can meet these exposure limits using the types of equipment specified in the product safety information provided by the chemical manufacturer.

These workplace standards are designed to protect worker safety until the Occupational Health and Safety Administration (OSHA) sets its own standards under Pub. L. 91–596. The existence of the EPA standards in no way bars OSHA from standard-setting under OSHA authorities as defined in Public Law 91–596.

3. Unacceptable Substitutes. a. Metals Cleaning.

(1) Chlorobromomethane.

Chlorobromomethane is proposed unacceptable as a substitute for CFC–113, methyl chloroform (MCF), and HCFC–141b in metals cleaning. Recent authoritative research establishes an ozone depletion potential (ODP) range for CBM of 0.17 to 0.28, and toxicity concerns exist based on potential widespread use in occupational settings not meeting an appropriate OEL of 5 ppm. Other alternatives exist with much lower ODP and do not pose a comparable risk.

b. Electronics Cleaning.

(1) Chlorobromomethane.

Chlorobromomethane is proposed unacceptable as a substitute for CFC–113, methyl chloroform, and HCFC–141b in electronics cleaning. Recent authoritative research establishes an ODP range for CBM of 0.17 to .28, and toxicity concerns exist based on potential widespread use in occupational settings not meeting an appropriate OEL of 5 ppm. Other alternatives exist with much lower ODP and do not pose a comparable risk. For example, hydrofluoroethers (HFE) and HFC–4310 mee do not contain chlorine and have no ODP.

c. Precision Cleaning.

(1) Chlorobromomethane.

Chlorobromomethane is proposed unacceptable as a substitute for CFC–113, MCF, and HCFC–141b in precision cleaning. Recent authoritative research establishes an ODP range for CBM of 0.17 to 0.28, and toxicity concerns exist based on potential widespread use in occupational settings not meeting an appropriate OEL of 5 ppm. Other alternatives exist with much lower ODP and do not pose a comparable risk. For example, hydrofluoroethers (HFE) and HFC–4310 mee do not contain chlorine and have no ODP.

D. Fire Suppression and Explosion Protection

1. Chlorobromomethane. As discussed in *Solvents Cleaning* above, CBM has been used for fire suppression and explosion inertion, and is designated Halon 1011. In the fire suppression and explosion protection sector, Halon 1011 has been used as a total flooding agent, in lieu of Halon 1301, for the purpose of preventing fires in the engine nacelles of aircraft, principally in the military. EPA understands the use of Halon 1011 for this purpose has been extremely limited, and demand for its future use is likely to be very small, given other alternatives. Recent authoritative research establishes an ODP range for CBM of 0.17 to 0.28. Other alternatives exist for total flooding applications with much lower or no ODP and do not pose a comparable risk. For example, HFC–134a and HFC–227ea, as well as several inert gases, have no ODP. As a result of these recent ODP findings, EPA proposes this agent unacceptable as a substitute for Halon 1301.

2. Petition. EPA has received a Petition asking for reconsideration of the wording of use conditions for PFCs and other long-lived gases. The Petitioner believes that while it is EPA's stated intent that PFCs be used as the agent of last resort when no other agent is acceptable due to performance or safety requirements, the regulatory language is unclear, potentially resulting in some users adopting PFCs inappropriately. The regulatory language in the March 18, 1994, Rulemaking (59 FR 13044, 13159) states the following:

> C_4F_{10} is acceptable as a Halon 1301 substitute where other alternatives are not technically feasible due to performance or safety requirements: (a) Due to their physical or chemical properties or (b) where human exposure to the agents may approach cardiosensitization levels or result in other

unacceptable health effects under normal operating conditions.

This same language applies for use of other PFCs in this sector as well.

EPA has discussed this language in rulemakings, letters and public forums to ensure that the public understands that a PFC may be used if no other commercially available agent will provide adequate protection against the specific fire hazard given the technical or environmental constraints of the application or if the use of other agents in the application in question would exceed safe toxicity levels. For halocarbons, cardiac sensitization is the primary endpoint of concern, and for inert gases, hypoxia is the relevant endpoint. The SNAP rulemaking describes the concentrations at which each agent can be safely used.

The Petitioner suggests the following changes to the use conditions for long-lived gases to allay confusion:

PFCs or other long-lived gases may only be used ''* * * (1) when physical or chemical properties necessitate their use, or (2) when the use of another SNAP accepted alternative would result in exposures beyond its applicable use conditions (*e.g.*, below the minimum O_2 content, egress times greater than 30 seconds with design concentrations greater than LOAEL,) or (3) when the use of other SNAP accepted alternatives would permanently impair the health of those in the discharge area.

EPA agrees that the choice of words ''may approach cardiosensitizations levels'' may be confusing to the public and thus proposes to accept the petitioner's suggestion by substituting the phrase ''may result in failure to meet applicable use conditions.'' Applicable use conditions refer to the cardiac sensitization levels stipulated in the SNAP use conditions for halocarbons, minimum oxygen and maximum CO_2 levels stipulated in the use conditions for inert gas systems, or other use conditions as may be stipulated in a SNAP rulemaking. The new language is consistent with the intent of the current conditions as it was discussed in the preamble to the March 18, 1994, rulemaking. Thus, this change reflects no change in policy but only clarification, and would apply to all PFCs currently listed under the SNAP program, including C_4F_{10}, C_6F_{14}, and C_3F_8. The use condition proposed for PFCs would read as follows:

C_xF_y is proposed acceptable as a Halon [1211 or 1301] substitute where other alternatives are not technically feasible due to performance or safety requirements: (a) Due to their physical or chemical properties or (b) where human exposure to the agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions.

The Petitioner did not make a cogent case for changing the phrase ''or result in other unacceptable health effects under normal operating conditions'' and thus EPA rejects suggested changes to that phrase at this time.

3. *Proposed Acceptable Subject to Use Conditions*. a. Total Flooding Agents.

(1) C_3F_8.

C_3F_8 is proposed acceptable as a Halon 1301 substitute where other alternatives are not technically feasible due to performance or safety requirements: (a) Due to their physical or chemical properties or (b) where human exposure to the agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions.

See the preceding discussion of the changes made to the use condition on this agent.

(2) C_4F_{10}.

C_4F_{10} is proposed acceptable as a Halon 1301 substitute where other alternatives are not technically feasible due to performance or safety requirements: (a) Due to their physical or chemical properties or (b) where human exposure to the agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions.

See the preceding dicussion of the changes made to the use condition on this agent.

(3) HFC–236fa.

HFC–236fa is proposed acceptable as a Halon 1301 substitute when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step. HFC–236fa may be used in explosion suppression and explosion inertion applications, and may be used in fire suppression applications where other non-PFC agents or alternatives are not technically feasible due to performance or safety requirements: (a) Due to their physical or chemical properties or (b) where human exposure to the agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions.

In the event of the development of acceptable alternatives which EPA finds should not only replace Halon 1301 and HFC–236a in new systems, EPA may grandfather existing uses but only to the extent warranted by cost and timing as outlined in the original SNAP rule discussion of grandfathering of unacceptable substitutes (59 FR 13057).

As discussed in the initial SNAP rulemaking (58 FR 13044, March 18, 1994), until OSHA establishes applicable workplace requirements, total flooding agents are acceptable by the Agency for use in occupied areas only under the following conditions:

1. Where egress from an area cannot be accomplished within one minute, the employer shall not use the agent in concentrations exceeding its NOAEL.

2. Where egress takes greater than 30 seconds but less than one minute, the employer shall not use the agent in a concentration greater than its LOAEL.

3. Agent concentrations greater than the LOAEL are only permitted in areas not normally occupied by employees provided that any employee in the area can escape within 30 seconds.

The employer shall assure that no unprotected employees enter the area during agent discharge. These conditions will no longer apply once OSHA establishes applicable workplace requirements.

The cardiac sensitization NOAEL of HFC–236fa is 10.0 per cent and its LOAEL is 15 per cent. Cup burner tests with heptane indicate that the extinguishment concentration for this agent is 5.3 per cent, thus making its calculated design concentration 6.4 per cent. Compared to the cardiac sensitization values, these concentrations provide a sufficient margin of safety for use in a normally occupied area.

In the March 18, 1994 final SNAP rule (58 FR 13044), EPA required manufacturers to submit information on manufacturing processes to allow an assessment of the risks posed to the general public and workers. EPA clarified in that action that acceptability determinations made on the basis of one company's submission would apply to the same chemical produced by other manufacturers, obviating the need for duplicative reporting requirements and review. However, manufacturers who believe a given manufacturing process may pose additional risks beyond those posed by other processes were required to alert EPA to that increased hazard. The February 8, 1996 (61 FR 4736) Notice of Acceptability specifically discussed the manufacturing process used in making HFC–236fa, and that discussion is repeated below.

EPA is aware of several methods for manufacturing HFC–236fa, including one that produces HFC–236fa directly from PFIB. PFIB is an extremely toxic substance that could pose risks in very small concentrations. Thus, EPA believes it is appropriate to distinguish among the different methods for producing HFC–236fa. This acceptability determination does not prohibit the manufacture of HFC–236fa directly from PFIB. Rather, it finds

acceptable the production of HFC–236fa in processes that do not convert PFIB directly to HFC–236fa in a single step. If a manufacturer wishes to produce HFC–236fa directly from PFIB, it must submit that process to EPA for review under SNAP.

HFC–236fa can replace Halon 1301 at a ratio of 1.3 by weight and 1.5 by volume. Due to its relatively high boiling point of minus 1.6 degrees centigrade, this agent may not be suitable in a low temperature environment. Its greatest potential appears to be in explosion suppression and in applications benefited by a misting or liquid discharge.

HFC–236fa does not deplete stratospheric ozone, however, it has an atmospheric lifetime of 250 years and a 100-year GWP of 6300. Concerns have been raised about this agent's potential atmospheric effects. Thus, this agent should be handled so as to minimize unnecessary emissions. Ways to minimize emissions include: Avoiding discharge testing and training; providing a high level of maintenance to avoid leaks and accidental discharges; recovering HFC–236fa from the fire protection equipment in conjunction with testing or servicing; and destroying HFC–236fa or recycling it for later use.

While HFC–236fa may be used without prejudice in explosion protection applications, before users adopt it for general fire suppression applications they must first ascertain that other non-PFC substitutes or alternatives are not technically feasible due to performance or safety requirements. That is, if a PFC is the only other substitute that is technically feasible due to performance or safety requirements, then this agent may be used in a general fire suppression application. Potential users are expected to evaluate the technical feasibility of other non-PFC substitutes or alternatives to determine their adequacy to control the particular fire risk. Such assessment may include an evaluation of the performance or functional effectiveness of the non-PFC agents' effectiveness for the intended applications as well as the risk to personnel potentially exposed to the agents. Similarly, use of HFC–236fa due to toxicological concerns would be appropriate where use of other non-PFC substitutes or alternatives would violate the workplace safety use conditions set forth in the SNAP rulemakings (58 FR 13044).

To assist users in their evaluation for general fire suppression applications, EPA has prepared a list of vendors manufacturing halon substitutes and alternatives. Although users are not required to report the results of their investigation to EPA, companies must retain these results in company files for future reference.

4. *Proposed Acceptable Subject to Narrowed Use Limits.* a. Streaming Agents. (1) C_6F_{14}

C_6F_{14} is proposed acceptable as a Halon 1211 substitute where other alternatives are not technically feasible due to performance or safety requirements: (a) Due to their physical or chemical properties or (b) where human exposure to the agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions.

See the preceding discussion of the changes made to the use condition on this agent.

(2) HFC–236fa.

HFC–236fa is acceptable as a Halon 1211 substitute in non-residential applications when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step. The cardiac sensitization NOAEL of HFC–236fa is 10.0 per cent and its LOAEL is 15 per cent. Cup burner tests with heptane indicate that the extinguishment concentration for this agent is 5.3 per cent. Compared to Halon 1211, HFC–236fa has a weight equivalence of 1.1 to 1.5.

As discussed above, HFC–236fa does not deplete stratospheric ozone, however, it has an atmospheric lifetime of 250 years and a 100-year GWP of 6300. Concerns have been raised about this agent's potential atmospheric effects. Thus, EPA recommends that users minimize unnecessary emissions by limiting testing only to that which is essential to meet safety or performance requirements; recovering HFC–236fa from the fire protection equipment in conjunction with testing or servicing; and destroying HFC–236fa or recycling it for later use. EPA encourages manufacturers to develop aggressive product stewardship programs to help users avoid such unnecessary emissions.

Further, this agent may not be used in residential applications, e.g., by a private individual in applications in or around a permanent or temporary household, during recreation, or for any personal use or enjoyment. Use in watercraft or aircraft is excluded from the definition of residential use.

(3) HFC–227ea.

HFC–227ea is acceptable as a Halon 1211 substitute in nonresidential applications. The weight equivalence of this agent is 1.66 pounds per pound of Halon 1211. It has a cardiac sensitization NOAEL of 9.0 per cent, and a LOAEL of 10.5% or greater. Its cup burner extinguishment value is 5.8%.

This agent has no ozone depletion potential, a 100-year GWP of 2050 relative to carbon dioxide, and an atmospheric lifetime of 31 years. It is already listed as acceptable for use in total flooding applications as an alternative to Halon 1301 (March 18, 1994, 59 FR 13107).

b. Total Flooding Agents.

(1) C_3F_8.

C_3F_8 is proposed acceptable as a Halon 1301 substitute where other alternatives are not technically feasible due to performance or safety requirements: (a) Due to their physical or chemical properties or (b) where human exposure to the agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions.

See the preceding discussion of the changes made to the use condition on this agent.

(2) C_4F_{10}. C_4F_{10} is proposed acceptable as a Halon 1301 substitute where other alternatives are not technically feasible due to performance or safety requirements: (a) Due to their physical or chemical properties or (b) where human exposure to the agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions.

See the preceding discussion of the changes made to the use condition on this agent.

(3) HFC–236fa. HFC–236fa is acceptable as a Halon 1301 substitute when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step. HFC–236fa may be used in explosion suppression and explosion inertion applications, and may be used in fire suppression applications where other non-PFC agents or alternatives are not technically feasible due to performance or safety requirements: (a) Due to their physical or chemical properties or (b) where human exposure to the agents may result in failure to meet applicable use conditions or result in other unacceptable health effects under normal operating conditions. Please see the section on "Proposed Acceptable Subject to Use Conditions" for a complete discussion of this agent. This agent is subject to the use conditions delineated in the above section.

5. *Unacceptable Substitutes.* a. Total Flooding Agents. (1) Chlorobromomethane.

Chlorobromomethane is proposed unacceptable as a substitute for Halon 1301 in total flooding applications. Recent authoritative research establishes an ODP range for CBM of 0.17 to 0.28. Other alternatives exist for total flooding applications with lower or no ODP and do not pose a comparable risk. For example, HFC–134a and HFC–227ea, as well as several inert gases, have no ODP.

E. Aerosols

1. *Chlorobromomethane.* Chlorobromomethane (CBM) has been used as a fire suppressant and has the designation of Halon 1011. EPA has received notification that it can also be used as a solvent and a potential substitute for the ozone depleting solvents CFC–113, methyl chloroform (MCF) and HCFC–141b. EPA received a SNAP submission requesting consideration of CBM as an acceptable substitute for CFC–113 and MCF in solvents cleaning of metals and electronics and in precision cleaning. Analysis of the available toxicity data base for CBM raises significant questions concerning its suitability as a solvent substitute for CFC–113, or methyl chloroform, or HCFC–141b in metals cleaning, electronics cleaning, and precision cleaning; and as a solvent agent in aerosols and in adhesives, coatings and inks. In a subchronic study, at a dose level of 500 ppm, adverse effects were evident in the livers of rats. At 1000 ppm, both guinea pigs and rabbits showed decreased spermatogenesis, but no studies of reproductive or developmental effects have been conducted. In addition, mutagenicity tests with CBM in microorganisms yielded consistently positive results. In mammalian systems, CBM induced sister chromatid exchanges. Thus the mutagenic effects of CBM are unmistakable.

In 1989, EPA established a one day health advisory for water contaminated with CBM at 50 ppm. A longer term health advisory was established at 4.57 ppm for this compound in drinking water. OSHA established an occupational Permissible Exposure Limit (PEL) of 200 ppm based on the ''grandfathered'' Threshold Limit Value (TLV) which dates back to 1961. This compound was not reviewed by OSHA in the 1989 proposed revision process. In 1991, the only use noted for this chemical by American Conference of Governmental Industrial Hygienists (ACGIH) was as a liquid (streaming agent) fire suppressant. They recommended an 8 hour TLV of 200 ppm consistent with the PEL. The potential widespread use of CBM as a solvent substitute in the light of its toxicity profile and significant data gaps imply a much lower workplace limit. Based upon the lowest observed adverse effect level of 500 ppm in rats, the SNAP evaluation suggests a more appropriate occupational exposure limit (OEL) to lie in the range of 2 and 5 ppm, making this compound unsuitable for use as a solvent.

Recent authoritative research establishes an ozone depletion potential (ODP) range for CBM of 0.17 to 0.28. Other alternatives exist with much lower or no ODP and do not pose a comparable risk. As a result of these recent ODP findings and the potential widespread use of CBM in occupational settings unable to meet an OEL of 5 ppm, EPA proposes this agent as unacceptable.

2. Acceptable Subject to Use Conditions. a. Solvents. (1) HFC–4310mee HFC–4310mee is proposed as an acceptable substitute for CFC–113 and methyl chloroform (MCF) in aerosols subject to a 200 ppm time-weighted average workplace exposure standard and a 400 ppm workplace exposure ceiling. This chemical does not deplete the ozone layer since it does not contain chlorine or bromine. Review under the SNAP program and the PMN program determined that a time-weighted average workplace exposure standard of 200 ppm and a workplace exposure ceiling of 400 ppm would be adequately protective of human health. Based on the results of exposure assessment studies, it is EPA's opinion that companies can meet the 200 ppm limit of the HFC–4310mee in defluxing and cleaning providing that the standard operating procedures and employee work habits are conducted in accordance with the procedures specified in the product safety information provided by the chemical manufacturer.

These workplace standards are designed to protect worker safety until the Occupational Health and Safety Administration (OSHA) sets its own standards under Pub. L. 91–596. The existence of the EPA standards in no way bars OSHA from standard-setting under OSHA authorities as defined in Pub. L. 91–596.

(2) HCFC–225 ca/cb. HCFC–225 ca/cb is proposed as an acceptable substitute for CFC–113 and methyl chloroform (MCF) in aerosols subject to a 25 ppm time-weighted average workplace exposure standard of the HCFC–225ca isomer. HCFC–225 ca/cb HCFC–225 ca/cb blend is offered as a 45%–ca/55%–cb blend. The company-set exposure limit of the -ca isomer is 25 ppm. The company-set exposure limit of the -cb isomer is 250 ppm. Based on the results of exposure assessment studies, it is EPA's opinion that companies can meet the 25 ppm limit of the HCFC–225 ca isomer in defluxing and cleaning providing that the standard operating procedures and employee work habits are conducted in accordance with the procedures specified in the product safety information provided by the chemical manufacturer.

These workplace standards are designed to protect worker safety until the Occupational Health and Safety Administration (OSHA) sets its own standards under Pub. L. 91–596. The existence of the EPA standards in no way bars OSHA from standard-setting under OSHA authorities as defined in Pub. L. 91–596.

3. Unacceptable Substitutes. a. Solvents. (1) Chlorobromomethane Chlorobromomethane is proposed unacceptable as a substitute for CFC–113 and methyl chloroform in aerosols. Recent authoritative research establishes an ODP range for CBM of 0.17 to 0.28, and toxicity concerns exist based on potential widespread use in occupational settings not meeting an appropriate OEL of 5 ppm. Other alternatives exist with much lower ODP and do not pose a comparable risk.

F. Adhesives, coatings and inks

1. Chlorobromomethane. Chlorobromomethane (CBM) has been used as a fire suppressant and has the designation of Halon 1011. EPA has received notification that it can also be used as a solvent and a potential substitute for the ozone-depleting solvents CFC–113, methyl chloroform (MCF) and HCFC–141b. EPA received a SNAP submission requesting consideration of CBM as an acceptable substitute for CFC–113 and MCF in solvents cleaning of metals and electronics and in precision cleaning. Analysis of the available toxicity data base for CBM raises significant questions concerning its suitability as a solvent substitute for CFC–113, or methyl chloroform, or HCFC–141b in metals cleaning, electronics cleaning, and precision cleaning; and as a solvent agent in aerosols and in adhesives, coatings and inks. In a subchronic study, at a dose level of 500 ppm, adverse effects were evident in the livers of rats. At 1000 ppm, both guinea pigs and rabbits showed decreased spermatogenesis, but no studies of reproductive or developmental effects have been conducted. In addition, mutagenicity tests with CBM in microorganisms yielded consistently positive results. In mammalian systems, CBM induced sister chromatid

exchanges. Thus the mutagenic effects of CBM are unmistakable.

In 1989, EPA established a one day health advisory for water contaminated with CBM at 50 ppm. A longer term health advisory was established at 4.57 ppm for this compound in drinking water. OSHA established an occupational Permissible Exposure Limit (PEL) of 200 ppm based on the ''grandfathered'' Threshold Limit Value (TLV) which dates back to 1961. This compound was not reviewed in the 1989 proposed revision process. In 1991, the only use noted for this chemical by American Conference of Governmental Industrial Hygienists (ACGIH) was as a liquid (streaming agent) fire suppressant. They recommended an 8 hour TLV of 200 ppm consistent with the PEL. The potential widespread use of CBM as a solvent substitute in the light of its toxicity profile and significant data gaps imply a much lower workplace limit. Based upon the lowest observed adverse effect level of 500 ppm in rats, the SNAP evaluation suggests a more appropriate occupational exposure limit (OEL) to lie in the range of 2 and 5 ppm, making this compound unsuitable for use as a solvent.

Recent authoritative research establishes an ozone depletion potential (ODP) range for CBM of 0.17 to 0.28. Other alternatives exist with much lower or no ODP and do not pose a comparable risk. As a result of these recent ODP findings and the potential widespread use of CBM in occupational settings unable to meet an OEL of 5 ppm, EPA proposes this potential substitute, CBM, as unacceptable.

2. Unacceptable Substitutes. a. Solvents. (1) Chlorobromomethane. Chlorobromomethane is proposed unacceptable as a substitute for CFC–113 and methyl chloroform in adhesives, coatings and inks. Recent authoritative research establishes an ODP range for CBM of 0.17 to 0.28, and toxicity concerns exist based on potential widespread use in occupational settings not meeting an appropriate OEL of 5 ppm. Other alternatives exist with much lower ODP and do not pose a comparable risk. For example, water-based formulations and other acceptable solvent formulations with no ODP are broadly used and readily available.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select the least costly, most cost effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not selected or this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. However, this proposed rule has the net effect of reducing burden from part 82, Stratospheric Protection regulations, on regulated entities.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because costs of the SNAP requirements as a whole are expected to be minor. In fact, this proposed rule offers regulatory relief to small businesses by providing acceptable alternatives to phased-out ozone-depleting substances. Additionally, the SNAP rule exempts small sectors and end-uses from reporting requirements and formal agency review. To the extent that information gathering is more expensive and time-consuming for small companies, the actions proposed herein may well provide benefits for small businesses anxious to examine potential substitutes to any ozone-depleting class I and class II substances they may be using, by requiring manufacturers to make information on such substitutes available. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

EPA has determined that this proposed rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). The OMB Control Numbers are 2060–0226 and 2060–0350.

V. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at 1–800–296–1996,

Monday–Friday, between the hours of 10 a.m. and 4 p.m. (EST).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. Notices and rulemaking under the SNAP program can also be retrieved electronically from EPA's Technology Transfer Network (TTN), Clean Air Act Amendment Bulletin Board. The access number for users with a 1200 or 2400 bps modem is (919) 541–5742. For users with a 9600 bps modem the access number is (919) 541–1447. For assistance in accessing this service, call (919) 541–5384 during normal business hours (EST). Finally, all EPA publications on protection of stratospheric ozone are available from the Ozone World Wide Web site at http://www.epa.gov/docs/ozone/index.html.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: May 14, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Subpart G is amended by adding the following appendix E to read as follows:

Subpart G—Significant New Alternatives Policy Program

* * * * *

Appendix E to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes Listed in the [FR publication date] final rule, effective [30 days after FR publication date].

Refrigeration and Air Conditioning

• Each refrigerant may only be used with a set of fittings that is unique to that refrigerant. These fittings (male or female, as appropriate) must be designed by the manufacturer of the refrigerant. Specifications for the fittings similar to those found in SAE J639 and samples of all fittings must be submitted to EPA at the same time as the initial SNAP submission, or the submission will be considered incomplete. These fittings must be designed to mechanically prevent cross-charging with another refrigerant.

The fittings must be used on all containers of the refrigerant, on can taps, on recovery, recycling, and charging equipment, and on all air conditioning system service ports. A refrigerant may only be used with the fittings and can taps specifically intended for that refrigerant and designed by the manufacturer of the refrigerant. Using a refrigerant with a fitting designed by anyone else, even if it is different from fittings used with other refrigerants, will be a violation of this use condition. Using an adapter or deliberately modifying a fitting to use a different refrigerant will be a violation of this use condition.

Fittings shall meet the following criteria, derived from Society of Automotive Engineers (SAE) standards and recommended practices:

—When existing CFC–12 service ports are retrofitted, conversion assemblies shall attach to the CFC–12 fitting with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that permanently prevents the assembly from being removed.

—All conversion assemblies and new service ports must satisfy the vibration testing requirements of sections 3.2.1 or 3.2.2 of SAE J1660, as applicable, excluding references to SAE J639 and SAE J2064, which are specific to HFC–134a.

—In order to prevent discharge of refrigerant to the atmosphere, systems shall have a device to limit compressor operation before the pressure relief device will vent refrigerant. This requirement is waived for systems that do not feature such a pressure relief device.

—All CFC–12 service ports not retrofitted with conversion assemblies shall be rendered permanently incompatible for use with CFC–12 related service equipment by fitting with a device attached with a thread lock adhesive and/or a separate mechanical latching mechanism in a manner that prevents the device from being removed.

• A label must be used as follows:

—The person conducting the retrofit or installing the system must apply a label to the air conditioning system in the engine compartment that contains the following information:

* the name and address of the technician and the company performing the retrofit

* the date of the retrofit

* the trade name, charge amount, and, when applicable, the ASHRAE refrigerant numerical designation of the refrigerant

* the type, manufacturer, and amount of lubricant used

* if the refrigerant is or contains an ozone-depleting substance, the phrase "ozone depleter"

* if the refrigerant displays flammability limits as measured according to ASTM E681 at normal atmospheric pressure and 25 degrees Celsius, the statement "This refrigerant is FLAMMABLE. Take appropriate precautions."

—This label must be large enough to be easily read and must be permanent.

—The background color must be unique to the refrigerant.

—The label must be affixed to the system over information related to the previous refrigerant, in a location not normally replaced during vehicle repair.

—Information about the previous refrigerant that cannot be covered by the new label must be rendered permanently unreadable.

• No substitute refrigerant may be used to "top-off" a system that uses another refrigerant. The original refrigerant must be recovered in accordance with regulations issued under section 609 of the CAA prior to charging with a substitute.

REFRIGERATION AND AIR CONDITIONING PROPOSED UNACCEPTABLE SUBSTITUTES

End use	Substitute	Decision	Comments
All CFC–12 end uses, retrofit and new.	NARM–12	Proposed Unacceptable	This blend contains HFC–23, which has an extremely high GWP and lifetime. Other substitutes for CFC–12 exist that do not contain HFC–23.

REFRIGERATION AND AIR CONDITIONING PROPOSED UNACCEPTABLE SUBSTITUTES—Continued

End use	Substitute	Decision	Comments
All R–502 end uses, retrofit and new.	NARM–502	Proposed Unacceptable	This blend contains HFC–23, which has an extremely high GWP and lifetime. Other substitutes for R–502 exist that do not contain HFC–23.
All HCFC–22 end uses, retrofit and new.	NARM–22	Proposed Unacceptable	This blend contains HCFC–22, and it is inappropriate to use such a blend as a substitute for HCFC–22. In addition, this blend contains HFC–23, which has an extremely high GWP and lifetime. Other substitutes for HCFC–22 exist that do not contain HFC–23.

SOLVENTS CLEANING PROPOSED ACCEPTABLE SUBJECT TO USE CONDITIONS

End use	Substitute	Decision	Conditions
Metals cleaning w/CFC–113	HFC–4310mee	Proposed Acceptable	Subject to a 200 ppm time-weighted average workplace exposure standard and a 400 ppm workplace exposure ceiling.
Metals cleaning w/MCF	HFC–4310mee	Proposed Acceptable	Subject to a 200 ppm time-weighted average workplace exposure standard and a 400 ppm workplace exposure ceiling.

SOLVENTS CLEANING PROPOSED UNACCEPTABLE SUBSTITUTES

End use	Substitute	Decision	Comments
Metals cleaning with CFC–113	Chlorobromomethane	Proposed Unacceptable	High ODP, toxicity concerns; other alternatives exist.
Metals cleaning with methyl chloroform (MCF).	Chlorobromomethane	Proposed Unacceptable	High ODP, toxicity concerns; other alternatives exist.
Metals cleaning with HCFC–141b	Chlorobromomethane	Proposed Unacceptable	High ODP, toxicity concerns; other alternatives exist.
Electronics cleaning with CFC–113.	Chlorobromomethane	Proposed Unacceptable	High ODP, toxicity concerns; other alternatives exist.
Electronics cleaning with MCF	Chlorobromomethane	Proposed Unacceptable	High ODP, toxicity concerns; other alternatives exist.
Electronics cleaning with HCFC–141b.	Chlorobromomethane	Proposed Unacceptable	High ODP, toxicity concerns; other alternatives exist.
Precision cleaning with CFC–113	Chlorobromomethane	Proposed Unacceptable	High ODP, toxicity concerns; other alternatives exist.
Precision cleaning with MCF	Chlorobromomethane	Proposed Unacceptable	High ODP, toxicity concerns; other alternatives exist.
Precision cleaning with HCFC–141b.	Chlorobromomethane	Proposed Unacceptable	High ODP, toxicity concerns; other alternatives exist.

FIRE SUPPRESSION AND EXPLOSION PROTECTION STREAMING AGENTS PROPOSED ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End use	Substitute	Decision	Conditions	Comments
Halon 1211	HFC–227ea	Proposed Acceptable in nonresidential uses only.	....	See comments 1, 2.
Streaming Agents	HFC–236fa	Proposed Acceptable in nonresidential uses when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step.	....	See comments 1, 2.

FIRE SUPPRESSION AND EXPLOSION PROTECTION STREAMING AGENTS PROPOSED ACCEPTABLE SUBJECT TO NARROWED USE LIMITS—Continued

End use	Substitute	Decision	Conditions	Comments
	C6F14	Acceptable for nonresidential uses where other alternatives are not technically feasible due to performance or safety requirements:. a. due to the physical or chemical properties of the agent, or b. where human exposure to the extinguishing agent may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions.	....	Users must observe the limitations on PFC acceptability by taking the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use; and (iii) determine that human exposure to the other alternative extinguishing agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions. Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes. Actual contributions to global warming depend upon the quantities of PFCs emitted. For additional guidance regarding applications in which PFCs may be appropriate, users should consult the description of potential uses which is included in the March 18, 1994 Final Rulemaking (59 FR 13044). See additional comments 1, 2.

Additional Comments:
1—Discharge testing and training should be strictly limited only to that which is essential to meet safety or performance requirements.
2—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

TOTAL FLOODING AGENTS PROPOSED ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End use	Substitute	Decision	Conditions	Comments
Halon 1301 .... Total Flooding Agents.	HFC–236fa	Proposed Acceptable .... o when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step.. o for use in explosion suppression and explosion inertion applications, and. o for use in fire suppression applications where other non-PFC agents or alternatives are not technically feasible due to performance or safety requirements:. a. due to their physical or chemical properties, or. b. where human exposure to the extinguishing agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions..	Until OSHA establishes applicable workplace requirements:. For occupied areas from which personnel cannot be evacuated in one minute, use is permitted only up to concentrations not exceeding the cardiotoxicity NOAEL of 10%.. For occupied areas from which personnel can be evacuated or egress can occur between 30 and 60 seconds, use is permitted up to a concentration not exceeding the LOAEL of 15%.. All personnel must be evacuated before concentration of HFC–236fa exceeds 15%.. Design concentration must result in oxygen levels of at least 16%..	The comparative design concentration based on cup burner values is approximately 6.4%. Users must observe the limitations on HFC–236fa acceptability by taking the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use. Documentation of such measures must be available for review upon request. Feasible for use in a normally occupied area. See additional comments 1, 2, 3, 4.

TOTAL FLOODING AGENTS PROPOSED ACCEPTABLE SUBJECT TO NARROWED USE LIMITS—Continued

End use	Substitute	Decision	Conditions	Comments
	C4F10	Proposed Acceptable where other alternatives are not technically feasible due to performance or safety requirements:. a. due to their physical or chemical properties, or. b. where human exposure to the extinguishing agents may result in failure to meet use conditions or in other unacceptable health effects under normal operating conditions..	Until OSHA establishes applicable workplace requirements:. For occupied areas from which personnel cannot be evacuated in one minute, use is permitted only up to concentrations not exceeding the cardiotoxicity NOAEL of 30%.. Although no LOAEL has been established for this product, standard OSHA requirements apply, i.e., for occupied areas from which personnel can be evacuated or egress can occur between 30 and 60 seconds, use is permitted up to a concentration not exceeding the LOAEL.. All personnel must be evacuated before concentration of C4F10 exceeds 40%.. Design concentration must result in oxygen levels of at least 16%..	The comparative design concentration based on cup burner values is approximately 8.8%. Users must observe the limitations on PFC acceptability by taking the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use. Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes. Actual contributions to global warming depend upon the quantities of PFCs emitted. For additional guidance regarding applications in which PFCs may be appropriate, users should consult the description of potential uses which is included in the March 18, 1994 Final Rulemaking (59 FR 13044.) See additional comments 1, 2, 3, 4.
Halon 1301 Total Flooding Agents.	C3F8	Proposed Acceptable where other alternatives are not technically feasible due to performance or safety requirements:. a. due to their physical or chemical properties, or. b. where human exposure to the extinguishing agents may result in failure to meet use conditions or in other unacceptable health effects under normal operating conditions..	Until OSHA establishes applicable workplace requirements:. For occupied areas from which personnel cannot be evacuated in one minute, use is permitted only up to concentrations not exceeding the cardiotoxicity NOAEL of 30%.. Although no LOAEL has been established for this product, standard OSHA requirements apply, i.e., for occupied areas from which personnel can be evacuated or egress can occur between 30 and 60 seconds, use is permitted up to a concentration not exceeding the LOAEL.. All personnel must be evacuated before concentration of C3F8 exceeds 30%.. Design concentration must result in oxygen levels of at least 16%..	The comparative design concentration based on cup burner values is approximately 8.8%. Users must observe the limitations on PFC acceptability by taking the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use. Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes. Actual contributions to global warming depend upon the quantities of PFCs emitted. For additional guidance regarding applications in which PFCs may be appropriate, users should consult the description of potential uses which is included in the March 18, 1994 Final Rulemaking (59 FR 13044.) See additional comments 1, 2, 3, 4.

Additional Comments

1—Must conform with OSHA 29 CFR 1910 Subpart L Section 1910.160 of the U.S. Code.

2—Per OSHA requirements, protective gear (SCBA) must be available in the event personnel must reenter the area.

3—Discharge testing should be strictly limited only to that which is essential to meet safety or performance requirements.

4—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

TOTAL FLOODING AGENTS PROPOSED ACCEPTABLE SUBJECT TO USE CONDITIONS

End use	Substitute	Decision	Conditions	Comments
Halon 1301 .... Total Flooding Agents.	HFC–236fa	Proposed Acceptable .... when manufactured using any process that does not convert perfluoroisobutylene (PFIB) directly to HFC–236fa in a single step for use in explosion suppression and explosion inertion applications, and for use in fire suppression applications where other non-PFC agents or alternatives are not technically feasible due to performance or safety requirements: a. due to their physical or chemical properties, or b. where human exposure to the extinguishing agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions.	Until OSHA establishes applicable workplace requirements: For occupied areas from which personnel cannot be evacuated in one minute, use is permitted only up to concentrations not exceeding the cardiotoxicity NOAEL of 10%. For occupied areas from which personnel can be evacuated or egress can occur between 30 and 60 seconds, use is permitted up to a concentration not exceeding the LOAEL of 15%. All personnel must be evacuated before concentration of HFC–236fa exceeds 15%. Design concentration must result in oxygen levels of at least 16%.	The comparative design concentration based on cup burner values is approximately 6.4%. Users must observe the limitations on HFC–236fa acceptability by taking the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use. Documentation of such measures must be available for review upon request. Feasible for use in a normally occupied area. See additional comments 1, 2, 3, 4.
Halon 1301 .... Total Flooding Agents.	C3F8	Proposed Acceptable where other alternatives are not technically feasible due to performance or safety requirements: a. due to their physical or chemical properties, or b. where human exposure to the extinguishing agents may result in failure to meet use conditions or in other unacceptable health effects under normal operating conditions.	Until OSHA establishes applicable workplace requirements: For occupied areas from which personnel cannot be evacuated in one minute, use is permitted only up to concentrations not exceeding the cardiotoxicity NOAEL of 30% Although no LOAEL has been established for this product, standard OSHA requirements apply, i.e., for occupied areas from which personnel can be evacuated or egress can occur between 30 and 60 seconds, use is permitted up to a concentration not exceeding the LOAEL. All personnel must be evacuated before concentration of C3F8 exceeds 30%. Design concentration must result in oxygen levels of at least 16%.	The comparative design concentration based on cup burner values is approximately 8.8%. Users must observe the limitations on PFC acceptability by undertaking the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use. Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes. Actual contributions to global warming depend upon the quantities of PFCs emitted. For additional guidance regarding applications in which PFCs may be appropriate, users should consult the description of potential uses which is included in the March 18, 1994 Final RUlemaking (59 FR 13044.) See additional comments 1, 2, 3, 4.

TOTAL FLOODING AGENTS PROPOSED ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End use	Substitute	Decision	Conditions	Comments
	C4F10	Proposed Acceptable where other alternatives are not technically feasible due to performance or safety requirements: a. due to their physical or chemical properties, or b. where human exposure to the extinguishing agents may result in failure to meet use conditions or in other unacceptable health effects under normal operating conditions	Until OSHA establishes applicable workplace requirements: For occupied areas from which personnel cannot be evacuated in one minute, use is permitted only up to concentrations not exceeding the cardiotoxicity NOAEL of 30%. Although no LOAEL has been established for this product, standard OSHA requirements apply, i.e., for occupied areas from which personnel can be evacuated or egress can occur between 30 and 60 seconds, use is permitted up to a concentration not exceeding the LOAEL. All personnel must be evacuated before Design concentration of C4F10 exceeds 40%. Design concentration must result in oxygen levels of at least 16%.	The comparative design concentration based on cup burner values is approximately 8.8%. Users must observe the limitations on PFC acceptability by undertaking the following measures: (i) conduct an evaluation of foreseeable conditions of end use; (ii) determine that human exposure to the other alternative extinguishing agents may result in failure to meet applicable use conditions or in other unacceptable health effects under normal operating conditions; and (iii) determine that the physical or chemical properties or other technical constraints of the other available agents preclude their use. Documentation of such measures must be available for review upon request. The principal environmental characteristic of concern for PFCs is that they have high GWPs and long atmospheric lifetimes. Actual contributions to global warming depend upon the quantities of PFCs emitted. For additional guidance regarding applications in which PFCs may be appropriate, users should consult the description of potential uses which is included in the March 18, 1994 Final Rulemaking (59 FR 13044.) See additional comments 1, 2, 3, 4.

Additional Comments
1—Must conform with OSHA 29 CFR 1910 Subpart L Section 1910.160 of the U.S. Code.
2—Per OSHA requirements, protective gear (SCBA) must be available in the event personnel must reenter the area.
3—Discharge testing should be strictly limited only to that which is essential to meet safety or performance requirements.
4—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.

FIRE SUPPRESSION AND EXPLOSION PROTECTION PROPOSED UNACCEPTABLE SUBSTITUTES

End use	Substitute	Decision	Comments
Halon 1301 Total Flooding Agents	Chlorobromomethane	Proposed Unacceptable	High ODP; other alternatives exist.

AEROSOLS PROPOSED ACCEPTABLE SUBJECT TO USE CONDITIONS

End use	Substitute	Decision	Conditions
Solvent in aerosols w/ CFC–113	HFC–4310 mee	Proposed Acceptable	Subject to a 200 ppm time-weighted average workplace exposure standard and a 400 ppm workplace exposure ceiling.
Solvent in aerosols w/ MCF	HFC–4310 mee	Proposed Acceptable	Subject to a 200 ppm time-weighted average workplace exposure standard and a 400 ppm workplace exposure ceiling.
Solvent in aerosols w/ CFC–113	HCFC–225ca/cb	Proposed Acceptable	Subject to a time weighted average exposure limit of 25 ppm for the HCFC–225 ca isomer.
Solvent in aerosols w/ MCF	HCFC–225ca/cb	Proposed Acceptable	Subject to a time weighted average exposure limit of 25 ppm for the HCFC–225 ca isomer.

AEROSOLS PROPOSED UNACCEPTABLE SUBSTITUTES

End use	Substitute	Decision	Comments
Solvent in aerosols with CFC–113	Chlorobromomethane	Proposed Unacceptable	High ODP, toxicity concerns; other alternatives exist.

AEROSOLS PROPOSED UNACCEPTABLE SUBSTITUTES—Continued

End use	Substitute	Decision	Comments
Solvent in aerosols with MCF	Chlorobromomethane	Proposed Unacceptable	High ODP, toxicity concerns; other alternatives exist.

ADHESIVES, COATINGS, AND INKS PROPOSED UNACCEPTABLE SUBSTITUTES

End use	Substitute	Decision	Comments
Solvent in adhesive, coatings, and inks with CFC–113.	Chlorobromomethane	Proposed Unacceptable	High ODP, toxicity concerns; other alternatives exist.
Solvent in adhesives, coatings, and inks with MCF.	Chlorobromomethane	Proposed Unacceptable	High ODP, toxicity concerns; other alternatives exist.

[FR Doc. 97–13209 Filed 5–20–97; 8:45 am]

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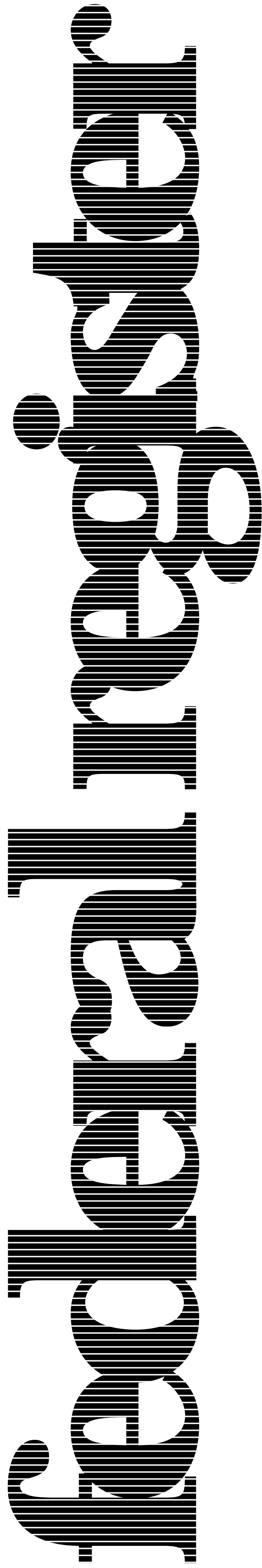

Wednesday
May 21, 1997

Part V

Department of the Treasury

31 CFR Part 103

Financial Crimes Enforcement Network; Bank Secrecy Act Regulations; Proposed Rules

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA09

Financial Crimes Enforcement Network; Proposed Amendment to the Bank Secrecy Act Regulations—Definition and Registration of Money Services Businesses

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is proposing to amend the regulations implementing the statute generally referred to as the Bank Secrecy Act to require certain money services businesses to register with the Department of the Treasury and to maintain a current list of their agents for examination, on request, by any appropriate law enforcement agency. As a corollary to the proposed registration requirement, FinCEN is also proposing to amend the Bank Secrecy Act regulations to revise, and group together in a separate category called ''money services businesses,'' the definitions of certain non-bank financial institutions. The revised definitions would also modify the treatment of the United States Postal Service under the regulations. The proposed rule regarding registration and maintenance of an agent list reflects changes to the law made by the Money Laundering Suppression Act of 1994.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before August 19, 1997.

ADDRESSES: Written comments should be submitted to: Office of Legal Counsel, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, VA 22182, *Attention:* NPRM—MSB Registration. Comments also may be submitted by electronic mail to the following Internet address: ''regcomments@fincen.treas.gov'' with the caption, in the body of the text, ''*Attention:* NPRM—MSB Registration.'' For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Submission of Comments.''

Inspection of comments: Comments may be inspected at the Department of the Treasury between 10 a.m. and 4 p.m., in the FinCEN reading room, on the third floor of the Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 622–0400.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, and Charles Klingman, Financial Institutions Policy Specialist, FinCEN, at (703) 905–3920; Stephen R. Kroll, Legal Counsel, Joseph M. Myers, Deputy Legal Counsel, Cynthia L. Clark, on detail to the Office of Legal Counsel, Albert R. Zarate, Attorney-Advisor, and Eileen P. Dolan, Legal Assistant, Office of Legal Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document proposes a rule that would amend 31 CFR part 103 to require money services businesses to register with the Department of the Treasury and, as part of the registration requirement, to maintain a current list of their agents in a central location for examination by appropriate law enforcement agencies. Money services businesses generally include businesses that provide check cashing, currency exchange, or money transmitting services, or that issue or redeem money orders, traveler's checks, or other similar instruments. The proposed rule would implement the terms of 31 U.S.C. 5330, which was added to the Bank Secrecy Act by section 408 of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325 (September 23, 1994).

In addition, this document proposes to amend 31 CFR part 103 by revising the definition of financial institution in 31 CFR 103.11. The revised definition would make changes to the term ''United States Postal Service'' and would add a new term, ''money services business,'' under which would be grouped the types of businesses required to register under the proposed rule (replacing and revising the present definitions of those businesses in 31 CFR 103.11(n)).

Finally, this document proposes to revise the structure of 31 CFR part 103. Under the new structure, subparts D through F would be redesignated as subparts E through G, respectively. A new subpart D, Special Rules for Money Services Businesses, would be added. The sections in redesignated subparts E through G would also be redesignated to reflect the addition of new subpart D, and corresponding changes would be made to the references to such redesignated sections in other portions of part 103.

II. Background

A. Statutory Provisions

The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330 authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330), appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

Under 31 U.S.C. 5330, any person who owns or controls a money services business (which the statute refers to as a ''money transmitting business'' [1]), whether or not the business is licensed as a money services business in any State, must register the business with the Secretary of the Treasury. 31 U.S.C. 5330(a). (A money services business required to be registered under 31 U.S.C. 5330 remains subject to any State law requirements relating to the operation of the business in the State.) The form and manner of registration must be prescribed by regulations.

The purpose of the registration requirement is to assist supervisory and law enforcement agencies in the enforcement of criminal, tax, and regulatory laws and to prevent money services businesses from engaging in illegal activities. *See*, section 408(a), Public Law 103–325. In requiring the registration of money services businesses, Congress recognized that such businesses are largely unregulated and are frequently used in sophisticated schemes to transfer large amounts of money that are the proceeds of unlawful enterprises and to evade the requirements of Title II of the Bank Secrecy Act, the Internal Revenue Code of 1986, and other laws of the United

[1] The statute uses the term ''money transmitting business'' to name those businesses subject to registration. See 31 U.S.C. 5330 (a)(1) and (d)(1). However, FinCEN believes that the statute's use of this term to refer to all the types of businesses subject to registration and its later use of the nearly identical term ''money transmitting service'' to refer to a particular type of business subject to registration, *compare* 31 U.S.C. 5330(d)(1)(A) *with* 31 U.S.C. 5330(d)(2), may lead to confusion. Therefore, FinCEN has adopted the term ''money services business'' in place of the term ''money transmitting business'' throughout this document and uses the same terminology in the other rules it is proposing today.

States. Congress also found that information on the identity of money services businesses and the names of the persons who own or control, or are officers or employees of, a money services business would have a high degree of usefulness in criminal, tax, or regulatory investigations and proceedings. *Id.*

The statute defines a money services business [2] as any business, other than the United States Postal Service, that is required to file reports under 31 U.S.C. 5313 and that provides check cashing, currency exchange, or money transmitting or remittance services,[3] or issues or redeems money orders, traveler's checks or other similar instruments. 31 U.S.C. 5330(d)(1). Depository institutions (as defined in 31 U.S.C. 5313(g)), however, are not money services businesses for purposes of the registration requirement. 31 U.S.C. 5330(d)(1)(C).

Section 5330 requires the Secretary of the Treasury to issue regulations treating certain agents of a money services business as money services businesses for purposes of section 5330. 31 U.S.C. 5330(c)(2). Those regulations must establish a threshold, based on criteria the Secretary determines to be appropriate, for treating an agent as a registrable money services business.

Under section 5330, a money services business must be registered not later than the end of the 180-day period beginning on the later of the date of enactment of the Money Laundering Suppression Act of 1994 (September 23, 1994), and the date on which the business is established. 31 U.S.C. 5330(a). On May 18, 1995, FinCEN issued a notice explaining that regulations prescribing the form and manner of registration would not require initial registration of money services businesses before the 90th day following the effective date of the implementing regulations. FinCEN Notice 95–1. The notice further explained that no penalty or other compliance sanction would be imposed under the provisions of the Bank Secrecy Act on account of the failure of any money services business to register before the last date for initial registration specified by regulation.

Section 5330 specifies the information that must be included as part of the registration. 31 U.S.C. 5330(b). The required information is—

(1) The name and location of the business;

(2) The name and address of each person who owns or controls the business, is a director or officer of the business, or otherwise participates in the conduct of the affairs of the business;

(3) The name and address of any depository institution at which the business maintains a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act);

(4) An estimate of the volume of business in the coming year, which shall be reported annually to the Secretary; and

(5) Such other information as the Secretary of the Treasury may require.

Under section 5330, a money services business must maintain a list containing the names and addresses of its agents and such other information about the agents as the Secretary may require. 31 U.S.C. 5330(c). Section 5330 requires a money services business to make the list available on request to any appropriate law enforcement agency.

Section 5330 prescribes a civil penalty for any person who fails to comply with any requirement of 31 U.S.C. 5330 or the regulations thereunder. The penalty is $5,000 for each violation; each day a violation of 31 U.S.C. 5330 or the regulations thereunder continues constitutes a separate violation. 31 U.S.C. 5330(e).

A failure to comply with 31 U.S.C. 5330 or the regulations under section 5330 may also result in a criminal penalty under 18 U.S.C. 1960. *See* the discussion of proposed 31 CFR 103.41(e), below.

B. Money Services Businesses—General

This is the first of a set of three notices of proposed rulemaking being published in this separate part of the **Federal Register** that deal with the application of the Bank Secrecy Act to money services businesses. In proposing these rules, FinCEN and the Department of the Treasury are not only following the mandate of Congress in the Money Laundering Suppression Act and the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Public Law 102–550, but are more generally responding to the need to update and more carefully tailor the application of the Bank Secrecy Act to a major, if little understood, part of the financial sector in the United States.[4]

''Money services business'' is a newly-coined term that refers to five distinctive types of financial services providers: currency dealers or exchangers; check cashers; issuers of traveler's checks, money orders, or stored value; sellers or redeemers of traveler's checks, money orders, or stored value; and money transmitters. (The five types of financial services are complementary and are often provided together at a common location.) These businesses are quite numerous; based on a study performed for FinCEN by Coopers & Lybrand, L.L.P., they comprise approximately 158,000 [5] outlets or selling locations, and provide financial services involving approximately $200 billion annually. To a significant extent, the customer base for such businesses lies in that part of the population that does not use, either in whole or in part, traditional financial institutions, primarily banks.

Money services businesses, like banks, can be large or small. It is estimated that approximately eight business enterprises account for the bulk of money service business financial products (that is, money transmissions, money orders, traveler's checks, and check cashing and currency exchange availability) sold within the United States, and also account, through systems of agents, for the bulk of locations at which these financial products are sold. Members of this first group include large firms, with significant capitalization, that are publicly traded on major securities exchanges.

A far larger group of (on average) far smaller enterprises compete with the eight largest firms in a highly bifurcated market for money services. In some cases, these small enterprises are based in one location with two to four employees. Moreover, the members of this second group may provide both financial services and unrelated products or services [6] to the same sets of customers. Far less is known about this

[2] Again, the statutory term is ''money transmitting business,'' for which the term ''money services business'' is being substituted by FinCEN. *See* footnote 1, *supra*.

[3] Section 5330(d)(2) provides that the term ''money transmitting service'' includes accepting currency or funds denominated in the currency of any country and transmitting the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network.

[4] The Congress has long-recognized the need generally to address problems of abuse by money launderers of ''non-bank'' financial institutions. *See, e.g.*, Permanent Subcommittee on Investigations, Senate Comm. on Governmental Affairs, Current Trends in Money Laundering, S. Rep. No. 123, 102d Cong., 2d Sess. (1992).

[5] The number does not include Post Offices (which sell money orders), participants in stored value product trials, or sellers of various stored value or smart cards in use in, *e.g.*, public transportation systems.

[6] *E.g.*, as a travel agency, courier service, convenience store, grocery or liquor store.

second tier of firms than about the major providers of money service products.[7]

Because money services businesses primarily serve individuals, they have grown to provide a set of financial products, albeit in large part for non-depository customers, that others look to banks to provide. For example, a money services business customer who receives a paycheck can take his check to a check casher to have it converted to cash. He can then purchase money orders to pay his bills. Finally, he may choose to send funds to relatives abroad, using the services of a money transmitter.

III. Section-by-Section Analysis

A. Definitions.

1. *31 CFR 103.11(n)(3)—Definition of financial institution to include ''money services business*''. This proposed section adds a new category called ''money services business'' to the definition of financial institution. This new category collects, with revisions discussed below, the financial institutions now defined at 31 CFR 103.11(n) (3), (4), (5), and (9). The change will permit these institutions to be referred to, when necessary, by one convenient term. FinCEN believes this restructuring of the definition of financial institution will clarify, and facilitate flexibility in the administration of, the Bank Secrecy Act regulations. (As a result of this restructuring, current 31 CFR 103.11(n) (3), (4), (5), and (9) will be deleted, and current 31 CFR 103.11(n) (6), (7), and (8) will be redesignated as 31 CFR 103.11(n) (4), (5), and (6)).

2. *31 CFR 103.11(uu)—Definition of money services business.* This proposed section defines money services business. The term includes each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in (1)–(6) below. (It should be noted that only one registration form per money services business is required.)

(1) *Currency dealer or exchanger.* A currency dealer or exchanger (other than a person who does not exchange currency in an amount greater than $500 in currency or monetary or other negotiable instruments for any person any day).

(2) *Check casher.* A person engaged in the business of cashing checks (other than a person who does not cash checks in an amount greater than $500 in currency or monetary or other negotiable instruments for any person any day).

Proposed 31 CFR 103.11 (uu)(1) and (uu)(2) would replace the definition of financial institution in existing 31 CFR 103.11(n)(3); that section is proposed to be broken into two sections, one dealing with currency dealers or exchangers[8] and one dealing with check cashers, for ease of reference. In addition, unlike existing 31 CFR 103.11(n)(3), which contains no dollar floor, proposed 31 CFR 103.11 (uu)(1) and (uu)(2) generally treat currency dealers or exchangers and check cashers as financial institutions only if they engage in transactions involving more than $500 for any person any day.

The addition of explicit floors in the definitions relating to currency exchange and check cashing businesses is proposed in an attempt to eliminate from Bank Secrecy Act treatment those businesses, such as grocery stores and hotels, that cash checks or exchange currency as an accommodation to customers who are otherwise purchasing goods, services, or lodging from the businesses involved. (Of course, exceeding the threshold has other, more immediate consequences if the amounts involved are sufficiently high to implicate particular Bank Secrecy Act reporting or recordkeeping thresholds.) Treasury invites comments on the appropriateness of the proposed $500 floor.

In determining whether the $500 floor is met in the case of a particular definition, different money services provided by the same business are not aggregated. Thus, for example, a hotel that limits its check cashing services to $250 for a customer on any day and limits its currency exchange services to $300 for a customer on any day does not meet the $500 floor for check cashers or for currency exchangers.

(3) *Issuer of traveler's checks, money orders, or stored value.* An issuer of traveler's checks or money orders or stored value or similar instruments (other than a person who does not issue such checks or money orders or stored value or similar instruments in an amount greater than $500 in currency or monetary or other negotiable instruments to any person any day).

Proposed 31 CFR 103.11(uu)(3) would replace the treatment of money order and traveler's check businesses in existing 31 CFR 103.11(n)(4). The definition of issuer of traveler's checks or money orders has been separated from the definition of seller or redeemer of traveler's checks or money orders in the proposed regulations, for ease of reference. In addition, unlike existing 31 CFR 103.11(n)(4), which contains no dollar floor for an issuer, the proposed definition generally treats an issuer of traveler's checks or money orders as a financial institution only if it engages in transactions involving more than $500 for any person any day.

(4) *Seller or redeemer of traveler's checks, money orders, or stored value.* A seller or redeemer of traveler's checks or money orders or stored value or similar instruments (other than a person who does not sell or redeem such checks or money orders or stored value or similar instruments in an amount greater than $500 in currency or monetary or other negotiable instruments to (or in the case of redemption, for) any person any day).

The $500 floor in proposed 31 CFR 103.11(uu)(4) is designed to replace the definitional floor (of $150,000 sold in instruments per 30-day period) for selling agents in present 31 CFR 103.11(n)(4). The $150,000 limitation produces a great deal of unnecessary complexity (dealing with the movement of particular businesses into or out of the scope of the Bank Secrecy Act) and does not, in FinCEN's view, any longer provide a meaningful threshold for distinguishing between businesses that ought to, and that need not, incorporate appropriate Bank Secrecy Act rules into their operations (or the operations they undertake on behalf of their principals). The definition in proposed 31 CFR 103.11(uu)(4) extends to ''redeemers'' of money orders and traveler's checks only insofar as the instruments involved are redeemed for monetary value—that is, for currency or monetary or other negotiable instruments. The taking of the instruments in exchange for goods or services is not a redemption for purposes of these rules. (See, however, 26 CFR 1.6050I–1(c)(1)(ii)(B) for situations in which certain traveler's checks or money orders (among other instruments) may be treated as currency, if taken in exchange for certain goods or services, for purposes of the requirement that non-financial

[7] For example, according to the Coopers & Lybrand study, two money transmitters and two traveler's check issuers make up approximately 97 percent of their respective known markets for non-bank money services. Three enterprises make up approximately 88 percent of the $100 billion in money orders sold annually (through approximately 146,000 locations). The retail foreign currency exchange sector is somewhat less concentrated, with the top two non-bank market participants accounting for 40 percent of a known market that accounts for $10 billion. Check cashing is the least concentrated of the business sectors; the two largest non-bank check cashing businesses make up approximately 20 percent of the market, with a large number of competitors.

[8] This document would retain the definition of currency dealer or exchanger at 31 CFR 103.11(i). FinCEN specifically invites comments on whether the definition at 31 CFR 103.11(i) is still necessary for its carve out of banks from the recordkeeping requirements of 31 CFR 103.37.

businesses report transactions in currency in excess of $10,000.)

(5) *Money transmitter.* (i) Any person, whether or not licensed or required to be licensed, who accepts currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network, or

(ii) Any other person engaged as a business in the transfer of funds.

Proposed 31 CFR 103.11(uu)(5) revises the definition in existing 31 CFR 103.11(n)(5), which simply treats as a financial institution ''a licensed transmitter of funds, or other person engaged in the business of transmitting funds.'' The substitute definition proposed is that of the registration statute for a ''money transmitting service,'' expanded to include ''any other person engaged as a business in the transfer of funds.'' *See* 31 U.S.C. 5330(d)(2).[9] Particular classes or subclasses of money transmitters can be excluded from the operation of the definition for particular substantive rules (as for example the rule proposed today relating to the reporting of suspicious activities by money transmitters excludes from its coverage sellers or transmitters of stored value or other advanced electronic payment system products).

FinCEN recognizes that the statutory definition is very broad and can encompass activities far beyond the traditional enterprises thought of popularly as money transmitters. For example, financial and other professionals that control the management of funds for their principals may in certain cases be money transmitters under the definition. Thus, Treasury specifically invites comments about whether it is necessary or appropriate specifically to exclude certain activities from the scope of registration of money services businesses (and perhaps as well from the definition of money transmitter for purposes of the Bank Secrecy Act regulations generally).

(6) *United States Postal Service.* The United States Postal Service, except with respect to the sale of postage or philatelic products.

This proposed parargraph revises the part of the definition of financial institution concerning the United States Postal Service, currently at 31 CFR 103.11(n)(9). Unlike the current regulation, which treats the United States Postal Service as a financial institution only with respect to the sale of money orders, the proposed rule would treat the Postal Service as a financial institution with respect to its provision of any money services products.

3. *31 CFR 103.11(vv)—Definition of stored value.* This proposed section defines stored value as funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

The inclusion in the rule of a specific definition of ''stored value'' and the cross-references to the stored value definition in the language of the definition of ''money services business'' is the first step in the characterization of stored value and other advanced electronic payment system products for purposes of the Bank Secrecy Act. The Department of the Treasury believes that stored value products are generally comprehended within the statutory reference to other instruments ''similar'' to money orders and traveler's checks and that businesses that operate systems that permit the transmission of stored value or other electronic representations of funds are comprehended within the statutory definition of money transmitting services, *see* 31 U.S.C. 5330(d)(2), which is carried over into the regulatory definition of money transmitter in proposed 31 CFR 103.11(uu)(5).[10]

Thus, under the proposed rule, most offerors of stored value products and operators of other advanced electronic payment systems would be treated as ''money services businesses'' for purposes of the Bank Secrecy Act. To fail to deal in any manner with stored value products and other such systems, in the context of a rule designed to implement 31 U.S.C. 5330, would belie the importance of such systems, would run contrary to the Congressional intent that the statutory term ''money transmitter'' be construed broadly, and would adopt yesterday's concepts to tomorrow's issues.

The other proposed rules being published today dealing with money services businesses do not affect advanced electronic payment systems. The proposed suspicious activity reporting rules for money transmitters and issuers, sellers, and redeemers of money orders and traveler's checks specifically exclude stored value and similar products from the scope of the reporting obligation at present; the difference in treatment reflects the fact that the treatment of stored value and similar systems in the money services business registration rule is intended to constitute for the most part the beginning of the policy cycle for determining the most effective way to deal with advanced electronic payment systems under the Bank Secrecy Act.

Of course, the definitions in proposed 31 CFR 103.11(uu) apply for all purposes under the Bank Secrecy Act, and thus the proposed language would eliminate any lingering doubt that offerors and operators of advanced electronic payments systems are subject to the Bank Secrecy Act. That treatment could cause such persons to become subject to existing Bank Secrecy Act requirements if, for example, they engaged in transactions in currency in excess of $10,000, or initiated funds transmittals of at least $3,000.

The Department of the Treasury naturally recognizes that as mechanisms for the issuance or transmission of stored value or other electronic representations of funds develop, the appropriateness of any particular characterization for Bank Secrecy Act purposes may change. It also recognizes that the characteristics of advanced electronic payment systems may present special issues that need to be considered as specific Bank Secrecy Act recordkeeping and reporting requirements for such systems are formulated. Comments are specifically invited on:

1. The manner in which the rules of the Bank Secrecy Act should be applied to advanced electronic payment systems;

2. The potential impact of Bank Secrecy Act compliance on the design and operation of such systems

[9] The term ''money transmitter'' in proposed 31 CFR 103.11(uu)(5) is not necessarily synonymous with the term ''transmittor's financial institution'' in existing 31 CFR 103.11(mm). As explained above, the term money transmitter follows the statutory definition of money transmitter in 31 U.S.C. 5330(d)(2), with one change, designed to flesh out the statutory phrase ''money transmitting or remittance services.'' The term ''transmittor's financial institution'' in existing 31 CFR 103.11(mm) was designed with a narrower purpose in mind—''to preserve as much uniformity as possible'' between the special rules for recordkeeping for wire transfers and the language of Article 4A of the Uniform Commercial Code. *See* 60 FR 220 (January 3, 1995).

[10] It should be clearly understood that the treatment of stored value and similar products as instruments ''similar'' to money orders and traveler's checks for purposes of the operation of 31 U.S.C. 5330 is solely a matter of federal law and cannot be taken as the expression of any view by the Department of the Treasury on the issue whether particular money services businesses are (or, indeed, should be) within the scope of state laws requiring the registration of money transmitters, check cashers, currency exchange businesses, or issuers, sellers, or redeemers of money orders or traveler's checks.

(including, if possible, estimates of costs); and

3. Whether products such as telephone cards (''closed system'' products), or products that are limited to facilitating very small transactions (so-called ''micro'' transactions) should be treated differently than other stored value products for purposes of the registration requirements of the proposed rule.[11]

B. Registration of Money Services Businesses

1. *31 CFR 103.41(a)(1)—Registration requirement; In general.* Proposed paragraph (a)(1) contains the requirement that a money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, must maintain a list of its agents.

Proposed paragraph (a)(1) excludes from the registration and list requirement the following persons: the United States Postal Service; a depository institution (as defined in 31 U.S.C. 5313(g)); the United States, any State or political subdivision of a State; or a broker or dealer in securities or commodities (to the extent of such activities) registered with, and regulated or examined by, the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC). Thus, for example, even though the United States Postal Service is a money services business as defined in 31 CFR 103.11(uu), it is not required to register as a money services business. Similarly, banks, and brokers registered with the SEC under the Securities and Exchange Act of 1934, are not required to register as such. However, if a bank has a non-bank subsidiary or affiliate (*e.g.,* a brother-sister subsidiary owned by the bank's holding company) that itself engages in a money services business (or a broker-dealer has a non-broker-dealer affiliate that engages in a money services business), the affiliate must register even though the bank (or broker-dealer) is not required to register. FinCEN specifically invites comments on whether there are other persons who should be excluded from the registration requirements.

The information required to be included on the registration form for a money services business and the agent list maintained by the business may include privileged and confidential trade secrets, commercial, and financial information. Congress has affirmed that confidential proprietary or trade secret information provided by registrants may be disclosed only subject to applicable law. H. R. Conf. Rep. No. 652, 103d Cong., 2d Sess. 192–93 (1994). At the same time, however, Congress recognized that some of the registration data will have legitimate uses outside of law enforcement. Thus, Congress has indicated that it intends that such latter information will be made available to the public in a manner that balances the need to protect confidential business information and the need of the public to have access to information about businesses on which it relies. *Id.* at 193. FinCEN specifically invites comments on how to make such information available to the public in as much detail as possible without revealing confidential business information.

2. *31 CFR 103.41(a)(2)—Agents treated as registrable money services businesses.* Proposed paragraph (a)(2) sets forth the threshold (registration threshold) an agent must meet before it is itself treated as a money services business that must independently register with the Department of the Treasury and maintain a list of its own agents. The registration threshold focuses on both the extent and the dollar amount of the agent's money services business activities. An agent meets the registration threshold if the agent satisfies any of the following four paragraphs—

(i) The agent's primary business is a business described in 31 CFR 103.11(uu), and the agent's money services gross transaction amount is more than $50,000 for any month;

(ii) The agent engages in more than one of the businesses described in 31 CFR 103.11(uu) as an agent for one money services business, and the agent's money services gross transaction amount is more than $50,000 for any month;

(iii) The agent is an agent for more than one money services business, and the agent's money services gross transaction amount is more than $50,000 for any month; or

(iv) The agent has subagents, and the agent's money services gross transaction amount is more than $50,000 for any month.

The money services gross transaction amount is the agent's combined gross amount (excluding fees and commissions) received from transactions in all its businesses described in 31 CFR 103.11(uu). Thus, for example, if an agent sells a $600 money order, charging an $18 fee and receiving a $6 commission on the sale, the agent's gross transaction amount is $600. An agent is not required to compute a gross transaction amount for any month beginning before the effective date of the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**.

FinCEN realizes that the registration threshold, as proposed, may require registration by certain agents, for example, grocery or retail food stores, that have a high volume of transactions, none of which individually exceeds the $500 floor in 31 CFR 103.11 (uu)(1)–(uu)(4) that would cause the agent to be a money services business in its own right under 31 CFR 103.11 (uu)(1)–(uu)(4). FinCEN specifically invites comments on whether the registration threshold should include a floor for individual transactions by these agents like the floor in 31 CFR 103.11 (uu)(1)–(uu)(4).

3. *31 CFR 103.41(b)(1)—Registration procedures in general.* Proposed paragraph (b)(1) provides that a money services business must be registered by filing such form as FinCEN may specify with the Detroit Computing Center of the Internal Revenue Service. The information required by 31 U.S.C. 5330(b) and any other information required by the form must be reported in the manner required by the form.

A branch office or location or an agent of a money services business is not required to file a registration form for the business, except for agents treated as a money services business because they meet the registration threshold. A money services business must, however, report information about its branch locations or offices as provided by the instructions to the registration form.

A money services business must retain a copy of any registration form it files (and any registration number that the Detroit Computing Center may assign to the business) at a central location in the United States reported on the form and for the 5-year period specified in § 103.38(d).

4. *31 CFR 103.41(b)(2)—Registration period.* Proposed paragraph (b)(2) provides that after an initial registration period of two calendar years (initial registration period), the registration must be renewed every two years (renewal period). The initial registration

[11] Stored value systems may be loosely characterized as ''closed'' or ''open'' systems. In a purely closed system, the stored value card is accepted only by a single merchant or entity and operates as prepayment for specific goods and services, such as public transportation or telephone calls. In contrast, an open system permits stored value cards (issued by one or more issuers of such cards) to be accepted by multiple merchants, or other consumers, and operates as a general payment and value transfer system. Certain arrangements—for example a university or stadium card system that permits payments to multiple merchants within a set geographic area—may contain aspects of both ''closed'' and ''open'' systems.

period is the two-calendar-year period beginning with the calendar year in which the money services business is first required to be registered. Each two-calendar-year period following the initial registration period is a renewal period.

5. *31 CFR 103.41(b)(3)—Due date.* Proposed paragraph (b)(3) sets forth the due date for filing the registration form for the initial registration period and each renewal period. For the initial registration period, the registration form must be filed by the end of the 180-day period beginning on the later of (i) the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**, and (ii) the date the business is established. In the case of an agent required to be registered under this section, the registration form for the initial registration period must be filed not later than the end of the 180-day period beginning on the date the agent meets the registration threshold. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

6. *31 CFR 103.41(b)(4)—Special rule for agents treated as money services businesses.* Proposed paragraph (b)(4) clarifies that once an agent meets the registration threshold, it must be registered for the initial registration period and each renewal period, even if its money services gross transaction amount later falls below $50,000.

7. *31 CFR 103.41(b)(5)—Events requiring re-registration.* Proposed paragraph (b)(5) requires a money services business to be re-registered before the end of a registration period upon the occurrence of certain events. Re-registration is required if the money services business experiences a change in ownership or control that requires re-registration under a State law registration program for money services businesses, more than 10 per cent of its voting power or equity interests is transferred, or the number of its agents increases by more than 50 per cent during any registration period. The form for the re-registration must be filed not later than 180 days after such change in ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period.

8. *31 CFR 103.41(c)—Persons required to file registration form.* Proposed paragraph (c) provides that, as required by 31 U.S.C. 5330(a), any person who owns or controls a money services business shares the responsibility for seeing that the business is registered as required by this rule. Only one registration form, however, is required to be filed for each registration period. Proposed paragraph (c) further provides that if more than one person owns or controls a money services business, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the money services business does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business.

9. *31 CFR 103.41(d)(1)—List of agents; In general.* Proposed paragraph (d)(1) provides that a money services business must prepare and maintain a list of its agents. Proposed paragraph (d)(1) then explains the time and manner of preparing and maintaining the agent list. The initial list of agents must be prepared by the time the initial registration form is filed and must be revised each calendar quarter to contain current information. The list is not filed with the registration form but is maintained at the location in the United States reported on the registration form. Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). The original list of agents and any revised list must be retained for five years, as specified in 31 CFR 103.38(d).

The proposed rule does not contain a specific definition of the term ''agent'' for purposes of the money services business registration rules, including the requirement that a list of agents be maintained by each money services business as part of its registration requirement. Instead the proposed rule speaks simply of a list of ''agents.'' Treasury understands that the relationships between money services businesses and their outlets may take many forms, some of which reflect traditional agency agreements while others are styled by the parties as creating independent contractor or similar relationships for state law purposes. Treasury intends that the concept of ''agent'' for the list requirement should be as broad as the common law of agency would allow, that is, it would extend to any relationship that would be deemed to create obligations of principal and agent at common law. Thus, for example, it is likely that virtually all independent contractor arrangements for money services business—whatever their characterization for employment law or income tax purposes—would be treated as creating principal-agent relationships to define the parameters of the rights, obligations, and direct and derivative liabilities of the parties. *See Restatement (Second) of Agency*, Sections 2(c) and 14N.

Distribution mechanism involving outlets other than agents. 31 U.S.C. 5330 speaks only of money services businesses and ''agents'' of those businesses. Congress intended that the registration requirement of the Money Laundering Suppression Act should be implemented in a manner that eliminated the need for direct registration of all the businesses—in many cases small businesses—through which money services products created and backed by others are offered to the public.[12] Thus, FinCEN specifically invites comments on whether, and how, the language of the proposed rule could be altered to treat money services businesses in the distribution chain for financial services products that are not technically agents within the meaning of 31 U.S.C. 5330 and the proposed regulations in the same manner as agents for purposes of the registration requirements.

10. *31 CFR 103.41(d)(2)—Information included on the list of agents.* Proposed paragraph (d)(2) sets forth the information with respect to each agent that must be included on the list (including any revised list) of agents. This information is—

(i) The name of the agent, including any trade names or doing-business-as names,

(ii) The address of the agent, including street address, city, state, and ZIP code,

(iii) The telephone number of the agent,

(iv) The type of service or services (sale or redemption of money orders, traveler's checks, stored value, check sales, check cashing, currency exchange, and money transmitting) the agent provides,

(v) The year in which the agent first became an agent of the money services business,

(vi) The number of branches or subagents the agent has, and

(vii) The name and address of any depository institution at which the

[12] ''The intent of the Conferees is to eliminate the need for all agents of money transmitting businesses to register with the Secretary. Such massive registration of thousands of agents would only create another needless and costly administrative burden.'' H.R. Conf. Rep. No. 652, 103 Cong., 2d Sess. 193 (1994).

agent maintains a transaction account (as defined in 12 U.S.C. 461(b)(1)(C)) for all or part of the funds received in or for its money services business whether in the agent's or principal's name.

11. *31 CFR 103.41(e)—Consequences of failing to comply with 31 U.S.C. 5330 or the regulations thereunder.* Proposed paragraph (e) explains that it is unlawful to do business without complying with 31 U.S.C. 5330 and the regulations thereunder, and that under 31 U.S.C. 5320, the Secretary of the Treasury may bring a civil action to enjoin the violation. Proposed paragraph (e) also explains the penalties that may be imposed for failing to comply with 31 U.S.C. 5330 or the regulations thereunder. Any person who fails to comply with any requirement of 31 U.S.C. 5330 or the regulations thereunder is liable for a civil penalty. Such a failure includes the filing of false or materially incomplete information in connection with the registration of a money services business. The penalty is $5,000 for each violation; each day a violation of 31 U.S.C. 5330 or the regulations thereunder continues constitutes a separate violation.

A person may also be liable for a criminal penalty under 18 U.S.C. 1960 for operating a money services business without complying with the registration requirements of 31 U.S.C. 5330 and regulations issued thereunder. 18 U.S.C. 1960 provides in part that any person who conducts, controls, manages, supervises, directs, or owns all or part of a money transmitting business [13] knowing that the business affects interstate or foreign commerce in any manner or degree and that the business has failed to comply with the registration requirements of 31 U.S.C. 5330 or the regulations thereunder is subject to a fine, imprisonment for not more than five years, or both.

18 U.S.C. 1960 imposes penalties not only upon operating a money transmitting business without compliance with the registration requirements of 31 U.S.C. 5330 (and its implementing regulations), *see* 18 U.S.C. 1960(b)(1)(B), but also upon the knowing operation of such a business without an appropriate money transmitting license in any state in which operation without a license is a crime, *see* 18 U.S.C. 1960(b)(1)(A). References to 18 U.S.C. 1960 in this preamble, and in proposed 31 CFR 103.41(e), naturally concern exclusively the relationship of 31 U.S.C. 5330 to 18 U.S.C. 1960. That relationship, and the meaning of the relevant terms of 31 U.S.C. 5330, of 18 U.S.C. 1960(b)(1)(B), and of the rules proposed by this document, are solely matters of federal law. As also specifically noted in the discussion above of stored value products and other advanced electronic payment systems, the rules proposed by this document should not be taken as the expression of any view by the Department of the Treasury on the issue whether particular money services businesses are (or, indeed, should be) within the scope of state laws requiring the registration of money transmitters, check cashers, currency exchange businesses, or issuers, sellers, or redeemers of money orders or traveler's checks.

12. *31 CFR 103.41(f)—Effective date.* Proposed paragraph (f) would make the regulations effective on [the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**]. That publication date would start the running of the 180-day period for filing the form for the initial registration of a money services business.

IV. Submission of Comments

An original and four copies of any comment (other than one sent electronically) must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

V. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. FinCEN anticipates that the provisions of the proposed rule generally excluding agents of money services businesses from registration will limit the impact of the proposed registration rule on small businesses. Further, most of the recordkeeping and reporting requirements that would be imposed by this proposed regulation concern information already found in routine business records. For example, as part of their business records, money services businesses (to the extent such businesses are small entities) will generally have information needed for the required agent list, such as the name and address of their agents and agent transaction account information, because such information is necessary to establish and maintain the relationship between the businesses and their agents. In addition to recordkeeping and reporting requirements, other requirements of the proposed regulation may also be satisfied with information that is currently available. For example, many businesses currently have policies in place regarding the maximum dollar amount of a money service transaction they will perform for a customer, such as the maximum check the business will cash, which may help (assuming the policy is observed) them determine whether they have exceeded the $500 floor in several of the definitions in the proposed regulation. Further, agents will generally have information currently available to help them determine whether they meet the $50,000 element of the registration threshold, for example, the monthly statement for the bank account they maintain pursuant to agreement with the money services business for which they are an agent.

VI. Paperwork Reduction Act Notices

Registration for Money Services Businesses

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information on the *Registration for Money Services Businesses* form is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if enacted as proposed, would result in a total of 25,000 *Registration for Money Services Businesses* forms to be filed annually. This result is an estimate, based on a projection of the size and volume of the industry.

Title: Registration for Money Services Businesses.

OMB Number: to be determined.

Description of Respondents: Money Services Businesses.

Estimated Number of Respondents: 25,000.

Frequency: Once every two years, or as required to be updated.

Estimate of Burden: Reporting average of 45 minutes per response; recordkeeping average of 3 hours per response.

Estimate of Total Annual Burden on Respondents: 25,000 responses.

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[13] As indicated above, this document, and the rules proposed herein and in the related notices of proposed rulemaking published today, generally use the phrase ''money services business'' as the equivalent of the definition of ''money transmitting business,'' in 31 U.S.C. 5330(d)(1)(A), in order to avoid confusion between the latter phrase and the statutory definition of ''money transmitting service,'' in 31 U.S.C. 5330(d)(2). In quoting the terms of 18 U.S.C. 1960(b)(1)(B), however, the text naturally uses the statutory language.

Reporting burden estimate = 18,750 hours; recordkeeping burden estimate = 75,000 hours. Estimated combined total of 93,750 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $1,875,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Review: New.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden 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.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Recordkeeping Requirements of 31 CFR 103.41

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.41 is presented to assist those persons wishing to comment on the information collection.

Title: Registration of Money Services Businesses.

OMB Number: 1506–0006.

Description of Respondents: Money Services Businesses.

Estimated Number of Respondents: 25,000.

Frequency: Once every two years, or as required.

Estimate of Burden: Recordkeeping average of 100 hours per Money Service Business.

Estimate of Total Annual Burden on Respondents: Recordkeeping burden estimate = 2,500,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $50,000,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Review: Extension.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden 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.

VII. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 31 CFR part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.11 is amended by—

a. Removing paragraphs (n)(3), (n)(4), (n)(5), and (n)(9),

b. Adding a new paragraph (n)(3),

c. Redesignating paragraphs (n)(6), (n)(7), and (n)(8) as paragraphs (n)(4), (n)(5), and (n)(6), respectively,

d. In newly redesignated paragraph (n)(6), removing '';.'' and adding a period in its place, and

e. Adding new paragraphs (uu) and (vv).

The added paragraphs read as follows:

§ 103.11 Meaning of terms.

* * * * *

(n) *Financial institution.* * * *

(3) A money services business as defined in paragraph (uu) of this section.

* * * * *

(uu) *Money services business.* Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed as follows—

(1) *Currency dealer or exchanger.* A currency dealer or exchanger (other than a person who does not exchange currency in an amount greater than $500 in currency or monetary or other negotiable instruments for any person any day);

(2) *Check casher.* A person engaged in the business of a check casher (other than a person who does not cash checks in an amount greater than $500 in currency or monetary or other negotiable instruments for any person any day);

(3) *Issuer of traveler's checks, money orders, or stored value.* An issuer of traveler's checks, money orders, stored value, or similar instruments (other than a person who does not issue such checks or money orders or stored value or similar instruments in an amount greater than $500 in currency or monetary or other negotiable instruments to any person any day);

(4) *Seller or redeemer of traveler's checks, money orders, or stored value.* A

seller or redeemer of traveler's checks or money orders or stored value or similar instruments (other than a person who does not sell or redeem such checks or money orders or stored value or similar instruments in an amount greater than $500 in currency or monetary or other negotiable instruments to (or in the case of redemption, for) any person any day);

(5) *Money transmitter.* (i) Any person, whether or not licensed or required to be licensed, who accepts currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network; or

(ii) Any other person engaged as a business in the transfer of funds; or

(6) *United States Postal Service.* The United States Postal Service, except with respect to the sale of postage or philatelic products.

(vv) *Stored value.* Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

3. Part 103 is further amended by redesignating the following subparts and sections as follows—

Old Subparts and Sections	*New Subparts and Sections*
Subpart D	Subpart E
103.41	103.51
103.42	103.52
103.43	103.53
103.44	103.54
103.45	103.55
103.46	103.56
103.47	103.57
103.48	103.58
103.49	103.59
103.50	103.60
103.51	103.61
103.52	103.62
103.53	103.63
103.54	103.64
Subpart E	Subpart F
103.61	103.71
103.62	103.72
103.63	103.73
103.64	103.74
103.65	103.75
103.66	103.76
103.67	103.77
Subpart F	Subpart G
103.70	103.80
103.71	103.81
103.72	103.82
103.73	103.83
103.74	103.84
103.75	103.85
103.76	103.86
103.77	103.87

4. Add a new subpart D to Part 103 to read as follows:

Subpart D—Special Rules for Money Services Businesses

Sec.
103.41 Registration of money services businesses.

Subpart D—Special Rules for Money Services Businesses

§ 103.41 Registration of money services businesses.

(a) *Registration requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, relating to agents, each money services business (whether or not licensed as a money services business by any State) must register with the Department of the Treasury and, as part of that registration, maintain a list of its agents as required by 31 U.S.C. 5330 and this section. This section does not apply to the United States Postal Service, to a depository institution as defined in 31 U.S.C. 5313(g), to the United States, any State or political subdivision of a State, or to a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(2) *Agents treated as money services businesses*—(i) *Registration threshold.* For purposes of this section, an agent of a money services business is itself a money services business and is required to register with the Department of the Treasury and maintain a list of its agents only if the agent meets the registration threshold in this paragraph (a)(2)(i). (See, however, § 103.11(uu), which, for other purposes of the Bank Secrecy Act, provides that an agent of a money services business is a money services business whether or not the agent meets the registration threshold.) An agent meets the registration threshold if—

(A) The agent's primary business is a business described in § 103.11(uu), and the agent's money services gross transaction amount is more than $50,000 for any month;

(B) The agent engages in more than one of the businesses described in § 103.11(uu) as an agent for one money services business, and the agent's money services gross transaction amount is more than $50,000 for any month;

(C) The agent is an agent for more than one money services business, and the agent's money services gross transaction amount is more than $50,000 for any month; or

(D) The agent has subagents, and the agent's money services gross transaction amount is more than $50,000 for any month.

(ii) *Money services gross transaction amount.* The money services gross transaction amount is the agent's gross amount (excluding fees and commissions) received from transactions by all its businesses described in § 103.11(uu). Thus, for example, if an agent sells a $600 money order, charging an $18 fee and receiving a $6 commission on the sale, the agent's gross transaction amount is $600.

(iii) *Transition rule.* An agent is not required to compute a money services gross transaction amount for any month beginning before the effective date in paragraph (f) of this section.

(b) *Registration procedures*—(1) *In general.* (i) A money services business must be registered by filing such form as FinCEN may specify with the Detroit Computing Center of the Internal Revenue Service. The information required by 31 U.S.C. 5330(b) and any other information required by the form must be reported in the manner required by the form.

(ii) A branch office or location or an agent of a money services business is not required to file a registration form for the business, except for agents treated as a money services business under paragraph (a)(2) of this section. A money services business must, however, report information about its branch locations or offices as provided by the instructions to the registration form.

(iii) A money services business must retain a copy of any registration form filed under this section and any registration number that the Detroit Computing Center may assign to the business at a central location in the United States reported on the form and for the period specified in § 103.38(d).

(2) *Registration period.* A money services business must be registered for the initial registration period and each renewal period. The initial registration period is the two-calendar-year period beginning with the calendar year in which the money services business is first required to be registered. Each two-calendar-year period following the initial registration period is a renewal period.

(3) *Due date.* The registration form for the initial registration period must be filed not later than the end of the 180-day period beginning on the later of [the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**], or the date the business is established. In the case of an agent required to be registered under this section, the registration form for the initial registration period must be filed not later than the end of the 180-day period beginning on the date the agent meets the registration threshold. The registration form for a renewal period must be filed on or before the last day of the calendar year preceding the renewal period.

(4) *Special rule for agents treated as money services businesses.* An agent treated as a money services business under paragraph (a)(2) of this section must be registered during each renewal period, even though its money services gross transaction amount falls below the registration threshold after the agent's initial registration.

(5) *Events requiring re-registration.* If a money services business registered as such under the laws of any State experiences a change in ownership or control that requires the business to be re-registered under State law, the money services business must also be re-registered under this section. In addition, if more than 10 percent of the voting power or equity interests of a money services business is transferred, the money services business must be re-registered under this section. Finally, if a money services business experiences a more than 50 percent increase in the number of its agents during any registration period, the money services business must be re-registered under this section. The registration form must be filed not later than 180 days after such change in ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or increase occurs is treated as the first year of a new two-year registration period.

(c) *Persons required to file the registration form.* Under 31 U.S.C. 5330(a), any person who owns or controls a money services business is responsible for registering the business; however, only one registration form is required to be filed for each registration period. If more than one person owns or controls a money services business, the owning or controlling persons may enter into an agreement designating one of them to register the business. The failure of the designated person to register the money services business does not, however, relieve any of the other persons who own or control the business of liability for the failure to register the business. See paragraph (e) of this section, relating to consequences of the failure to comply with 31 U.S.C. 5330 or this section.

(d) *List of agents*—(1) *In general.* A money services business must prepare and maintain a list of its agents. The initial list of agents must be prepared by the time the initial registration form is filed and must be revised each calendar quarter to contain current information. The list is not filed with the registration form but must be maintained at the location in the United States reported on the registration form under paragraph (b)(1) of this section. Upon request, a money services business must make its list of agents available to FinCEN and any other appropriate law enforcement agency (including, without limitation, the examination function of the Internal Revenue Service in its capacity as delegee of Bank Secrecy Act examination authority). The original list of agents and any revised list must be retained for the period specified in § 103.38(d).

(2) *Information included on the list of agents.* A money services business must include the following information with respect to each agent on the list (including any revised list) of its agents—

(i) The name of the agent, including any trade names or doing-business-as names;

(ii) The address of the agent, including street address, city, state, and ZIP code;

(iii) The telephone number of the agent;

(iv) The type of service or services (money orders, traveler's checks, stored value, check sales, check cashing, currency exchange, and money transmitting) the agent provides;

(v) The year in which the agent first became an agent of the money services business;

(vi) The number of branches or subagents the agent has; and

(vii) The name and address of any depository institution at which the agent maintains a transaction account (as defined in 12 U.S.C. 461(b)(1)(C)) for all or part of the funds received in or for its money services business whether in the agent's or principal's name.

(e) *Consequences of failing to comply with 31 U.S.C. 5330 or the regulations thereunder.* It is unlawful to do business without complying with 31 U.S.C. 5330 and this section. A failure to comply with the requirements of 31 U.S.C 5330 or this section includes the filing of false or materially incomplete information in connection with the registration of a money services business. Any person who fails to comply with any requirement of 31 U.S.C. 5330 or this section shall be liable for a civil penalty of $5,000 for each violation. Each day a violation of 31 U.S.C. 5330 or this section continues constitutes a separate violation. In addition, under 31 U.S.C. 5320, the Secretary of the Treasury may bring a civil action to enjoin the violation. See 18 U.S.C. 1960 for a criminal penalty for failure to comply with the registration requirements of 31 U.S.C. 5330 or this section.

(f) *Effective date.* This section is effective on [the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**].

§ 103.36 [Amended]

5. Paragraph (b)(10) of § 103.36 is amended by removing the language "§ 103.54(a)" and adding the language "§ 103.64(a)" in its place.

§ 103.56 [Amended]

6. Paragraph (b)(7) of newly redesignated § 103.56 is amended by removing the language "§ 103.48" and adding the language "§ 103.58" in its place.

§ 103.57 [Amended]

7. Newly redesignated § 103.57 is amended by:

a. In paragraph (d) removing the language ''§ 103.48'' and adding the language ''§ 103.58'' in its place.

b. In the first sentence of paragraph (e) removing the language ''§ 103.53'' and adding the language ''§ 103.63'' in its place.

§ 103.72 [Amended]

8. Newly redesignated § 103.72 is amended by removing the language ''§ 103.61'' from the introductory text and adding the language ''§ 103.71'' in its place.

§ 103.73 [Amended]

9. Newly redesignated § 103.73 is amended by:

a. In paragraph (a) introductory text removing the language ''§ 103.61'' and adding the language ''§ 103.71'' in its place.

b. In paragraph (a)(1) removing the language ''§ 103.62'' and adding the language ''§ 103.72'' in its place.

c. In paragraph (b) introductory text removing the language ''§ 103.61'' and adding the language ''§ 103.71'' in its place.

d. In paragraph (b)(1) removing the language ''§ 103.62'' and adding the language ''§ 103.72'' in its place.

§ 103.74 [Amended]

10. Newly redesignated § 103.74 is amended by removing the language ''§ 103.62'' from paragraph (a) and adding the language ''§ 103.72'' in its place.

§ 103.75 [Amended]

11. Newly redesignated § 103.75 is amended by:

a. In the first sentence of paragraph (a) removing the language ''§ 103.62'' and adding the language ''§ 103.72'' in its place.

b. In paragraph (c) introductory text removing the language ''103.62(a)'' and adding the language ''103.72(a)'' in its place and removing the language ''§ 103.62 (b) or (c)'' and adding the language ''§ 103.72 (b) or (c)'' in its place.

§ 103.76 [Amended]

12. Newly redesignated § 103.76 is amended by:

a. In the first sentence removing the language ''§ 103.62'' and adding the language ''§ 103.72'' in its place.

b. In the second sentence removing the language ''§ 103.62(a)'' and adding the language ''§ 103.72(a)'' in its place.

§ 103.82 [Amended]

13. Newly redesignated § 103.82 is amended by removing the language ''§ 103.71'' from the first sentence and adding the language ''§ 103.81'' in its place.

§ 103.83 [Amended]

14. Paragraph (b) of newly redesignated § 103.83 is amended by:

a. In the first sentence removing the language ''§ 103.71'' and adding the language ''§ 103.81'' in its place.

b. In the last sentence removing the language ''§ 103.71'' and adding the language ''§ 103.81'' in its place.

§ 103.85 [Amended]

15. Newly redesignated § 103.85 is amended by removing the language ''§ 103.71'' from the first sentence and adding the language ''§ 103.81'' in its place.

§ 103.86 [Amended]

16. Newly redesignated § 103.86 is amended by:

a. In paragraph (a) introductory text removing the language ''§ 103.75'' and adding the language ''§ 103.85'' in its place.

b. In the second sentence of paragraph (b) removing the language ''§ 103.71'' and adding the language ''§ 103.81'' in its place.

Dated: May 16, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–13304 Filed 5–16–97; 4:32 pm]

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DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA20

Financial Crimes Enforcement Network; Proposed Amendment to the Bank Secrecy Act Regulations—Requirement of Money Transmitters and Money Order and Traveler's Check Issuers, Sellers, and Redeemers To Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is proposing to amend the Bank Secrecy Act regulations to require money transmitters, and issuers, sellers, and redeemers, of money orders and traveler's checks, to report suspicious transactions involving at least $500 in funds or other assets. The proposal is a further step in the creation of a comprehensive system (to which banks are already subject) for the reporting of suspicious transactions by financial institutions. Such a system is a core component of the counter-money laundering strategy of the Department of the Treasury.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before August 19, 1997.

ADDRESSES: Written comments should be submitted to: Office of Legal Counsel, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182, *Attention:* NPRM—Suspicious Transaction Reporting—Money Services Businesses. Comments also may be submitted by electronic mail to the following Internet address: ''regcomments@fincen.treas.gov'' with the caption, in the body of the text, ''*Attention:* NPRM—Suspicious Transaction Reporting—Money Services Businesses.'' For additional instructions on the submission of comments, see SUPPLEMENTARY INFORMATION under the heading ''Submission of Comments.''

Inspection of comments. Comments may be inspected at the Department of the Treasury between 10:00 a.m. and 4:00 p.m., in the FinCEN reading room, on the third floor of the Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 622–0400.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, and Charles Klingman, Financial Institutions Policy Specialist, FinCEN, at (703) 905–3920; Stephen R. Kroll, Legal Counsel, Joseph M. Myers, Deputy Legal Counsel, Albert R. Zarate, Attorney-Advisor, Cynthia L. Clark, detailed to the Office of Legal Counsel of FinCEN, and Eileen P. Dolan, Legal Assistant, Office of Legal Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document proposes to add a new section 103.20 to 31 CFR part 103, to require (i) money transmitters, (ii) issuers, sellers, and redeemers of money orders, and (iii) issuers, sellers, and redeemers of traveler's checks, to report to the Department of the Treasury any suspicious transaction relevant to a possible violation of law or regulation. The proposal would extend to these ''money services businesses,'' which are part of the universe of financial institutions subject to the Bank Secrecy Act, the suspicious transaction reporting regime to which the nation's banks,

thrift institutions, and credit unions have been subject since April 1, 1996.[1]

II. Background

A. Statutory Provisions

The Bank Secrecy Act, Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330), appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

The authority to require reporting of suspicious transactions is contained in 31 U.S.C. 5318(g). That subsection was added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act (the ''Annunzio-Wylie Anti-Money Laundering Act''), Title XV of the Housing and Community Development Act of 1992, Public Law 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994 (the ''Money Laundering Suppression Act''), Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, to require designation of a single government recipient for reports of suspicious transactions.

The provisions of 31 U.S.C. 5318(g) deal with the reporting of suspicious transactions by financial institutions subject to the Bank Secrecy Act and the protection from liability to customers of persons who make such reports. Subsection (g)(1) states generally:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2) provides further:

> A financial institution, and a director, officer, employee, or agent of any financial institution, who voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

Subsection (g)(3) provides that neither a financial institution, nor any director, officer, employee, or agent

> that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority * * * shall * * * be liable to any person under any law or regulation of the United States or any constitution, law, or regulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.

Finally, subsection (g)(4) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.''[2] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement or supervisory agency.'' *Id.,* at subsection (g)(4)(B).

B. Importance of Suspicious Transaction Reporting in the Treasury's Counter-Money Laundering Program

The Congressional mandate to require reporting of suspicious transactions recognizes two basic points that are central to Treasury's counter-money laundering and anti-financial crime programs. First, it is to financial institutions that money launderers must go, either initially or eventually. Second, the officials of those institutions are more likely than government officials to have a sense as to which transactions appear to lack commercial justification or otherwise cannot be explained as falling within the usual methods of legitimate commerce. Moreover, because money laundering transactions are designed to appear legitimate in order to avoid detection, the creation of a meaningful system for detection and prevention of money laundering is impossible without the cooperation of financial institutions. Indeed, many non-banks have come increasingly to recognize the increased pressure that money launderers have come to place upon their operations and the need for innovative programs of training and monitoring necessary to counter that pressure.

The reporting of suspicious transactions is also a key to the emerging international consensus on the prevention of money laundering. One of the central recommendations of the Financial Action Task Force—recently updated and reissued—is that:

> If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the competent authorities.

Financial Action Task Force Annual Report (June 28, 1996),[3] Annex 1 (Recommendation 15). The recommendation, which applies equally to money services businesses as to banks, revises the original recommendation, issued in 1990, that required institutions to be either ''*permitted or* required'' to make such reports. (Emphasis supplied.) The revised recommendation makes clear the international consensus that a mandatory suspicious transaction reporting system is essential to an effective counter-money laundering program.

Similarly, the European Community's *Directive on prevention of the use of the financial system for the purpose of money laundering* calls for member states to

> ensure that credit and financial institutions and their directors and employees cooperate fully with the authorities responsible for combating money laundering * * * by [in part] informing those authorities, on their own initiative, of any fact which might be an indication of money laundering.

EC Directive, O.J. Eur. Comm. (No. L 166) 77 (1991), Article 6. *Accord, the Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and Related Offenses of the Organization of American States,* OEA/Ser. P. AG/Doc. 2916/92 rev. 1 (May 23, 1992), Article 13, section 2.[4] All of these documents recognize the importance of extending the counter-money laundering controls to ''non-traditional'' financial institutions, not simply to banks, both to ensure fair competition in the marketplace and to

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[1] The suspicious transaction reporting rules for banks are found at 31 CFR 103.21 (which this notice of proposed rulemaking proposes to renumber as 31 CFR 103.18). The term bank, for purposes of the Bank Secrecy Act regulations, includes all depository institutions. *See* 31 CFR 103.11(c).

[2] This designation is not to preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.'' 31 U.S.C. 5318(g)(4)(C).

[3] The FATF is an inter-governmental body whose purpose is development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

[4] The OAS reporting requirement is linked to the provision of the Model Regulations that institutions ''shall pay special attention to all complex, unusual or large transactions, whether completed or not, and to all unusual patterns of transactions, and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.'' OAS Model Regulation, Article 13, section 1.

recognize that non-banks as well as depository institutions are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report, supra,* Annex 1 (Recommendation 8).

C. Suspicious Transaction Reporting by Money Services Businesses

This notice of proposed rulemaking, the second of the notices of proposed rulemaking being published in this separate part of the **Federal Register** dealing with application of the Bank Secrecy Act to money services businesses, would generally require money transmitters, businesses issuing, selling, or redeeming money orders, and businesses issuing, selling, or redeeming traveler's checks, to report suspicious transactions to the Department of the Treasury.[5] Money services businesses have not in the past been the subject of the same concentrated attention as banks in the administration of the Bank Secrecy Act.[6] The Annunzio-Wylie Anti-Money Laundering and Money Laundering Suppression Acts were crafted by the Congress in significant part to give the Treasury flexible tools to deal with non-bank institutions, and today's notices of proposed rulemaking represent an attempt by the Department of the Treasury to design Bank Secrecy Act rules that address the problems encountered by law enforcement agents, regulators, and money services businesses themselves, in fighting money laundering in this part of the financial sector. The notice and its timing reflect both the general course of Treasury's counter-money laundering program and specific developments that indicate the need for immediate extension of updated and appropriately-tailored Bank Secrecy Act rules to money services businesses, especially to money transmitters, but also to money order and traveler's check services.[7]

It should be emphasized at the outset that, as in the case of the nation's banks and securities firms, most money service business operators and agents are completely law-abiding and as interested in cost-effective financial law enforcement as the Treasury itself.

Money Transmitters. Since last August, a large group of money transmitters (now 23 licensed transmitters and their approximately 3,200 agents) in the New York Metropolitan Area have been the subject of a Geographic Targeting Order (the ''Order''), issued pursuant to 31 U.S.C. 5326 and 31 CFR 103.26, that is directed at the remission of funds to Colombia.[8] The original 60-day period of the Order has been extended several times under the statutory rules, and the Order is at present set to expire on June 2, 1997. The Order, first directed against 12 money transmitters and 1,600 agents, was expanded in October 1996 and again in April 1997.

The Order requires daily reporting by agents of the 23 money transmitters, and weekly reporting by their principals (*i.e.*, state-licensed money transmission companies), of information about the senders and recipients of all money remittances of $750 or more to Colombia paid for with currency or bearer monetary instruments, as well as the reporting of any transactions or patterns of transactions that appear suspicious. Special verification of identity rules for such transactions are also imposed by the Order.

The Order was issued against a backdrop of several years of intensive investigative work conducted by the Customs and Internal Revenue Service-led El Dorado Task Force, which had uncovered widespread laundering of narcotics funds within segments of the money transmitter industry in New York. El Dorado agents have been able repeatedly to show the complicity of money remitter agents in the simple scheme of structuring of large cash transactions to evade the existing Bank Secrecy Act reporting and recordkeeping obligations applicable to such transactions, using, for example, false invoices and fabricated identities of senders and recipients.[9] One major licensed money transmitter had itself pled guilty to money laundering charges,[10] and investigations of several other transmitters and their agents were underway.[11]

But a number of other factors also supported the Order's issuance. Perhaps most strikingly, the New York area money transmitters' business volume to Colombia was strikingly out of harmony with legitimate demographic expectations: New York State Banking Department figures indicated that the 12 originally targeted transmitters had been sending approximately $1.2 billion annually to South America; about two thirds of this amount, or approximately $800 million, went to Colombia. To account for this figure, each of the approximately 25,500 Colombian households in the New York area (earning an average gross annual income of $27,000) would have had to send approximately $30,000 per year through money transmitters to Colombia.

The Order almost immediately caused dramatic changes in the volume and character of money transmissions, indicating a major reduction in the amount of illicit funds moving through New York money transmitters.[12] Analysis of data generated by the Order is ongoing, but the targeted money transmitters' business volume to Colombia appears to have dropped approximately 30 percent. (Three of the money transmitters subject to the Order have simply stopped sending any funds to Colombia.) Most of the money that would in the past have been placed abroad through the use of money transmission services appears to have been physically removed from the New York Metropolitan area, either for transfer through money transmitters operating in other American cities, or for bulk smuggling out of the United States. The change demonstrates

[5] Readers of the discussion that follows may wish to refer to the Notice of Proposed Rulemaking entitled ''Amendment to the Bank Secrecy Act Regulations—Definition and Registration of Money Services Businesses,'' for a general description of money services businesses in the United States.

[6] The placement of illegally-derived currency into the financial system and the smuggling of such currency out of the country remain two of the most serious issues facing financial law enforcement efforts in the United States and around the world. But banks, in cooperation with law enforcement agencies and federal and state banking regulators, have responded in many positive ways to the challenges posed by money laundering. It is now far more difficult than in the past to pass large amounts of cash directly into the nation's banks unnoticed and far easier to identify and isolate those banks and officials still willing to assist or ignore money launderers.

[7] The Congress has long-recognized the need generally to address problems of abuse by money launderers of ''non-bank'' financial institutions. *See, e.g.,* Permanent Subcommittee on Investigations, Senate Comm. on Governmental Affairs, Current Trends in Money Laundering, S. Rep. No. 123, 102d Cong., 2d Sess. (1992).

[8] The Order was issued by Raymond W. Kelly, Under Secretary (Enforcement) of the Department of the Treasury, in response to an application from the United States Attorneys for the Eastern District of New York, the Southern District of New York, and the District of New Jersey, and senior officials of the Customs Service and the Internal Revenue Service. (The statute allows such orders to be issued either upon such a request, from an appropriate law enforcement authority, or by the Treasury upon its own initiative.) Issuance of an Order requires a finding, amply documented in this case, that there is reason to believe that special reporting or record keeping requirements are necessary to carry out the purposes, or prevent evasions, of the Bank Secrecy Act.

[9] Over the years preceding the issuance of the Order, El Dorado's ''Operation Wire Drill'' investigations led to the conviction of 97 persons and the seizure and forfeiture of over $10 million associated with money laundering through the licensed money transmitters.

[10] *United States* v. *Vigo Remittance Corp.*, No. 96–575 (J.S.) (E.D.N.Y.) (July 24, 1996) (entry of plea). It is fair to note that since its guilty plea, Vigo has sought to strengthen its Bank Secrecy Act compliance measures significantly.

[11] *See, e.g., United States* v. *Remesas America Oriental, Inc.*, No. S1 96 Cr. 919 (TPG) (S.D.N.Y.).

[12] One money transmitter surrendered its license to the New York State Banking Department upon being served with the Order.

graphically both that narcotics money launderers have been extensively abusing a segment of the relatively unsupervised money transmitter industry, and that the underground market does respond to regulatory and enforcement pressures.

Ancillary results of the Order have also been significant. The Treasury has observed a dramatic increase in Customs Service interdiction and seizure activity at air and seaports, on common carriers, and on highways—over $36 million during the first six months of the Order's operation, a figure approximately four times higher than for comparable periods in prior years.

Despite the Order, it is clear that a not insubstantial number of money transmitter agents have been willing to structure transactions beneath the Order's $750 reporting threshold, in an attempt to move narcotics-tainted funds abroad even during a period of known surveillance of the industry and its agents. (At the same time, at least one money transmitter has itself worked with federal authorities during this period to identify suspicious transactions, even those involving its own agents.) The number of transactions in amounts below $750 has risen sharply, and the amount of funds transferred to Colombia in such increments appears to have almost doubled. The El Dorado Task Force has already executed search warrants on 22 money transmitter agents suspected of intentionally structuring transactions in violation of the Order; all but five businesses served have closed, five people have been indicted, and four people have already pleaded guilty. Three additional arrest warrants are outstanding. The Task Force is continuing to pursue investigations of this type, and the Treasury will consider imposing civil penalties against violators who are not pursued criminally.

The New York GTO experience is not an isolated phenomenon. The Texas Attorney General's office began investigating so-called ''giro Houses'' in the Houston area in the early 1990s. Giro houses are independent money transmitters that also provide ancillary services such as cargo shipment and long distance telephone access. Before 1991, there were as many as 100 giro houses in Houston processing over $450 million per year in wire transfers, primarily to Colombia. The Texas Attorney General's Office, working with the Texas Department of Banking and the Houston office of the IRS, opened formal investigations of a number of giro houses. These investigations, like the El Dorado Task Force's investigations in New York, revealed a pattern of money laundering through false invoices designed to justify the large currency deposits at local banks.

From late 1994 through 1995 the Texas Attorney General's Office obtained and executed 11 search warrants at Houston giro houses. Many businesses closed while under investigation, and the overall effect of the Texas investigations on illegitimate trade was dramatic. A recent count of giro houses lists eight sending funds to Colombia, and the total amount of money processed through giro houses has dropped to approximately $10 million.

Money Order Sellers. The use by money launderers of money orders, whether issued by the United States Postal Service or private companies, is well-documented. As one example, a Postal Inspection Service investigation beginning in the late 1980s and early 1990s, whose offshoots continue to this day, revealed a multiple step scheme in which money orders, in individual amounts of $1,000 or less, were purchased from New York area banks and post office outlets (often in bulk), sent abroad for negotiation or deposit, and then repatriated to the United States for clearance or deposit into banks from which the aggregated funds were again to be wired abroad. The scheme involved some 99,000 money orders worth approximately $70 million that were deposited into three bank accounts in New York and Miami; it resulted in the 1992 guilty plea of two individuals, and the 1993 forfeiture of approximately $2.1 million.

The ease with which money orders can be redeemed or negotiated—the very factors that make them attractive commercially—also make them an attractive tool for money launderers. The orders are negotiable, may be made out to ''cash,'' and operate as virtually the equivalent of cash, especially when backed by the credit of the Postal Service or one of the two major commercial money order issuers that, together with the Postal Service, dominate the money order market. Money order issuers have made major strides in recognizing their obligations to report suspicious activity and in designing computer systems to, *e.g.,* identify suspicious sequential money order purchases, and to that extent today's proposal recognizes those developments and makes clear that the protective provisions of 31 U.S.C. 5318(g) (2)–(3) apply equally to reports by money order issuers, sellers, and redeemers as to reports by banks. Despite that fact, however, the extremely large number of agents and other businesses that deal in money orders as financial instruments makes the promulgation of a general suspicious transaction reporting rule for such businesses essential.

Traveler's Checks. Traveler's checks raise the same issues as money orders. Clearly, the requirement that traveler's checks be counter-signed on issuance and at the time they are negotiated makes them more difficult to abuse, but the counter-signature requirement can be evaded by a corrupt sales agent and may have less force abroad than in the United States. Traveler's checks are already included within the definition of monetary instruments at 31 CFR 103.11(u)(ii), and their potential for abuse was recognized in the 1992 amendments to the definition of ''cash'' for purposes of the reporting of cash purchases of goods and services valued over $10,000. *See* 26 U.S.C. 6050I(d)(2); 26 CFR 6050I–1(c)(1)(ii); 56 FR 57974, 57977 (Nov. 15, 1991).

Special Structural Problems Affecting Money Services Businesses. In issuing this notice of proposed rulemaking, the Department of the Treasury is again expressing its judgment that reporting of suspicious transactions in a timely fashion is a component of the flexible and cost-efficient compliance system required to prevent the use of the nation's financial system—in this case money services businesses—for illegal purposes. Implementation of a comprehensive counter-money laundering strategy for money services businesses, however, raises significant issues not present in devising counter-money laundering strategies for banks, largely due to unique structural factors affecting money services businesses.

First, most money services businesses operate through the medium of independent enterprises that agree to serve as agents for the businesses' products or services; thus the public often does not deal directly with the businesses that issue or back the instruments, or actually perform the services, purchased. Second, and as a corollary, money services businesses permit performance of a specific function—the conversion of money into a money order or traveler's check, or the sending of money to a distant location—but generally neither offer nor are capable of maintaining continuing account relationships. Third, money services businesses are not subject generally to federal regulation and are regulated, in differing degrees, by some, but not all, states.[13] Finally, and perhaps

[13] Section 407 of the Money Laundering Suppression Act, 31 U.S.C. 5311 note, states the

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most important, the rules of the Bank Secrecy Act have not been appropriately tailored to reflect the particular operating realities, problems, and potential for abuse of an industry that deals in sums far below $10,000 per transaction. For all of these reasons, the assumptions that underlay design of a suspicious transaction reporting system for banks cannot be assumed to apply with equal force to the money services businesses with which this notice of proposed rulemaking deals.

Check Cashers and Currency Exchangers. Check cashers and currency exchangers would not be subject to the suspicious transaction reporting requirement contained in this proposed rulemaking. Because the operations of those businesses generally involve disbursement rather than receipt of funds, the appropriate definition of suspicious activity involves issues not present to the same degree in the case of money transmitters and money order and traveler's check services.

A reporting money services business is subject to this section only with respect to transactions that involve or relate to the business activities described in § 103.11(uu) (3), (4), (5), or (6). Thus, for example, a seller of money orders (a money services business described in § 103.11(uu)(4)) that is also a check casher (a money services business described in § 103.11(uu)(2)) is not required to report under this section with respect to its check cashing activities in general, although it would be required to report check cashing activity that was part of a series of transactions that led to, for example, the purchase of money orders if the money order purchases were required to be reported hereunder. In addition, check cashing and currency exchange services may be subject to the suspicious activity rules to the extent they redeem either money orders or traveler's checks for currency (U.S. or other) or other monetary or negotiable instruments and hence qualify as redeemers of money orders or traveler's checks, to whom the proposed rules do apply. *See* proposed section 103.11(uu)(4), which would treat as a redeemer of money orders and traveler's checks, respectively, any enterprise that redeems such instruments ''in an amount greater than $500 in currency or monetary instruments per person per day.'' [14]

Stored Value Products. As noted in the preamble to the Registration Rule, the Department of the Treasury believes that a business that issues or facilitates the digital transfer of electronically-stored value [15] is a money services business covered by the Bank Secrecy Act.[16] However, it is not appropriate, given the infancy of the use of stored value products in the United States, to propose a rule specifically dealing with suspicious transaction reporting by non-banks with respect to stored value products at this time. Thus, proposed paragraph (a)(4) would exempt transactions solely involving such products from the operation of the rule at present. Treasury invites specific comments about the manner in which the suspicious transaction reporting rules for money services businesses should apply to transactions involving stored value products.

III. Specific Provisions [17]

A. 103.11(ii)—Transaction

The definition of ''transaction'' in the Bank Secrecy Act regulations for purposes of suspicious transaction reporting conforms generally to the definition Congress added to 18 U.S.C. 1956 when it criminalized money laundering in 1986. *See* Pub. L. 99–570, Title XIII, 1352(a), 100 Stat. 3207–18 (Oct. 27, 1986). This notice proposes to amend that definition explicitly to include the purchase of any money order and the payment or order for any money remittance or transfer. No similar amendment is necessary in the case of traveler's checks, which are already defined clearly as monetary instruments in 31 CFR 103.11(u)(ii). This definition of transaction is broad enough to cover all activity that should be reported under the proposed rule.

B. 103.15—Determination by the Secretary

Section 103.20 is redesignated as section 103.15 in order to make room in part 103 for the proposed rule and to create space for future changes to the Bank Secrecy Act regulations.

C. 103.18—Reports by Banks of Suspicious Transactions

Section 103.21 is redesignated as section 103.18 to make room in subpart B, ''Reports Required To Be Made,'' for the suspicious transaction reporting requirement proposed in this notice.

D. 103.20—Reports of Suspicious Transactions, General

Proposed section 103.20 contains the rules setting forth the obligation of certain money services businesses to file reports of suspicious transactions involving at least $500 in funds or other assets. Paragraph (a) contains the general statement of the obligation to file, and a general definition of the term ''suspicious transaction.'' It is important to recognize that transactions are reportable under this rule and 31 U.S.C. 5318(g) whether or not they involve currency.

The choice of a $500 threshold for suspicious transaction reporting by reporting money services businesses reflects the judgment, discussed more generally above, that the levels of reporting appropriate for other financial institutions, for example, the $5,000 suspicious activity reporting threshold for banks, are not appropriate given the patterns of transactions prevalent in such money services businesses. The threshold reflects FinCEN's understanding of normal transaction levels for the businesses involved. Given the fact that one of the purposes of suspicious transaction reporting is to identify structuring, a higher reporting threshold would significantly limit the effectiveness of the proposed rule, in light of the reporting levels proposed for special currency transaction reporting by money transmitters, in the third of the related notices of proposed rulemaking relating to money services businesses that are being published today.

Reporting Institutions. Any enterprise that is a money services business,

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sense of the Congress that, ''[f]or purposes of preventing money laundering and protecting the payment system from fraud and abuse,'' the states should ''establish uniform laws for licensing and regulating'' the businesses which are referred to as money services businesses in the proposed amendments to the Bank Secrecy Act regulations published today, and ''provide sufficient resources * * * to enforce such laws * * *.'' Section 407(c) calls for the Secretary of the Treasury to study the progress of the states in meeting the Congressional goal and section 407(d) requires the Secretary to report to Congress on the results of its study and any recommendations flowing therefrom.

[14] In addition, of course, a business that engages in business as a money transmitter, or in covered money order or traveler's check services, as well as check cashing or currency exchange services, would be subject to the suspicious transaction reporting rules with respect to the former services, even if not to the latter.

[15] *See* proposed 31 CFR 103.11(vv), which defines stored value.

[16] It should be clearly understood that the treatment of stored value and similar products for purposes of the operation of 31 U.S.C. 5330 and the Registration Rule is solely a matter of federal law and cannot be taken as the expression of any view by the Department of the Treasury on the issue whether particular money services businesses are (or, indeed, should be) within the scope of state laws requiring the registration of money transmitters, check cashers, currency exchange businesses, or issuers, sellers, or redeemers of money orders or traveler's checks.

[17] Because proposed § 103.20 reflects the terms of the reporting rule for banks, readers of this document may wish to consult the notice of proposed rulemaking and the document containing the final reporting rule for banks, at 60 FR 46556 (September 7, 1995) (proposed rule) and 61 FR 4326 (February 5, 1996) (final rule). The bank suspicious activity reporting rule is found at § 103.21, but proposed by this notice to be renumbered as § 103.18).

within the definition proposed today, because it is a money transmitter or an issuer, seller, or redeemer [18] of money orders or traveler's checks (including the Postal Service), is subject to the proposed suspicious activity reporting rule. However, banks, broker-dealers, and casinos are not subject to the proposed rule.

Reportable Transactions. The proposed rule designates three classes of transactions as requiring reporting. The first class, described in proposed paragraph (a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second class, described in proposed paragraph (a)(2)(ii), involves transactions designed, whether through structuring or other means, to evade the requirements of the Bank Secrecy Act. The third class, described in proposed paragraph (a)(2)(iii), involves transactions that appear to serve no business or apparent lawful purpose, and for which the money services business knows of no reasonable explanation after examining the available facts relating thereto.

The operating circumstances of money services businesses, especially the absence of account relationships, necessarily make the standards by which transactions are to be evaluated less easy to apply than in the case of banks in many situations. For that reason, and given the differences in structure, operation, and regulation between banks and money services businesses, the proposed rule contains specific illustrations (noted below) of the sorts of transactions for which reporting is sought within the text of the rule itself.

Paragraph (a)(2)(iii) provides the following examples (by way of illustration, but not limitation) of such transactions:

A. The contemporaneous purchase of multiple remittances to the same beneficiary or city by the same purchaser;

B. The purchase of multiple instruments or remittances in the same or similar amounts by the same person;

C. A large volume of transactions, sequential invoices, or both, directed to one correspondent from one agent (operating either through a single or multiple offices) on a single day;

D. Patterns of remittances to the same city or correspondent purchased at approximately the same time;

E. The deposit of large numbers of instruments, especially sequentially-numbered instruments, into or through the same or related bank or other financial institution accounts;

F. Patterns of instruments or remittances purchased just below the dollar thresholds for particular Bank Secrecy Act reporting or recordkeeping requirements;

G. Presentation for redemption or encashment of third-party endorsed instruments, or of blocks of instruments purchased by the party seeking redemption, in either case in sums outside of normal commercial or personal usage;

H. Significant changes or fluctuations in volume at one or more of the business' agents or branches;

I. Significant variations in the size of the average remittance at a business' agents or branches; and

J. Multiple senders of remittances using the same recipient's last name, address, or telephone number.

Of course, determinations as to whether a report is required must be based on all the facts and circumstances relating to the transaction and the money services customer in question. Different fact patterns will require different types of judgments. In some cases, the circumstances of the transaction or pattern of transactions may clearly indicate the need to report. For example, an individual's seeking regularly to purchase or redeem instruments in bulk, or to purchase transmissions to multiple overseas locations, all to the same named beneficiary should, in the absence of unique qualifying circumstances, place the money services business on notice that a suspicious transaction is underway. Similarly, the fact that a customer refuses to provide information necessary for the money services business to make reports or keep records required by 31 CFR 103 or other regulations, provides information that a money services business determines to be false, or seeks to change or cancel the transaction *after* such person is informed of currency transaction reporting or information verification or recordkeeping requirements relevant to the transaction or of the money services business' intent to file a currency transaction report with respect to the transaction, would all indicate that a SAR–MSB should be filed. (Of course, as the proposed rule makes clear, the money services business may not notify the customer that it intends to file or has filed a suspicious transaction report with respect to the customer's activity.)

Treasury ultimately must rely on creation of a working partnership with the various types of money services business that will assist those businesses to apply their knowledge of both their customers and business patterns to identify and report suspicious activity. FinCEN hopes and expects to enter into a dialogue with the money services businesses to which this rule would apply about the manner in which a combination of government guidance, training programs, and government-industry information exchange can smooth the way for operation of the new suspicious activity reporting system in as flexible and cost-efficient a way as possible.

Treatment of Agents. 31 U.S.C. 5318(g)(1) authorizes Treasury to require suspicious transaction reporting not only by financial institutions but by ''any director, officer, employee, or agent of any financial institution.'' The authorization parallels the definition of financial institution itself in 31 U.S.C. 5312 (a)(2) and (b), and 31 CFR 103.11(n). The operating realities of money services businesses place special importance on the relationships between the operators of the money services businesses involved and the otherwise unrelated businesses that, in many cases, sell the financial products involved, in the case of money orders or traveler's checks, or that serve, in the case of money remissions, as receivers of the funds to be transmitted.

Thus, paragraph (a)(3) places responsibility for reporting on each money services business, as well as its agents,

> regardless of whether, and the terms on which, the money services business treats such person as an agent or independent contractor for other purposes.

It is important to recognize that the definition of money services business for this purpose is broader than it is for purposes of the registration rules proposed to be added to part 103 as 31 CFR 103.41. Thus, an agent of a money transmitter may (indeed usually will) itself be a money services business for purposes of the reporting rule (although not necessarily for purposes of the registration rule).

Certain patterns of suspicious dealing that may not be apparent to a particular agent may become visible when various remission or instrument purchase activities are aggregated by the principal business. In other situations, a principal may, upon reviewing transaction records, uncover an indication of patterns of suspicious transactions at a particular agent that, unfortunately, arise because of the cooperation of the agent with money launderers. Thus, it is impossible to specify the particular method for reporting that will

[18] Under the definition in proposed § 103.11(uu)(4), a person is a ''redeemer'' of money orders and traveler's checks only insofar as the instruments involved are redeemed for monetary value—that is, for currency or monetary instruments. The taking of the instruments in exchange for goods or services is not a redemption for purposes of the rules proposed today.

comprehend all situations. The same issues arise, of course, when headquarters or central processing facility bank compliance officials uncover a pattern of suspicious dealing at or through a bank branch.

The allocation of principal-agent liability in particular cases, under the governing terms of the Bank Secrecy Act, is too complex a subject to be dealt with in this notice of proposed rulemaking. However, the Department of the Treasury believes that at a minimum the operators of money services businesses have a duty to know their agents sufficiently well to be able to satisfy the reporting obligations involved in compliance with the proposed rule. As in the case of the rules for suspicious activity reporting by banks, the proposed rule is intended to introduce a concept of due diligence into the reporting procedures, and that diligence applies equally to review of the actions of agents of money services businesses as to review of the transactions of customers of those businesses. Treasury invites comments on:

1. Whether the rule should contain more detailed procedures or rules dealing with the allocation of responsibility between principals (the issuers of the money orders or traveler's checks, and the companies actually arranging for the remission of funds) and agents;

2. Whether language should be added to the rule to make it clear that a money services business's duty of diligence extends not only to supervision of its agents but also to supervision of money services businesses in the distribution chain for financial services products that may not technically be either agents under the broad definition used in the proposed rule or independent contractors; and

3. Whether the rule should contain more specific rules for compliance programs that recognize the realities of the business operations in this part of the financial sector.

Filing Procedures. Paragraph (b) sets forth the filing procedures to be followed by money services businesses making reports of suspicious transactions. Within 30 days after a money services business becomes aware of a suspicious transaction, the business must report the transaction by completing a Suspicious Activity Report-MSB [19] and filing it in a central location, to be determined by FinCEN. The SAR–MSB will resemble the SAR now used by banks to report suspicious transactions, and a draft form will be made available for comment when ready.

Supporting documentation relating to each SAR–MSB is to be collected and maintained separately by the money services business and made available to law enforcement and regulatory agencies upon request. Special provision is made for situations requiring immediate attention, in which case money services businesses are to telephone the appropriate law enforcement authority in addition to filing a SAR–MSB.

Reports filed under the terms of the proposed rule will be lodged in a central data base (on the model of the data base used to process, analyze, and retrieve bank suspicious activity reports). Information will be made electronically available to federal and state law enforcement and regulatory agencies, to enhance the ability of those agencies to carry out their mandates to fight financial crime.

Maintenance of Records. Paragraph (c) provides that filing money services businesses must maintain copies of SAR–MSBs and the original related documentation for a period of five years from the date of filing. As indicated above, supporting documentation is to be made available to FinCEN and appropriate law enforcement authorities on request.

Safe Harbor from Civil Liability. Paragraph (d) incorporates the terms of 31 U.S.C. 5318 (g)(2) and (g)(3). This paragraph thus specifically prohibits persons filing SAR–MSBs from making any disclosure, except to law enforcement and regulatory agencies, about either the reports themselves, the information contained therein, or the supporting documentation. The paragraph also restates the broad protection from liability for making reports of suspicious transactions, and for failures to disclose the fact of such reporting, contained in the statute. The regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection; however, because Treasury recognizes the importance of these statutory provisions to the overall effort to encourage meaningful reports of suspicious transactions, they are described in the regulation in order to remind compliance officers and others of their existence.

Auditing and Enforcement. Paragraph (e) notes that compliance with the obligation to report suspicious transactions will be audited, and provides that failure to comply with the rule may constitute a violation of the Bank Secrecy Act and the Bank Secrecy Act regulations, which may subject non-complying money services businesses to enforcement action.

Effective Date. Finally, paragraph (f) provides that the new suspicious activity reporting rules are effective 30 days after [the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**].

IV. Submission of Comments

An original and four copies of any written hard copy comment (other than one sent electronically) must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

V. Regulatory Flexibility Act

FinCEN certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The average money order sold is approximately $102, and the average money transmission is approximately $240 within the United States and approximately $320 outside the United States. Both of these amounts are substantially below the $500 threshold that triggers reporting under the proposed rule. Thus, FinCEN believes that the threshold has been set at a level that will avoid a significant economic burden on small entities.

VI. Paperwork Reduction Act Notices

Suspicious Activity Report for Certain Money Services Businesses.

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information on *Suspicious Activity Report—Money Services Businesses* is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if enacted as proposed, would result in a total of 10,000 *Suspicious Activity Report—Money Services Businesses* forms to be filed annually. This result is an estimate, based on a projection of the size and volume of the industry.

Title: Suspicious Activity Report—Money Services Businesses

OMB Number: To be determined.

[19] The term ''MSB'' is an abbreviation for ''money services businesses'' and is used to distinguish the form from forms for reporting by other non-bank institutions.

Description of Respondents: Money transmitters, and issuers, sellers, and redeemers of money orders or traveler's checks, and their agents.

Estimated Number of Respondents: 10,000.

Frequency: As required.

Estimate of Burden: Reporting average of 20 minutes per response; recordkeeping average of 10 minutes per response.

Estimate of Total Annual Burden on Respondents: 10,000 responses. Reporting burden estimate = 3,333 hours; recordkeeping burden estimate = 1,667 hours. Estimated combined total of 5,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $100,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Review: New.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden 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.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Recordkeeping Requirements of 31 CFR 103.20

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.20 is presented to assist those persons wishing to comment on the information collection.

Title: Suspicious Activity Report—Money Services Businesses.

OMB Number: 1506–0006.

Description of Respondents: Specified Money Services Businesses. Money transmitters, and issuers, sellers, and redeemers of money orders or traveler's checks, and their agents.

Estimated Number of Respondents: 10,000.

Frequency: As required.

Estimate of Burden: Recordkeeping average of 100 hours per Money Service Business.

Estimate of Total Annual Burden on Respondents: Recordkeeping burden estimate = 1,000,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $20,000,000.

Estimate of Total Other Annual Costs to Respondents: $100 for each report of suspicious transactions made.

Type of Review: Extension.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden 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.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

VII. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

VIII. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance this proposal provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR Part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Section 103.11(ii)(1) is revised to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, purchase or redemption of any money order, payment or order for any money remittance or transfer, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

§§ 103.20 and 103.21 [Redesignated as §§ 103.15 and 103.18]

3. In Subpart B, redesignate §§ 103.20 and 103.21 as §§ 103.15 and 103.18, respectively, and add new § 103.20 to read as follows:

§ 103.20 Reports by money services businesses of suspicious transactions.

(a) *General.* (1) Every money services business, other than a bank, a broker-dealer, or a casino, described in § 103.11(uu) (3), (4), (5), or (6) (for purposes of this section, a ''reporting money services business''), shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. Any money services business may also file with the Treasury Department, by using the Suspicious Activity Report-MSB specified in paragraph (b)(1) of this section, or otherwise, a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section.

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through the money services business, involves or aggregates at least $500 in funds or other assets, and the money services business knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this Part or of any other regulations promulgated under the Bank Secrecy Act, Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330; or

(iii) Serves no business or apparent lawful purpose, as, for example, in the case of—

(A) The contemporaneous purchase of multiple remittances to the same beneficiary or city by the same purchaser;

(B) The purchase of multiple instruments or remittances in the same or similar amounts by the same person;

(C) A large volume of transactions, sequential invoices, or both, directed to one correspondent from one agent (operating either through a single or multiple offices) on a single day;

(D) Patterns of remittances to the same city or correspondent purchased at approximately the same time;

(E) The deposit of large numbers of instruments, especially sequentially-numbered instruments, into or through the same or related bank or other financial institution accounts;

(F) Patterns of instruments or remittances purchased just below the dollar thresholds for particular Bank Secrecy Act reporting or recordkeeping requirements;

(G) Presentation for redemption or encashment of third-party endorsed instruments or of blocks of instruments purchased by the party seeking redemption, in either case in sums outside of normal commercial or personal usage;

(H) Significant change or fluctuations in volume at one or more of the business' agents or branches;

(I) Significant variations in the size of the average remittance at a business' agents or branches;

(J) Multiple senders of remittances using the same recipient's last name, address, or telephone number; and, in each case, the money services business knows of no reasonable explanation for the transaction or circumstance involved, after examining the available facts relating thereto.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with the money services business as well as any agents of the money services business involved, regardless of whether, and the terms on which, the money services business treats such person as an agent or independent contractor for other purposes.

(4) Notwithstanding the provisions of this section, a transaction that involves solely the issuance, or facilitation of the transfer, of stored value or the issuance, sale, or redemption of stored value shall not be subject to reporting under this paragraph (a), until the promulgation of rules specifically relating to such reporting.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report-MSB (''SAR–MSB''), and collecting and maintaining supporting documentation as required by paragraph (c) of this section.

(2) *Where to file.* The SAR–MSB shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–MSB.

(3) *When to file.* A reporting money services business is required to file each SAR–MSB no later than 30 calendar days after the date of the initial detection by the reporting money services business of facts that may constitute a basis for filing a SAR–MSB under this section. In situations involving violations that require immediate attention, such as ongoing money laundering schemes, the reporting money services business shall immediately notify by telephone an appropriate law enforcement authority in addition to filing a SAR–MSB.

(c) *Retention of records.* A reporting money services business shall maintain a copy of any SAR–MSB filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–MSB. Supporting documentation shall be identified as such and maintained by the reporting money services business, and shall be deemed to have been filed with the SAR–MSB. A reporting money services business shall make all supporting documentation available to FinCEN and any other appropriate law enforcement agencies or supervisory agencies upon request.

(d) *Confidentiality of reports; limitation of liability.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this Part, may notify any person involved in the transaction that the transaction has been reported. Thus, any person subpoenaed or otherwise requested to disclose a SAR–MSB or the information contained in a SAR–MSB, except where such disclosure is requested by FinCEN or an other appropriate law enforcement or supervisory agency, shall decline to produce the SAR–MSB or to provide any information that would disclose that a SAR–MSB has been prepared or filed, citing this paragraph and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto. A reporting money services business, and any director, officer, employee, or agent of such reporting money services business, that makes a report pursuant to this section (whether such report is required by this section or made voluntarily) shall be protected from liability for any disclosure contained in, or for failure to disclose the fact of, such report, or both, to the extent provided by 31 U.S.C. 5318(g)(3).

(e) *Compliance.* Compliance with this section shall be audited by the

Department of the Treasury, through FinCEN or its delegees under the terms of the Bank Secrecy Act. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the Bank Secrecy Act and of this part.

(f) *Effective date.* This section is effective [30 days after the date on which the final regulations to which this notice of proposed rulemaking relates are published in the **Federal Register**].

Dated: May 16, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–13303 Filed 5–16–97; 4:32 pm]

BILLING CODE 4820–03–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA19

Financial Crimes Enforcement Network; Proposed Amendments to the Bank Secrecy Act Regulations—Special Currency Transaction Reporting Requirement for Money Transmitters

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') is proposing to amend the regulations implementing the Bank Secrecy Act to require money transmitters and their agents to report and retain records of transactions in currency or monetary instruments of at least $750 but not more than $10,000 in connection with the transmission or other transfer of funds to any person outside the United States, and to verify the identity of senders of such transmissions or transfers. The proposed rule is intended to address the misuse of money transmitters by money launderers and is in addition to the existing rule requiring currency transaction reports for amounts exceeding $10,000.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before August 19, 1997.

ADDRESSES: Written comments should be submitted to: Office of Legal Counsel, Financial Crimes Enforcement Network, Department of the Treasury, 2070 Chain Bridge Road, Vienna, Virginia 22182, *Attention*: NPRM—Money Transmitters—Special CTR Rule. Comments also may be submitted by electronic mail to the following Internet address: ''regcomments@fincen.treas.gov,'' with the caption, in the body of the text, ''*Attention*: NPRM—Money Transmitters—Special CTR Rule.'' For additional instructions on the submission of comments, see **SUPPLEMENTARY INFORMATION** under the heading ''Submission of Comments.''

Inspection of comments. Comments may be inspected at the Department of the Treasury between 10:00 a.m. and 4:00 p.m., in the FinCEN reading room, on the third floor of the Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Persons wishing to inspect the comments submitted should request an appointment by telephoning (202) 622–0400.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, and Charles Klingman, Financial Institutions Policy Specialist, FinCEN, at (703) 905–3920; Stephen R. Kroll, Legal Counsel, Joseph M. Myers, Deputy Legal Counsel, Cynthia L. Clark, on detail to the Office of Legal Counsel, Albert R. Zarate, Attorney-Advisor, and Eileen P. Dolan, Legal Assistant, Office of Legal Counsel, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

I. Introduction

This document contains a proposed rule that would amend 31 CFR part 103 to impose requirements on money transmitters and their agents to report and retain records of transactions in currency or monetary instruments of at least $750 but not more than $10,000 in connection with the transmission or other transfer of funds to any person outside the United States. The proposed rule also would amend the regulations implementing the Bank Secrecy Act to require that money transmitters verify the identity of the sender of the kind of transmission described above. Treasury has been moved to this unusual step by continuing evidence of serious abuses of the money transmitting industry by money launderers.

II. Background

A. Statutory Provisions

The Bank Secrecy Act, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR Part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

Section 5313 grants the Secretary of the Treasury broad authority to require financial institutions to report domestic transactions in coins or currency. Paragraph (a) of that section states:

> When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A person acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

Under 31 CFR 103.22, which was issued under the broad authority of section 5313(a), financial institutions generally are required to report transactions in currency in excess of $10,000. Under the Bank Secrecy Act, the term ''financial institution'' at present (that is, before the changes proposed to be made today) includes, *inter alia*, ''licensed transmitter[s] of funds, or other person[s] engaged in the business of transmitting funds.'' 31 CFR 103.11(n)(5).

In 1992, Congress amended the Bank Secrecy Act to allow the Secretary to require financial institutions to carry out anti-money laundering programs. *See* 31 U.S.C. 5318(h) (added to the Bank Secrecy Act by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550 (October 28, 1992)). Under section 5318(h), anti-money laundering programs must at a minimum include, *inter alia*, the ''development of internal policies, procedures, and controls.'' In 1994, Congress again amended the Bank Secrecy Act, this time to require the registration of money services businesses. *See* 31 U.S.C. 5330 (added to the Bank Secrecy Act by section 408 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325 (September 23, 1994)). Section 5330 defines a money services

business[1] as any business, other than a bank or the United States Postal Service, that is required to file reports under 31 U.S.C. 5313 and that provides check cashing, currency exchange, or money transmitting services, or issues or redeems money orders, traveler's checks, and other similar instruments. In requiring the registration of money services businesses, Congress recognized that such businesses are ''frequently used in sophisticated schemes to * * * transfer large amounts of money which are the proceeds of unlawful enterprise.'' 31 U.S.C. 5330 (Historical and Statutory Notes).[2]

B. Nature of the Problem

1. Money Transmitters—General

This notice is the third in a set of three notices of proposed rulemaking being published in this separate part of the **Federal Register** that deal with the application of the Bank Secrecy Act to money services businesses. The first of these notices relates to the registration of money services businesses (the ''Registration Rule''). The second would impose on some of these businesses a requirement to report suspicious transactions (the ''Suspicious Transaction Rule''). In proposing these rules, the Department of the Treasury is responding to the need to update and more carefully tailor the application of the Bank Secrecy Act to a major, if little understood, part of the financial sector in the United States.[3]

''Money services business'' is a newly coined term that refers to five distinctive types of financial services providers: currency dealers or exchangers; check cashers; issuers of traveler's checks, money orders, or stored value; sellers or redeemers of traveler's checks, money orders, or stored value; and money transmitters. These businesses are quite numerous; based on a study performed for FinCEN by Coopers & Lybrand, L.L.P., they comprise approximately 158,000[4] outlets or selling locations, and provide financial services involving approximately $200 billion. To a significant extent, the customer base for such businesses lies in that part of the population that does not use, either in whole or in part, traditional financial institutions, primarily banks.

The proposed special reporting rule contained in this document relates to money transmitters, a class of money services businesses. For purposes of this notice of proposed rulemaking, and consistent with the definition proposed in the Registration Rule, a money transmitter is

> (i) any person, whether or not licensed or required to be licensed, who accepts currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of the Board of Governors of the Federal Reserve System, or an electronic funds transfer network; or (ii) [a]ny other person engaged as a business in the transfer of funds.

Based on the study performed by Coopers & Lybrand, L.L.P., several broad generalizations can be made about the money transmitting industry in the United States. Due to the global trend of rapidly increasing electronic commerce and the increase in the number of persons who use international transfer services to send money to family and friends, the United States market for money transmission services has grown steadily over the last ten years. Money transmitters in the United States remitted approximately $10.8 billion in 1996, exclusive of fees, each year, through approximately 43,000 locations nationwide. The international component of the money transmission market has been growing at a rate of at least 20 per cent per year for the last five years. Even these estimates are believed to be low, because there is by all accounts a significant, ''informal'' international money transfer market.

The ''formal'' part of the non-bank money transmitter industry is highly concentrated: the vast majority of the formal funds transfers are handled by two major national companies through their network of agents. Most of the money transmission outlets are concentrated in six major states: California, New York, Texas, New Jersey, Florida, and Illinois. There appears to be a disproportionately large number of outlets as well in Georgia, Michigan, North Carolina, and Pennsylvania.

Most of the smaller money transmitters in competition with the major national companies are oriented toward particular markets and rely on their own service infrastructures for transferring funds and for communications and settlement among outlets. These niche transmitters often are bilingual, with outlets located in urban communities. Their customers are willing to pay a premium for value added services, such as receiving informal news from other countries.

State regulators have been monitoring the growing money transmission market with great interest. Twenty-three states now have licensing requirements for money transmitters. Some states, such as New York, also require each licensed money transmitter to register the names and locations of each of its legal agents or vendors, but in general, state regulations vary a great deal, and are primarily focused on consumer protection issues.

2. Use of Money Transmitters by Money Launderers

Work of the El Dorado Task Force. Since 1992, the El Dorado Task Force (the ''Task Force'') has been conducting an investigation into the money transmitting industry in the New York metropolitan area and its use by drug traffickers to return drug proceeds to narcotics source countries.[5] In the course of its work, the Task Force uncovered widespread abuse within segments of the money transmitter industry in New York.[6] One major money transmitter has itself pled guilty to money laundering charges,[7] and investigations of several other

[1] The statute uses the term ''money transmitting business'' to name those businesses subject to registration. See 31 U.S.C. 5330(a)(1) and (d)(1). However, FinCEN believes that the statutes's use of this term to refer to all the types of businesses subject to registration and its later use of the nearly identical term ''money transmitting service'' to refer to a particular type of business subject to registration, *compare* 31 U.S.C. 5330(d)(1)(A) *with* 31 U.S.C. 5330(d)(2), may lead to confusion. Therefore, FinCEN has adopted the term ''money services business'' in place of the term ''money transmitting business'' throughout this document and uses the same terminology in the other rules it is proposing today.

[2] *See also*, H. Conf. Rep. 652, 103d Cong., 191 (1994).

[3] The Congress has long-recognized the need generally to address problems of abuse by money launders of ''non-bank'' financial institutions. *See, e.g.*, Permanent Subcommittee on Investigations, Senate Comm. on Governmental Affairs, Current Trends in Money Laundering, S. Rep. No. 123, 102d Cong., 2d Sess. (1992).

[4] The number does not include Post Offices (which sell money orders), participants in stored value product trials, or sellers of various stored value or smart cards in use in, *e.g.*, public transportation systems.

[5] The Task Force was established by Treasury law enforcement agencies in 1992 specifically to investigate narcotics related money laundering in the New York metropolitan area. The Task Force is a joint effort of federal, state, and local authorities, and includes approximately 140 agents, police officers and administrative personnel from the Customs Service, the Criminal Investigative Division of the Internal Revenue Service, the Secret Service, the New York State Banking Department, the New York City Police Department, and a number of other local police authorities.

[6] The Task Force's investigations have led to the conviction of 97 persons and the seizure and forfeiture of over $10 million associated with money laundering through the licensed money transmitters.

[7] *United States* v. *Vigo Remittance Corp.*, No. 96–575 (J.S.)(E.D.N.Y.)(July 24, 1996)(entry of plea). It is fair to note that, since its guilty plea, Vigo has strengthened its Bank Secrecy Act compliance measures significantly.

transmitters and their agents are underway.[8]

The results of the Task Force's investigations confirm that the money transmitting industry in New York shares many common characteristics with the industry nationwide. First, the typical legitimate customer of a money transmitter in New York is someone who, because of lack of access for credit reasons or lack of sufficient documentation, has decided not to use banks to obtain financial services.

Second, with rare exceptions, almost all licensed money transmitters in New York operate through agents. Agents of the licensed money transmitters receive the transmitted funds from the sender, along with sender information, such as name, address, and telephone number, and recipient information, usually name and telephone number. The agents enter this information into computers provided by the money transmitters, and invoices are generated. The agents then send the information to the money transmitters by computer (or by fax, if the particular agent does not have a computer).

The agents must deposit the funds to be transmitted into bank accounts set up for the agents but controlled by the money transmitters. On a daily basis, each money transmitter will transfer all of the money it intends to transmit into one of several main transmission accounts maintained at a financial institution with access to CHIPS and FEDWIRE.[9] The funds are then moved through the domestic and foreign banking system by way of wire transfer. Once the transmitted funds have arrived at their destinations, foreign correspondents notify the recipients that their money is available to be picked up.

The primary method of laundering funds through money transmitters in New York that has come to light to date is the structuring of transactions beneath the thresholds for recordkeeping and reporting imposed by existing Bank Secrecy Act rules. Corrupt agents accept illicit funds, in amounts greater than $3,000 or $10,000, structure the funds to avoid the recordkeeping and reporting requirements, and then deposit the funds into accounts controlled by the money transmitter. The money transmitter then transmits the funds to the designated recipient locations.

Most often, the traffickers bring the agents large amounts of currency which need to be returned to a drug source country. The agents create invoices which make it appear as if the money had been brought in by a number of different senders, in amounts below the recordkeeping and reporting thresholds. These corrupt agents also provide the money transmitters with lists of recipient names in the foreign countries for each remittance, again using a different name for each remittance. In this way, each time it appears as if there were a number of smaller, unrelated remittances instead of one remittance, in excess of $3,000, that would trigger the recordkeeping rules of 31 CFR 103.33, or in excess of $10,000, which would trigger the filing of a Currency Transaction Report (''CTR'').

New York Geographic Targeting Order. Based in large part on the evidence produced by the Task Force, a large group of money transmitters (now 23 licensed transmitters and their approximately 3,200 agents) in the New York Metropolitan Area have been the subject of a Geographic Targeting Order (the ''Order''). Issued last August, the Order is grounded in 31 U.S.C. 5326 and 31 CFR 103.26, and is directed at the remittance of funds to Colombia.[10] The Order, first directed against 12 money transmitters and 1,600 agents, was expanded in October 1996, and again in April 1997. Its original 60-day period has been extended several times under the statutory rules, and the Order is at present set to expire on June 2, 1997.

The Order requires daily reporting by agents of the 23 money transmitters, and weekly reporting by their principals (*i.e.*, state-licensed money transmission companies), of information about the senders and recipients of all money transmissions of $750 or more to Colombia paid for with currency or bearer monetary instruments, as well as the reporting of any transactions or patterns of transactions that appear suspicious. Special verification of identity rules for such transactions are also imposed by the Order.

A number of factors in addition to the direct evidence adduced by the Task Force supported the Order's issuance. Perhaps most strikingly, the New York area money transmitters' business volume to Colombia was significantly out of harmony with legitimate demographic expectations. New York State Banking Department figures indicated that the 12 originally targeted transmitters had been sending approximately $1.2 billion annually to South America; about two thirds of this amount, or approximately $800 million, went to Colombia. To account for this figure, each of the approximately 25,500 Colombian households in the New York area (earning an average gross annual income of $27,000) would have had to send approximately $30,000 per year through money transmitters to Colombia.

Implementation of the Order almost immediately caused dramatic changes in the volume and character of money transmissions, indicating a major reduction in the amount of illicit funds moving through New York money transmitters.[11] Analysis of data generated by the Order is ongoing, but the targeted money transmitters' business volume to Colombia appears to have dropped approximately 30 percent. (Three of the money transmitters subject to the Order have simply stopped sending any funds to Colombia.) Most of the money that would in the past have been placed abroad through the use of money transmitters appears to have been physically removed from the New York Metropolitan area, either for transfer through money transmitters operating in other American cities, or for bulk smuggling out of the United States. The change demonstrates graphically both that narcotics money launderers have been extensively abusing a segment of the relatively unsupervised money transmitter industry, and that the underground market does respond to regulatory and enforcement pressures.

Ancillary results of the Order also have been significant. The Treasury has observed a dramatic increase in Customs Service interdiction and seizure activity at air and seaports, on common carriers, and on highways— over $50 million during the first seven months of the Order's operation, a figure over three times higher than that for comparable periods in prior years. Also significant is the fact that the cost of sending funds to Colombia through money transmitters in New York has dropped, from 7 percent to 5 percent of

[8] *See, e.g., United States* v. *Remesas America Oriental*, No. S1 96 Cr. 919 (S.D.N.Y. 1996).

[9] Clearing House Interbank Payments System (CHIPS) and FEDWIRE are commonly-used funds transfer systems.

[10] The Order was issued by Raymond W. Kelly, Under Secretary (Enforcement) of the Department of the Treasury, in response to an application from the United States Attorneys for the Eastern District of New York, the Southern District of New York, and the District of New Jersey and senior officials of the Customs Service and the Internal Revenue Service. (The statute allows such orders to be issued either upon a request from an appropriate law enforcement authority, or by the Treasury upon its own initiative.) Issuance of an order requires a finding, amply documented in this case, that there is reason to believe that special reporting or recordkeeping requirements are necessary to carry out the purposes, or prevent evasions of, the Bank Secrecy Act.

[11] One money transmitter surrendered its license to the New York Banking Department immediately before the Order became effective. Two other money transmitters subject to the Order simply stopped sending any funds to Colombia.

the value of the transfer, since the Order was put in place.

At the same time, it is clear that a significant number of money transmitter agents have been willing to structure transactions beneath the Order's $750 reporting threshold, in an attempt to move narcotics-tainted funds abroad even during a period of known surveillance of the industry and its agents. (At least one money transmitter has itself actively worked with federal authorities during this period to identify suspicious transactions, even those involving its own agents.) The number of transactions in amounts below $750 has risen sharply, and the amount of funds transferred to Colombia in such increments appears to have almost doubled. The Task Force has already executed search warrants on twenty-two money transmitter agents suspected of intentionally structuring transactions in violation of the Order; all but five businesses served have closed, five people have been indicted, and four people have already pleaded guilty. Three additional arrest warrants are outstanding. The Task Force is continuing to pursue investigations of this type, and the Treasury will consider imposing civil penalties against violators who are not pursued criminally.

Texas State Investigations. The New York GTO experience is not an isolated phenomenon. The Texas Attorney General's office began investigating so called ''giro houses'' in the Houston area in the early 1990s. Giro houses are independent money transmitters that also provide ancillary services such as cargo shipment and long distance telephone access. Before 1991, there were as many as 100 giro houses in Houston processing over $450 million per year in wire transfers, primarily to Colombia. The Texas Attorney General's Office, working with the Texas Department of Banking and the Houston office of the Internal Revenue Service, opened formal investigations of a number of giro houses. These investigations, like the El Dorado Task Force's investigations in New York, revealed a pattern of money laundering through false invoices designed to justify the large currency deposits at local banks.

From late 1994 through 1995 the Texas Attorney General's Office obtained and executed 11 search warrants at Houston giro houses. Many businesses closed while under investigation, and the overall effect of the Texas investigations on the illegitimate trade was dramatic. A recent count of giro houses lists eight sending funds to Colombia, and the total amount of money processed through giro houses has dropped to approximately $10 million.

A significant factor in the Texas investigations has been the state requirement that any wire transaction over $1,000 be recorded on a receipt that includes driver's license and social security or other photo identification numbers, birth date and address of the sender. Because false identification and addresses are commonly used by money launderers sending funds in excess of $1,000, the identification requirement has provided a clear mechanism for detecting and proving illegal behavior. In the case of businesses that are willing to structure transactions beneath the $1,000 threshold, surveillance has been used to document the deviation between the number of people observed patronizing the business and the number of customers reflected in business records during the surveillance period.

C. Need for Special Reporting and Recordkeeping Rules for Money Transmitters

This notice proposes to amend the Bank Secrecy Act regulations to require money transmitters and their agents to report and keep records of, and verify the identity of senders of, transactions in currency or monetary instruments of at least $750 but not more than $10,000 in connection with a transmission or other transfer of funds to any person outside the United States. While Treasury recognizes the significance of this proposed action, it believes that the step is nevertheless clearly warranted based on the potential, and the record of actual, abuse of the money transmission industry documented, *inter alia*, by the Task Force's investigations and the results of the Order.

As indicated above, the Order and the Texas investigations have had a significant impact in providing crucial information to the Treasury as well as disrupting the flow to Colombia, through money transmitters, of illegally-derived funds. But geographic targeting orders are by their nature relatively temporary measures, intended to illuminate, rather than solve, long-term enforcement problems. Given the structural factors that created the situation to which the Order was addressed (plus the evidence of extensive structuring that has taken place to avoid even the Order-imposed threshold of $750), the likelihood that launderers are now moving large sums through other money transmitters in other cities, and will resume doing so in New York once the Order expires, cannot responsibly be discounted, let alone ignored.

The Task Force's investigations and the Order focused on money transmitters in the New York Metropolitan Area. But the Texas giro house investigations and the consensus of law enforcement officials simply confirms what the New York situation itself would lead one to expect, namely that elements of the money transmission industry, given a combination of factors, are very susceptible to systematic misuse, extending unfortunately in some cases to infiltration and corruption, by money launderers.

It should be emphasized at the outset that, as in the case of the nations's banks and securities firms, most money services business operators and agents are completely law-abiding and as interested in cost-effective financial law enforcement as the Treasury itself. A number of major national money remitters and issuers of traveler's checks and money orders have already taken their own steps to devise anti-money laundering compliance programs.

The challenges for reasonable implementation of the Bank Secrecy Act posed by the situation the New York Order illuminates are daunting. Implementation of a comprehensive counter-money laundering strategy for money transmitter and other money services businesses raises significant issues not present in devising counter-money laundering strategies for banks, largely due to unique structural factors affecting money services businesses. Money transmitters (like other money services businesses) operate largely through the medium of independent enterprises that agree to serve as agents for the businesses' products or services.

Thus, the public does not deal directly with the businesses that issue the instruments, or actually perform the services, purchased, and the activities of the agents are subject to less systematic control than in the case, for example, of branch banks or brokerage offices.

Even more important, the experience encountered in New York and Texas indicates that the rules of the Bank Secrecy Act are not now appropriately tailored to reflect the particular operating realities, problems, and potential for abuse of an industry that deals in sums far below $10,000 per transaction. Given a truly ''cash'' industry, that moves impressively large sums in the aggregate, with few of the structural controls in place that banks and their regulators impose, and that is not subject to the sorts of market discipline to which banks are subject with respect to avoiding collaboration

with criminals, a single strategy does not easily suggest itself.

The issue facing the Treasury is how to move from the world of a temporary geographic targeting order to stabilize the situation of this industry. The decision to propose a $750 currency transaction reporting requirement for outbound transmissions reflects two determinations. The first is that such a rule, while in effect, will create a source of information that should help nationwide to stop the relatively uncontrolled outflow of narcotics proceeds through money transmitters. The second is that such a rule will allow more long-term (and less absolute) measures, most important, heightened industry procedures and programs based on a mandatory suspicious transaction reporting regime, backed by nation-wide registration of money services businesses, the time to become effective.

Treasury has considered a number of alternatives in seeking to craft the proposed rule. The value of reporting in this situation is plain. Mandatory reporting creates a critical source of information for Treasury enforcement and bank regulators about the transactions that move through money transmitters. That the reporting requirement also creates a deterrent effect and drives launderers from the system, cannot, Treasury believes, be seriously debated.

No Bank Secrecy Act requirement other than the New York Order (and previous geographic targeting orders, in Phoenix in 1989 and Houston in 1991) has ever keyed reporting requirements or special recordkeeping requirements at a level as low as $750. The next standard rung in the ladder is $3,000; money transmitters, like other financial institutions, currently are subject to a requirement to maintain records of funds transfers of $3,000 or more, *see* 31 CFR 103.33, and to a requirement to report transactions in currency of more than $10,000. *See* 31 CFR 103.22(a). It is, in part, the evasion of the $3,000 recordkeeping requirement that the New York Order was put in place to prevent.

In addition, enforcement and regulatory analyses increasingly confirm what the experience under the Order amply demonstrates, namely that a $3,000 threshold has small relevance to an industry that most commonly deals in sums far below that amount. A study by Coopers & Lybrand concluded that the average transaction amount for funds transferred by money transmitters to persons outside the United States is approximately $320. The fact that $750 is more than twice the amount of the average transaction decreases the likelihood that legitimate transactions will be put off track by this simple reporting requirement.

Another issue is whether the rule should apply to transfers to all destinations outside the United States, rather than, say, applying only to transmissions to particular countries. Any rule directed at transmissions to a particular nation would simply move the process to create a switching station in some third country, for funds ultimately bound to the country designated. (For example, there is some basis for a conclusion that funds destined for Colombia, once the New York Order was in place, were simply routed through transmitters in other Latin American nations, on their way to their ultimate destination in Colombia.) Not only is singling out a particular country likely to be ineffective, but it could also contravene international agreements to which the United States is a party.

Money transmitters provide a valuable service, especially in lower-income communities in which access to banks may be limited. In issuing this notice of proposed rulemaking, Treasury has sought to avoid imposing undue hardship on any segment of the United States population. On the contrary, by establishing a reporting threshold more than double the average amount of funds transferred outside the United States by a money transmitter, it is targeting the criminals who misuse money transmitters to send the profits of their illegal activity to drug source countries. Indeed, if the New York experience holds true, a lower reporting threshold may actually lead to a *reduction* in the cost to customers of remitting funds abroad through money transmitters.

As indicated above, it is not necessarily the case that any special $750 reporting rule, once made final, would be permanent. The Department of the Treasury intends carefully to review the experience of the industry and the results of reporting under the blanket $750 reporting rule. The Department of the Treasury intends, at the same time that its programs emphasize a government-industry thrust to bring counter-money laundering programs in the money services industry up to a workable standard, to determine whether, and to what extent, a special reporting rule continues to be necessary.

D. Authority for Special Reporting and Recordkeeping Rule for Money Transmitters

This notice of proposed rulemaking is grounded in the broad authority granted the Secretary of the Treasury by section 5313(a) and section 5318(h). Section 5313(a) authorizes the Secretary to require a domestic financial institution to report transactions involving coins, currency or other monetary instruments. Section 5318(h) authorizes the Secretary to require a financial institution to carry out anti-money laundering programs, including at a minimum the development of internal policies, procedures, and controls.

While 31 CFR 103.22(a) imposes a general reporting and recordkeeping threshold of more than $10,000 for domestic financial institutions, section 5313(a) does not mandate any single threshold amount. Instead, the statute grants the Secretary the discretion to require reports of transactions ''in an amount, denomination, or amount and denomination'' as the Secretary may prescribe. FinCEN believes this language permits the Secretary to impose a reporting threshold lower than $10,000, where the circumstances warrant.[12]

Similarly, the statute is silent on whether the Secretary may set a different reporting threshold for different kinds of financial institutions. Section 5313(a) does state, however, that reports of transactions may be required ''under circumstances the Secretary prescribes by regulation.'' FinCEN reads this broadly-stated language as permitting the Secretary to set a reporting threshold for money transmitters that is different than the reporting threshold for other financial institutions.[13]

The proposal contained in this document that would lower the general reporting threshold of more than $10,000 has historical antecedents. Both Congress and the Department of the Treasury have in the past each drafted a law or proposed a rule that would have lowered the $10,000 reporting threshold generally applicable to financial institutions. On these occasions, FinCEN is unaware of any challenge ever being made to Treasury's legal authority under the Bank Secrecy Act or its implementing regulations to make such a change.

In August 1986, the House of Representatives considered legislation (HR 5484) aimed at countering the misuse of financial institutions by narcotics launderers. One provision of that bill would have authorized the Secretary of the Treasury to order domestic financial institutions to report

[12] This plain reading of section 5313(a) is consistent with the statute's relevant legislative and administrative histories.

[13] Again, the relevant legislative and administrative histories of section 5313(a) do not conflict with this plain reading of the statute.

and retain records of any transaction of more than $3,000 involving currency or other monetary instruments. The version of the bill containing this provision was never enacted into law.[14]

When HR 5484 was introduced, the Department of the Treasury issued a notice of proposed rulemaking that would have amended the Bank Secrecy Act regulations to require domestic financial institutions to report and retain records of certain transactions in currency less than $10,000. *See* 51 FR 30233 (August 25, 1986). Specifically, the notice would have required that financial institutions obtain and retain a report from each purchaser of any official bank check, cashier's check, money order or traveler's check, if the purchase involved a transaction in currency of $3,000 or more. The rule then proposed would have required that each such report be signed by the purchaser and certify whether or not the purchaser had purchased more than $10,000 of these kinds of instruments in any one day. Under the notice, the selling financial institution would have been required to treat any affirmative certification, or refusal to certify, as a reportable transaction, that would require the financial institution to file a CTR. Based on Treasury's conclusions that these proposals were ''not advisable at this time,'' the proposals were eventually withdrawn. *See* 58 FR 6611 (February 29, 1988).

The notice of proposed rulemaking containing these proposals generated approximately 300 comments. While most commenters objected to lowering the reporting threshold from $10,000 to $3,000 for transactions involving the kinds of instruments listed above, no commenter questioned Treasury's legal authority under the Bank Secrecy Act and its implementing regulations to establish either a reporting threshold other than $10,000 or a different reporting threshold for different kinds of transactions.

III. Specific Provisions

A. 31 CFR 103.22(i)(1) General

Proposed paragraph (i)(1) states the special reporting rule for money transmitters. It provides that money transmitters and their agents must report transactions in currency or monetary instruments of at least $750 but not more than $10,000 in connection with a transmission or other transfer of funds to any person outside the United States.

Reporting Institutions

Any enterprise that is a money transmitter, within the definition proposed in the Registration Rule, or agent of a money transmitter, is subject to the proposed special reporting rule contained in this document.

As proposed, the special reporting rule would not apply to depository institutions, despite the fact that some depository institutions accept funds transmission business from non-customers. Depository institutions are subject to national examination by the federal financial supervisory agencies for, *inter alia*, compliance with the Bank Secrecy Act and adequacy of systems to prevent money laundering. They are also subject to the obligation to report suspicious transactions to the Department of the Treasury, and FinCEN will be issuing a suspicious transaction report advisory to banks with respect to the potential for abuse of the funds transmittal system by non-account customers in the near future. In addition, FinCEN does not possess information about the segment of the money transmission business that involves bank transmissions for non-account customers that indicates the sorts of abuses demonstrated, in the case of some non-bank money transmitters and their agents, by the New York Order, the Texas investigations, other enforcement activities, and industry analyses.

Under these circumstances, and in the absence of demonstrated abuse of the bank non-customer segment of the money transmission industry, the Department of the Treasury is not proposing the extension to depository institutions, at this time, of the rules proposed for other money transmitters by this notice of proposed rulemaking. However, comments are specifically requested on the question whether either competitive or other factors make it necessary for the special reporting rules to apply to banks, for non-customers, as well as to other money transmitters.

Reportable Transactions

The proposed reporting rule applies to transactions in currency or monetary instruments of at least $750 but not more than $10,000 in connection with a transmission or other transfer of funds to any person outside the United States. (At the more than $10,000 level, the normal reporting rules apply.) The $750 threshold for reporting under the proposed rule reflects information about the money transmitting industry provided voluntarily by the industry, collected by Coopers & Lybrand, L.L.P., and confirmed by the Task Force's investigations and the results of the Order. Law enforcement sources agree that, across the industry and throughout the United States, the average legitimate funds transfer to Colombia ranges in amount between $200 and $500.[15] Thus, reports about transfers of $750 or more should impose neither an undue burden on the legitimate business conducted by money transmitters nor an undue government intrusion into the financial affairs of their legitimate customers. In this regard, it is worth noting that the maximum available value of a U.S. Postal Service money order—a monetary instrument widely used for bill paying by the same part of the population that has a legitimate need for the services of money transmitters such as those targeted by the proposed special reporting rule—is $700.

Any transmission or other transfer of funds to any person outside the United States of at least $750 but not more than $10,000 would be subject to the proposed reporting rule. As discussed above, any limitation of the rule's attention to a particular country or group of countries would ignore the reality that organized financial crime and its money-moving circuits are worldwide in scope and would likely raise far more problems than it solved. Any such limitation would be both unfair and ill-tailored to the realities of the money laundering problem.

The reporting range for this proposed special reporting rule has been set at an amount of at least $750 but no more than $10,000 to avoid any overlap with the general reporting requirement of 31 CFR 103.22(a) to report transactions in currency of $10,000 or more. Moreover, the proposed special reporting rule does not affect in any way the obligation of money transmitters to comply with the suspicious transaction reporting requirements, as set forth in the Suspicious Transaction Rule. The proposed rule further does not affect the obligation for money transmitters to comply with the recordkeeping requirements for funds transfers as set forth in 31 CFR 103.33.

B. 31 CFR 103.22(i)(2) Identification Required

Proposed paragraph (i)(2) requires that before any money transmitter or agent completes a transaction in currency of at least $750 but not more

[14] Nevertheless, certain amendments to the Bank Secrecy Act (*e.g.*, making structuring a crime) eventually were made by the Money Laundering Control Act of 1986, Subtitle H of the Anti-Drug Abuse Act of 1986, Pub. L. 99–570 (October 27, 1986).

[15] According to the Coopers & Lybrand study, noted above, the average amount of a funds transfer from the United States to another country is approximately $320.

than $10,000 in connection with any transmission or other transfer of funds to any person outside the United States, the money transmitter or agent involved must verify and record the name and address of the sender of the funds and satisfy with respect to such transaction the requirements of 31 CFR 103.28, provided that for purposes of the special reporting requirement, only a drivers license, passport, alien registration card or state-issued identification card, containing a photograph of the individual involved, may be accepted for verification of identity.

C. 31 CFR 103.22(i)(3) Person Required To File and Keep Records

As is the case with the Suspicious Transaction Rule, proposed paragraph (i)(3) places responsibility for reporting on each money transmitter, as well as on its agents,

regardless of whether, and the terms on which, the money transmitter treats such person as an agent or independent contractor for other purposes.

The allocation of principal-agent liability in particular cases, under the governing terms of the Bank Secrecy Act, is too complex a subject to be dealt with in this notice of proposed rulemaking. However, the Department of the Treasury believes that at a minimum the operators of money transmitters have a duty to know their agents sufficiently well to be able to fulfill the reporting and recordkeeping obligations involved in compliance with the proposed rule. As in the case of the rules for suspicious activity reporting by banks, 31 CFR 103.21, and exemptions from the requirement to report transactions in currency by banks, 31 CFR 103.22(h), the proposed rule is intended to introduce a concept of due diligence into the reporting procedures, and that diligence applies equally to a review of activities of agents as to a review (by both principals *and* agents) of transactions of consumer-customers of money transmitters.

Treasury invites comments on whether the rule should contain more detailed procedures or rules dealing with the allocation of responsibility between principals (the money transmitters) and agents, as well as specific rules for compliance programs that recognize the realities of the business operations in this part of the financial sector.

D. 31 CFR 103.22(i)(4) Recordkeeping

Proposed paragraph (i)(4) makes it clear that records maintained by a money transmitter or its agent in compliance with and administration of the rules of this paragraph (i) must be maintained in accordance with the recordkeeping provisions of 31 CFR 103.38, which, *inter alia*, requires that records be maintained for a period of five years.

E. 31 CFR 103.27(a)(3)

Proposed paragraph (a)(3) states the filing deadline applicable to any report required to be filed by proposed paragraph (i)(1). Any such report must be filed within 30 days following the day on which the reportable transaction occurred.

IV. Proposed Effective Date

The amendments to 31 CFR Part 103 contained in this notice of proposed rulemaking will become effective 30 days following the publication in the **Federal Register** of the final rule to which this notice of proposed rulemaking relates.

V. Submission of Comments

An original and four copies of any comment (other than one sent electronically) must be submitted. All comments will be available for public inspection and copying, and no material in any such comments, including the name of any person submitting comments, will be recognized as confidential. Accordingly, material not intended to be disclosed to the public should not be submitted.

VI. Regulatory Flexibility Act

FinCEN certifies that the proposed rule contained in this document will not have a significant economic impact on a substantial number of small entities. The average money transmission from the United States to another country is approximately $320. This amount is substantially below the $750 threshold that triggers reporting under the proposed rule. Thus, FinCEN believes that the threshold has been set at a level that will avoid a significant economic burden on small businesses.

VII. Paperwork Reduction Act Notices

Special Currency Transaction Report for Money Transmitters

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information on *International Transmission of Funds Report* is presented to assist those persons wishing to comment on the information collection.

FinCEN anticipates that this proposed rule, if enacted as proposed, would result in a total of 300,000 *International Transmission of Funds Report* forms to be filed. This result is an estimate, based on a projection of the size and volume of the industry.[16]

Title: International Transmission of Funds Report.

OMB Number: To be determined.

Description of Respondents: Money transmitters.

Estimated Number of Respondents: 100,000.

Frequency: As required.

Estimate of Burden: Reporting average of 19 minutes per response; recordkeeping average of 5 minutes per response.

Estimate of Total Annual Burden on Respondents: 300,000 responses. Reporting burden estimate = 95,000 hours; recordkeeping burden estimate = 25,000 hours. Estimated combined total of 120,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated at $2,400,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Review: New.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden 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.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Recordkeeping Requirements of 31 CFR 103.22(i)

In accordance with requirements of the Paperwork Reduction Act of 1995,

[16] Given the state of our knowledge of the industry and patterns of illegal transactions, these estimates are extremely hard to generate.

44 U.S.C. 3501, *et seq.*, and its implementing regulations, 5 CFR Part 1320, the following information concerning the collection of information as required by 31 CFR 103.22(i) is presented to assist those persons wishing to comment on the information collection.

Title: Currency transaction special reporting.

OMB Number: 1506–0006.

Description of Respondents: All financial institutions.

Estimated Number of Respondents: 100,000.

Frequency: As required.

Estimate of Burden: Recordkeeping average of 10 minutes per response; 300,000 responses.

Estimate of Total Annual Burden on Respondents: Recordkeeping burden estimate = 50,000 hours.

Estimate of Total Annual Cost to Respondents for Hour Burdens: Based on $20 per hour, the total cost to the public is estimated to be $1,000,000.

Estimate of Total Other Annual Costs to Respondents: None.

Type of Review: Extension.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden 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.

In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the completion of the form. These comments on cost should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Comments may be submitted to FinCEN, at the address specified at the beginning of this document, *Attention:* Paperwork Reduction Act.

Responses to this request for comments under the Paperwork Reduction Act will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record.

VIII. Executive Order 12866

The Department of the Treasury has determined that this proposed rule is not a significant regulatory action under Executive Order 12866.

IX. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 because it believes that the proposed amendments will not result in the expenditure of $100 million or more in any one year by either state, local and tribal governments, in the aggregate, or by the private sector.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities, Taxes.

Proposed Amendments to the Regulations

For the reasons set forth above in the preamble, 31 CFR 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5330.

2. Paragraph (i) of section 103.22 is added to read as follows:

§ 103.22 Reports of currency transactions.

* * * * *

(i) *Reporting of the transmission or other transfer of funds outside the United States*—(1) *General.* In addition to any reports required by paragraph (a) of this section, each money transmitter or its agent shall file a report, in such manner as FinCEN may prescribe, of any transaction or attempted transaction in currency or monetary instruments in an amount of at least $750 but not more than $10,000, in connection with a request or order for the transmission or other transfer of funds, directly or indirectly, to any person outside the United States. For purposes of the preceding sentence, multiple transactions in currency shall be treated as a single transaction if the money transmitter or its agent has knowledge that the transactions are by or on behalf of any person and result in the transmission or other transfer of funds of at least $750 but not more than $10,000 on a single calendar day.

(2) *Identification required.* Before concluding any transaction described in paragraph (i)(1) of this section, a money transmitter or its agent must verify and record the name and address of the individual presenting such transaction and satisfy with respect to such transaction the requirements of § 103.28, provided that for purposes of this paragraph (i), only a drivers license, passport, alien registration card, state-issued identification card, containing a photograph of the individual involved, may be accepted for verification of identity.

(3) *Person required to file and keep records.* The obligation to report each transaction that is described in paragraph (i)(1) of this section and to maintain records as described in paragraph (i)(4) of this section, rests with the money transmitter involved and its agent, regardless of whether, and the terms on which, the money transmitter treats such person as an agent or independent contractor for other purposes. Notwithstanding this paragraph (i)(3), the filing of a report and maintaining of records by either the money transmitter involved or its agent satisfies the obligations imposed by this paragraph (i). If an agent of a money transmitter completes and files a report, a copy of the report also must be sent to the money transmitter for which the agent is acting.

(4) *Recordkeeping.* The records maintained by a money transmitter or its agent to document its compliance with and administration of the rules of this paragraph (i) shall be maintained in accordance with the provisions of § 103.38.

(5) *Excluded persons.* This paragraph (i) does not require reporting by depository institutions as defined in 31 U.S.C. 5313(g).

(6) *Effective date.* This paragraph (i) is effective [30 days following the publication in the **Federal Register** of the final rule to which this notice of proposed rulemaking relates].

3. In § 103.27, paragraphs (a)(3) and (a)(4) are redesignated as paragraphs (a)(4) and (a)(5), respectively, and new paragraph (a)(3) is added to read as follows:

§ 103.27 Filing of reports.

(a) * * *

(3) A report required by § 103.22(i) shall be filed within 30 days following the day on which the reportable transaction occurred.

* * * * *

Dated: May 16, 1997.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 97–13302 Filed 5–16–97; 4:32 pm]

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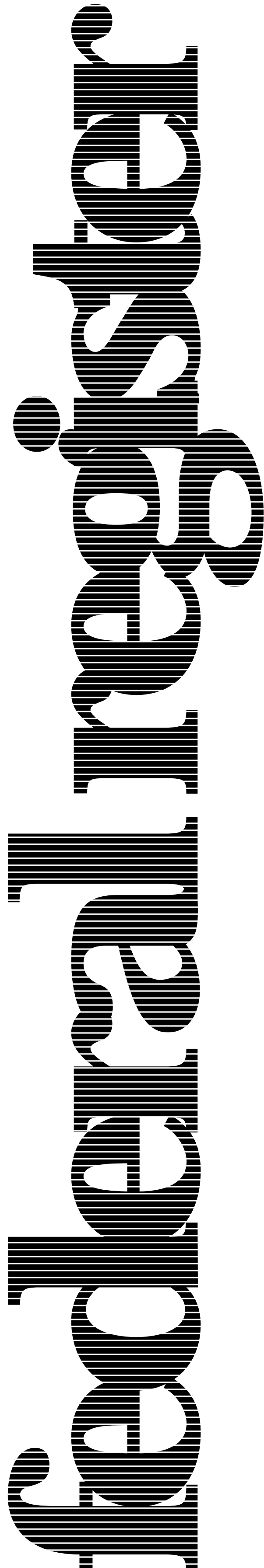

Wednesday
May 21, 1997

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125 and 135

Revision to Minimum Altitudes for the Use of an Autopilot; Final Rule

Advisory Circular 120–67; Criteria for Operational Approval of Auto Flight Guidance System; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No. 27987; Amendment No. 121–265, 125–29, 135–68]

RIN 2120–AF19

Revision to Minimum Altitudes for the Use of an Autopilot

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration amends the regulations governing the use of approved flight control guidance systems with automatic capability (autopilot), and would permit the use of an autopilot at altitudes less than 500 feet above ground level (AGL) during the takeoff and initial climb phases of flight. This amendment permits this use of approved autopilot systems for takeoff and initial climb phases of flight if the Administrator authorizes their use as stated in an air carrier's operations specifications. By permitting air carriers to take advantage of technological improvements in the operational capabilities of autopilot systems, safety will be enhanced by decreasing pilot workload during the critical takeoff phase of flight.

EFFECTIVE DATE: This amendment is effective June 20, 1997.

FOR FURTHER INFORMATION CONTACT: Richard A. Temple, AFS–410, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–5824.

SUPPLEMENTARY INFORMATION:

Background

The FAA is amending §§ 121.579 125.329, and 135.93 of Title 14 of the Code of Federal Regulations to permit certificate holders that operate under parts 121, 125, or 135 to obtain authorization to use an approved autopilot system for takeoff if authorized by the FAA in the certificate holders's operations specifications. Section 121.579(a) currently states that no person may use an autopilot en route, including climb and descent, at an altitude above the terrain that is less than twice the maximum altitude loss specified in the Airplane Flight Manual (AFM) for a malfunction of the autopilot under cruise conditions, or less than 500 feet, whichever is higher. Sections 125.329(a) and 135.93(a) state that no person may use an autopilot at an altitude above the terrain which is less than 500 feet or less than twice the maximum altitude loss specified in the approved Airplane Flight Manual or equivalent for a malfunction of the autopilot, whichever is higher. Paragraphs (b) and (c) in § 121.579, paragraphs (b), (c) and (d) of § 125.329, and paragraphs (b), (c), and (d) in § 135.93 provide exceptions to this restriction for the approach and landing phases of flight.

The current restrictions in the regulations regarding the use of an autopilot below 500 feet AGL have not been amended since 1965, when provisions for the landing phase of flight were incorporated into § 121.579. This change was incorporated into part 135 when § 135.93 was recodified in 1978, and into part 125 when § 125.329 was established in 1980. Although significant improvements in autopilot technology have been made, the regulations have not been amended to specifically permit the use of an autopilot system during the takeoff and initial climb phases of flight. In addition, the aviation industry anticipates further improvements in autopilot technology, particularly in relation to using the autopilot during the takeoff phase of flight.

The Aviation Rulemaking Advisory Committee (ARAC) and some industry members expressed their opinion that amending the regulation to permit increased usage of autopilot engagement during takeoff would have certain benefits, such as allowing pilots to focus proportionately more attention on duties other than the manual manipulation of the flight controls and constant surveillance of the cockpit instruments during the critical takeoff phase of flight. Based on a recommendation from the Autopilot Engagement Working Group of the ARAC, the FAA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on December 9, 1994 (59 FR 63868). Comments on the proposal closed January 9, 1995. Seven comments were received.

Based on autopilot technology, the expectation that technology will continue to advance, and the safety benefits that will result from using improved technology, the FAA amends the current regulations to permit authorization for the use of an autopilot during the takeoff and initial climb phases of flight; to enable parts 121, 125, and 135 operators, when authorized, to use existing technology; and to further promote technological advances while increasing the level of public safety.

The FAA and the aviation industry anticipate that further technological advances will lead to the evolution of additional autoflight guidance systems that can safely be used from initiation of takeoff roll to completion of landing.

Comments

The FAA received seven comments on the proposal. The Regional Airline Association (RAA) comments that it supports the proposal; that support is based primarily on its development and recommendation by the ARAC.

The National Air Transportation Association (NATA) comments that it supports the proposal because it allows operators to take advantage of advanced technology, thus decreasing pilot workload during a critical phase of flight. NATA also comments that it will achieve a significant increase in aviation operating safety without a corresponding increase in capital or operating expenses.

Maine Instrument Flight (MIF) supports the proposal, saying that this is a good example of how the FAA can respond to advances in technology and give regulatory relief to operators.

The Air Line Pilots Association (ALPA) also supports the proposed rule and advisory circular based on the permitted advantages of technological improvements in the operational capabilities of approved flight control guidance systems.

Boeing Commercial Airplane Group comments that it agrees with the FAA that an automatic pilot system can provide the flightcrew with work load relief during the busy takeoff and landing phases of flight. Boeing notes, however, that the NPRM addresses only a limited part of the total minimum engagement altitude issue, which is currently being addressed by the FAA/JAA/Industry All Weather Operations Harmonization Program. Boeing also sees no value in the proposed advisory circular discussed in the NPRM, commenting that existing methods of approval and use of the autopilot are adequate.

AVRO International Aerospace comments that it supports the proposal, but is concerned that it does not cover all phases of flight for which modern autopilots are being used, e.g., circling approaches. AVRO also comments that the certification procedures of 14 CFR 25.1329 must be updated since they do not specifically cover the operational changes of this proposal. AVRO notes that there is some overlap in the areas covered by the Autopilot Engagement Requirements Working Group and the All Weather Operations Working Group, and urges the FAA to coordinate within

the ARAC system to determine areas of responsibility. AVRO views the proposed advisory circular as ''increasing certification costs,'' and therefore recommends that it not be issued. AVRO also requests that commenters be given at least 30 working days to comment; they find 30 calendar days, over a holiday period, unacceptable.

The Civil Aviation Authority makes a similar comment on the abbreviated comment period. CAA commends the removal of arbitrary takeoff limitations, but also notes that this operational proposal fails to provide detailed airworthiness requirements, which it finds need to be developed in harmonization with the JAA requirements in JAR 25.1329.

In response to Boeing, AVRO, and CAA, the FAA notes that the ARAC, in establishing the initial terms of reference for its task, focused on the takeoff phase of flight only which is addressed in this rule change. Certification issues for future autopilot systems are presently being addressed by the ICAO All Weather Operations Harmonization working group and will complement this rule change.

The ICAO All Weather Operations Harmonization working group will propose the modification of 14 CFR 25.1329, automatic pilot systems, to determine any additional certification requirements for future uses of autopilot systems. This action is in keeping with the goal of FAR/JAR harmonization to the maximum extent possible.

The FAA agrees with Boeing and AVRO that the initial approval of the equipment installation would be addressed in the normal certification process. The advisory circular is addressed to operators under parts 119, 121, 125, and 135, providing issues to consider when requesting changes to their operations specifications. The FAA sees no additional program requirement or cost in the areas of certification and maintenance to the certificate holder by providing this list for their use. However, the FAA acknowledges that there may be minimal costs voluntarily incurred by the certificate holder associated with modifying existing training programs and manuals to utilize the new/lower engagement altitude.

An abbreviated comment period was determined by the FAA as adequate because of previous FAA/Industry participation and agreement through the ARAC process.

In the course or reviewing and addressing comments to the proposed minimum takeoff engagement height requirement the FAA noted that additional adjustments to the proposed provisions were necessary to properly relate these amended provisions to operational procedures and other provisions of the FAR, such as 14 CFR 121.189. Adjustments to the language of the provisions were also necessary to acknowledge that proper operational use of automatic flight guidance and control systems may sometimes require specific mode use constraints or minimum engagement altitudes above that demonstrated in the AFM. For example, because autoflight system use must be consistent with both lateral and vertical obstacle clearance requirements, and must take into account irregular terrain in the departure path, non-normal procedures for such things as engine failure, and the application of different methods for autoflight engagement height airworthiness demonstrations, it was recognized that the FAA and the operator may sometimes need to operationally specify mode use constraints or minimum engagement heights above that demonstrated and specified in the AFM. Issues such as these are typically addressed by the FAA's Flight Standardization Board (FSB) for each aircraft type, and any additional provisions for safe operational autoflight system use, if required, are identified by the FAA. Although the language in sections 121.579(d)(2), 125.329(e)(2), and 135.93(e)(2) [redesignated in this rule as sections 121.579(d)(3), 125.329(e)(3), and 135.93(e)(3)] was designed to address issues like the irregular terrain in the departure path, it would not have addressed some of the other issues mentioned above which warrant a higher minimum engagement height for the autopilot than specified in the AFM. Accordingly, the language of each of the provisions was modified to acknowledge this, and note that the Administrator may in certain instances find it necessary for safety to operationally specify engagement heights above or different than the minimum specified in the AFM. In view of the modifications discussed above, it was necessary to add some new language to the three sections to make it clear that engagement of the autopilot below the greater of two altitudes specified in §§ 121.579(a), 125.329(a), or 135.93(a) is only permitted if the AFM specifies a minimum engagement height. Thus, under these amendments, engagement of the autopilot is prohibited below the minimum engagement altitude specified in the AFM and may in some circumstances be prohibited below an altitude that is higher than the altitude specified in the AFM.

The Amendment

Section 121.579

Section 121.579 is amended by adding a new paragraph (d), which will allow the Administrator to issue operations specifications that establish the minimum altitude permitted to engage/use an autopilot during the takeoff and initial climb phases of flight. In addition, § 121.579(a) will be amended by striking the words ''paragraphs (b) and (c)'' and inserting the words ''paragraphs (b), (c), and (d).''

Section 125.329

Section 125.329 is amended by adding paragraph (e) to allow the Administrator to issue operations specifications that establish the minimum altitude permitted to engage/use an autopilot during the takeoff and initial climb phases of flight. In addition, § 125.329(a) is amended by striking the words ''paragraphs (b), (c), and (d)'' and inserting the words ''paragraphs (b), (c), (d), and (e).''

Section 135.93

Section 135.93 is amended by redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e) to allow the Administrator to issue operations specifications that establish the minimum altitude permitted to engage/use an autopilot during the takeoff and initial climb phases of flight. In addition, § 135.93(a) is amended by striking the words ''paragraphs (b), (c), and (d)'' and inserting the words ''paragraphs (b), (c), (d), and (e).''

Paperwork Reduction Act

The information collection requirements in the amendment to §§ 121.579, 125.329, and 135.93 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120–0008.

Economic Assessment

The FAA has determined that this rulemaking is not a significant rulemaking action as defined by Executive Order 12866, and therefore no assessment is required. In accordance with Department of Transportation Policies and Procedures (44 FR 11034; February 26, 1979) when the impact of a regulation will be minimal if adopted, a full regulatory evaluation does not need to be prepared. The following discussion provides an economic

assessment of the proposal's anticipated costs and benefits.

Costs

The amendment will allow air carriers and commercial operators to seek authorization for the use of autopilot systems during the takeoff phase of flight. Because the decision whether to seek authorization for the use of autopilot is optional and voluntary, the amendment will not impose any additional costs on certificate holders that operate under parts 121, 125, or 135.

Benefits

This amendment will have positive effects on the safety of air operations. As with any change to operations specifications, the FAA reserves the right to determine whether suggested revisions to an air carrier's operations specifications meet the various criteria and guidelines that will ensure that the current level of safety is met or exceeded.

The use of the autopilot system below 500 feet AGL will enable the pilot to monitor the performance of the aircraft while performing other safety-related functions, such as scanning the outside area for other aircraft. Since less time is spent manipulating the controls, the use of the autopilot also enables the flightcrew to more readily identify any deviations from expected aircraft performance thus increasing the pilot's opportunity to quickly respond to any aircraft malfunctions. Increasing the pilot's opportunity to scan the area outside the aircraft for other airborne traffic, to detect aircraft malfunctions, and to respond more quickly to problems will increase the level of safety.

International Trade Impact Analysis

The FAA has determined that the amendments to parts 121, 125, and 135 will not have a significant impact on international trade. The amendments are expected to have no negative impact on trade opportunities for U.S. firms doing business overseas or foreign firms doing business in the United States.

International Civil Aviation Organization and Joint Aviation Regulations

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to the maximum extent practicable. In reviewing the SARP for air carrier operations and JAR–OPS 1, the FAA finds that there is not a comparable rule under either ICAO standards or the JAR.

Regulatory Flexibility Determination

Congress enacted the Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354) to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules that may have a significant impact on a substantial number of small entities. This amendment will impose no additional costs on air carriers; therefore, it will not have a significant economic impact on small business entities.

Federalism Implications

The regulations contained 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 amendment will not have sufficient implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not a significant rulemaking action under Executive Order 12866. This amendment is also considered nonsignificant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA certifies that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the RFA.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 121, 125, and 135 of the Federal Aviation Regulations (14 CFR parts 121, 125, and 135) as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

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

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Section 121.579 is amended by removing ''paragraphs (b) and (c)'' and adding in their place ''paragraphs (b), (c), and (d)'' in paragraph (a) and adding new paragraph (d) to read as follows:

§ 121.579 Minimum altitudes for use of autopilot.

* * * * *

(d) *Takeoffs.* Notwithstanding paragraph (a) of this section, the Administrator issues operations specifications to allow the use of an approved autopilot system with automatic capability below the altitude specified in paragraph (a) of this section during the takeoff and initial climb phase of flight provided:

(1) The Airplane Flight Manual specifies a minimum altitude engagement certification restriction;

(2) The system is not engaged prior to the minimum engagement certification restriction specified in the Airplane Flight Manual or an altitude specified by the Administrator, whichever is higher; and

(3) The Administrator finds that the use of the system will not otherwise affect the safety standards required by this section.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

3. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

4. Section 125.329 is amended by removing ''paragraphs (b), (c), and (d)'' and adding in their place ''paragraphs (b), (c), (d), and (e)'' in paragraph (a) and adding new paragraph (e) to read as follows:

§ 125.329 Minimum altitudes for use of autopilot.

* * * * *

(e) Notwithstanding paragraph (a) of this section, the Administrator issues operations specifications to allow the use of an approved autopilot system with automatic capability during the takeoff and initial climb phase of flight provided:

(1) The Airplane Flight Manual specifies a minimum altitude engagement certification restriction;

(2) The system is not engaged prior to the minimum engagement certification restriction specified in the Airplane Flight Manual or an altitude specified by the Administrator, whichever is higher; and

(3) The Administrator finds that the use of the system will not otherwise affect the safety standards required by this section.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

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

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

6. Section 135.93 is amended by removing ''paragraphs (b), (c), and (d)'' and adding in their place ''paragraphs (b), (c), (d), and (e)'' in paragraph (a), redesignating paragraph (e) as paragraph (f), and adding new paragraph (e) to read as follows:

§ 135.93 Autopilot: Minimum altitudes for use.

* * * * *

(e) Notwithstanding paragraph (a) of this section, the Administrator issues operations specifications to allow the use of an approved autopilot system with automatic capability during the takeoff and initial climb phase of flight provided:

(1) The Airplane Flight Manual specifies a minimum altitude engagement certification restriction;

(2) The system is not engaged prior to the minimum engagement certification restriction specified in the Airplane Flight Manual, or an altitude specified by the Administrator, whichever is higher; and

(3) The Administrator finds that the use of the system will not otherwise affect the safety standards required by this section.

* * * * *

Issued in Washington, DC, on May 9, 1997.

Barry L. Valentine,

Acting Administrator.

[FR Doc. 97–12747 Filed 5–20–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 120–67; Criteria for Operational Approval of Auto Flight Guidance Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advisory circular.

SUMMARY: This advisory circular (AC), published with a related final rule amendment elsewhere in this separate part of the **Federal Register,** states an acceptable means, but not the only means, for obtaining operational approval of the initial engagement or use of an Auto Flight Guidance System (AFGS) under Title 14 of the Code of Federal Regulations (14 CFR) part 121, § 121.579(d); part 125, § 125.329(e); and part 135, § 135.93(e) for the takeoff and initial climb phase of flight. This advisory circular supports recent changes in the Title 14 that allow use of the autopilot at lower altitudes than previously allowed.

FOR FURTHER INFORMATION CONTACT: Richard A. Temple, AFS–410, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–5824.

SUPPLEMENTARY INFORMATION:

1. Purpose

This advisory circular (AC) states an acceptable means, but not the only means, for obtaining operational approval of the initial engagement or use of an Auto Flight Guidance System (AFGS) under Title 14 of the Code of Federal Regulations (14 CFR) part 121, § 121.579(d); part 125, § 125.329(e); and part 135, § 135.93(e) for the takeoff and initial climb phase of flight.

2. Applicability

The criteria contained in this AC are applicable to operators using commercial turbojet and turboprop aircraft holding Federal Aviation Administration (FAA) operating authority issued under SFAR 38–2 and 14 CFR parts 119, 121, 125, and 135. The FAA may approve the AFGS operation for the operators under these parts, where necessary, by amending the applicant's operations specifications (OPSPECS).

3. Background

The purpose of this AC is to take advantage of technological improvements in the operational capabilities of autopilot systems, particularly at lower altitudes. This AC complements a rule change that would allow the use of an autopilot, certificated and operationally approved by the FAA, at altitudes less than 500 feet above ground level in the vertical plane and in accordance with §§ 121.189 and 135.367, in the lateral plane.

4. Definitions

a. Airplane Flight Manual (AFM). A document (under 14 CFR part 25, § 25.1581) which is used to obtain an FAA type certificate. This document contains the operating procedures and limitations and performance information applicable to a particular airplane type in order to safely operate that aircraft and conform to the type certificate.

b. Autopilot. An aircraft system and associated sensors designed to provide automatic control of the pitch, roll, and, in certain instances, yaw axis of an aircraft.

c. Auto Flight Guidance System (AFGS). Aircraft systems, such as an autopilot, autothrottles, displays, and controls, that are interconnected in such a manner to allow the crew to automatically control the aircraft's lateral and vertical flightpath and speed. A flight management system (FMS) is sometimes associated with an AFGS.

d. Auto Throttle System (ATS). A system selected by the crew to provide automatic engine thrust control, as required, to achieve and maintain desired aircraft speed or vertical flight profile.

e. Control Wheel Steering (CWS). A selectable feature of some autopilots that directly relates control wheel displacement to a desired aircraft response. The pilot's force or displacement inputs of the control wheel/column or stick are transmitted by the autopilot into appropriate commands to the control surfaces to achieve the desired aircraft pitch, roll, or yaw response.

f. Flight Director (FD). An instrument display system providing visual commands for aircraft control by displaying appropriate command indications on the primary flight display. The flightcrew use these command indications to manually fly the aircraft or monitor the autopilot.

g. Flight Management Systems (FMS). An integrated system used by flightcrews for flight planning, navigation, performance management, aircraft guidance and flight progress monitoring.

h. Minimum Altitude for AFGS Engagement. Unless otherwise specified by the FAA, the minimum height relevant to the airport elevation, and runway elevation over which the crew may either initially engage an AFGS for automatic flight after takeoff or allow the AFGS to remain engaged during approach and landing.

5. Discussion

a. AFGS capabilities have steadily increased and improved with time. Air carrier crews now routinely use autoflight features that are operational during takeoff and landing/roll-out (e.g., control wheel steering, automatic landing, automatic throttles, and wingload alleviation).

b. Some aircraft now have automatic features identified for operations specifically at low altitudes (e.g., for noise abatement) which when used, contribute to performance, workload, cost, noise, and safety benefits. Such features will be certificated on the aircraft by either type certification or supplemental type certification. Operators may obtain operational approval for in service use by following the guidance in this AC. This should meet the intent of §§ 121.579, 125.329, and 135.93 for existing aircraft and describe acceptable methods for demonstration of these systems for new or modified aircraft.

c. In accordance with the regulations, §§ 121.579(d), 125.329(e), and 135.93(e), the autopilot system may not be engaged below the minimum engagement certification altitude specified in the AFM or an altitude specified by the Administrator, whichever is higher, and may not be engaged below that altitude without a finding by the Administrator that use of the system will not otherwise affect the safety standards required by those sections of the regulations. Additionally, the Flight Standardization Board (FSB) report for the aircraft may contain further conditions or limitations regarding AFGS engagement after takeoff. Inclusion of a specified altitude for use after takeoff in the AFM or the FSB report does not constitute approval to conduct operations. Authorization to engage the AFGS at the altitude specified in the AFM are made by a revision to the operator's OPSPECS. For aircraft with an AFM that specifies an AFGS engagement altitude for takeoff, principal operations inspectors (POI's) may issue OPSPECS authorizing the engagement of the AFGS after takeoff at or above the altitude specified in the AFM or as specified in the FSB report, whichever is higher. When an FSB report is not available, the FAA does not approve an altitude below that specified in the AFM or 200 feet, whichever is higher. The expectation is that as technology continues to advance, additional operational and safety

benefits can be derived from using improved autopilot technology. Such a benefit may eventually include the use of an AFGS from the beginning of the takeoff phase of flight, in which case the rules will have to be amended.

6. Operational Concept

a. The AFGS, as discussed in this AC, consists of an Autopilot (pitch, roll, and yaw) Flight Guidance System, which if used in conjunction with other available components such as FMS, autothrottle, etc. will enhance safety and ease pilot workload. Any or all of the many available automatic operational features are selectable at the pilot's discretion in modern transport aircraft. This allows a clear distinction to be made in contrast to the primary flight control system which may also be largely automatic and electronic, but is not normally deselectable at the flightcrew's discretion, such as the yaw dampers.

b. There are several functions of an AFGS that could be presented for operational approval. These functions could be used singularly or in combination with each other. The following are examples of these functions:

(1) Setting takeoff thrust.
(2) Initial climb.
(3) Noise abatement profiles.
(4) Engine failure recognition.
(5) Reduced climb performance profiles.

c. Approval for using any of the above functions may include changing equipment, equipment support, and operational procedures in the aircraft manufacturer's AFM and in the air carrier's operations manual. Approval may require adjustments to the air carrier's OPSPECS.

d. Once the new operation is developed and approved, maintenance and flightcrew training programs must be adjusted and approved. Qualification of maintenance personnel and flightcrews must be accomplished before flight operations with the new procedure can be implemented.

7. Airport and Ground Facilities

An applicant authorized to use an AFGS may have certain constraints related to airports or ground facilities specified in the operator's OPSPECS where such specific provisions are necessary (e.g., operations based on special procedures at airports with adjacent mountainous terrain, operations requiring runway guidance information, etc.).

8. Airborne Equipment

AFGS system criteria will be defined in the AFM.

9. Pilot Training and Proficiency Program

The operator's training program for flight-crews should provide ground and flight training in the following subjects:

a. Knowledge of airport and ground facilities—as defined in the airborne equipment certification, AFM, and/or Flight Operations Manual (FOM) to include new minima criteria for weather operations authorized through OPSPECS.

b. The use of the AFGS within the parameters indicated by the AFM and FOM. This should include all normal and abnormal procedures.

c. Training should include checking in the flight tasks (maneuvers and procedures) that have been adjusted in the manuals.

10. Operations Manual and Procedures

Procedures, instructions, and information to be used by flightcrews should be developed by each air carrier to include, as applicable, the following:

a. Flight Crewmember Duties. Flight crewmember duties during initial engagement or use of the AFGS should be described in the air carrier's operations manual. These duties should contain a description of the responsibilities and tasks for the pilot flying the aircraft and the pilot not flying the aircraft during all stages of operation. The duties of the third flight crewmember, if required, should also be explicitly defined.

b. Training Information. Training requirements and procedures should be provided in the operator's approved training program.

11. Maintenance Program

Each operator should establish a maintenance and reliability program, acceptable to the Administrator, to ensure that the airborne equipment will continue at a level of performance and reliability established by the manufacturer or the FAA. [part 121, subpart L; part 125, subpart G; and part 135, subpart J] The program should include the following:

a. Maintenance Personnel Training. Each operator should establish an initial and recurrent training program, or arrange for contract maintenance that is acceptable to the Administrator for personnel performing maintenance work on airborne systems and equipment. Personnel training records should be maintained.

b. Test Equipment and Standards. The operator's program for maintenance of line (ramp) test equipment, shop (bench) test equipment, and a listing of all primary and secondary standards utilized during maintenance of test equipment which relates to airborne system operation should be submitted to the Administrator for determination of adequacy. Emphasis should be placed on standards associated with flight directors, automatic flight control systems, maintenance techniques and procedures of associated redundant systems.

c. Maintenance Procedures. Any changes to maintenance procedures, practices, or limitations established in the qualification for airborne system operations are to be submitted to the Administrator for acceptance before such changes are adopted.

12. Engineering Modifications.

Titles and numbers of all modifications, additions, and changes that were made to qualify aircraft systems performance should be provided to the Administrator. [part 21, subparts D and E]

Dated: May 13, 1997.

W. Michael Sacrey,

Acting Deputy Director, Flight Standards Service.

[FR Doc. 97–13176 Filed 5–20–97; 8:45 am]

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Federal Register

Vol. 62, No. 98

Wednesday, May 21, 1997

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FEDERAL REGISTER PAGES AND DATES, MAY

23613–23938 1
23939–24324 2
24325–24558 5
24559–24796 6
24797–25106 7
25107–25420 8
25421–25798 9
25799–26204 12
26205–26380 13
26381–26734 14
26735–26914 15
26915–27166 16
27167–27492 19
27493–27686 20
27687–27926 21

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6996 24555
6997 24557
6998 25105
6999 25421
7000 26201
7001 26203
7002 26379
7003 27167

Executive Orders:
12975 27685
13046 27685

Administrative Orders:
Presidential Determinations:
No. 97–21 of April 24, 1997 23939
Memorandums:
March 27, 1997 26369
April 24, 1997 24797

5 CFR

530 25423
531 25423
591 25423
1312 25426
2641 26915
3801 23941

Proposed Rules:
1603 25558
1640 25559

7 CFR

28 25799
29 24559
35 27493
226 23613
301 ....23620, 23943, 24746, 24753
340 ....23628, 23945
401 25107
454 23628
457 ....23628, 25107, 26205
718 25433
723 24799
729 25433
947 27169
1131 26735
1230 26205
1464 24799
1493 24560
1494 24560
1755 ....23958, 25017
1930 25062
1941 26918
1944 ....25062, 25071, 26207
1951 25062
1965 25062
3403 26168

Proposed Rules:
Ch. XIII 24849, 25140
319 ....24849, 25561
321 24849
330 24849
401 23675
405 25140
416 ....23680, 26750
425 23685
435 26248
437 23690
457 ....23675, 23680, 23685, 23690, 25140, 26248, 26750
800 26252
1005 27525
1007 27525
1011 27525
1046 27525
1126 26255
1137 24610
1138 26257
1710 27546

8 CFR

292 23634

9 CFR

77 24801
92 23635
94 ....24802, 25439
160 25444
161 25444
304 23639
308 ....23639, 26211
310 ....23639, 26211
327 23639
381 ....23639, 26211
416 ....23639, 26211
417 23639

Proposed Rules:
3 24611

10 CFR

2 ....26219, 27494
51 26730
52 ....25800, 27293, 27840
110 27494
420 26724
430 26140
450 26724
703 24804
1023 24804

Proposed Rules:
51 26733
71 25146
435 24164

11 CFR

Proposed Rules:
100 24367
104 24367
109 24367
110 24367

12 CFR

217 26736

229....26220
327....27171
543....27177
552....27177
571....27177
614....25831
617....24562
618....25831
620....24808
630....24808
931....26921
934....26921
Proposed Rules:
Ch. IX....25563
210....27547
307....26431
330....26435
343....26994
566....26449

13 CFR

121....24325, 26381
Proposed Rules:
120....25874

14 CFR

25....27687
39....23640, 23642, 24009, 24013, 24014, 24015, 24017, 24019, 24021, 24022, 24325, 24567, 24568, 24570, 24809, 24810, 25832, 25833, 25834, 25836, 25837, 25839, 26221, 26223, 26381, 26737, 27293, 27496
71....23643, 23644, 23646, 23647, 34648, 23649, 23651, 23652, 23653, 23654, 23655, 23656, 24024, 25110, 25112, 25445, 25448, 26224, 26383, 26739, 27181, 27659, 27688, 27690
91....268901
95....25448
97....24025, 25110
121....27920
125....27920
135....27920
187....24286, 24552
310....25840
374....25840
Proposed Rules:
Ch. I....26894
11....24288
21....24288
25....24288, 26453
39....23695, 23697, 24851, 25130, 25563, 25565, 25566, 26258, 26261, 26456, 27211, 27554
71....23699, 25568, 26263, 26264, 26265, 26457, 27212, 27705, 27706
93....26902

15 CFR

730....25451
732....25451
734....25451
736....25451
738....25451
740....25451
742....25451
744....25451, 26922
750....25451
752....25451
754....25451
756....25451
758....25451
762....25451
764....25451
768....25451
770....25451
772....25451
902....27182
950....24812
Proposed Rules:
3....27556

16 CFR

305....26383
Proposed Rules:
1015....24614

17 CFR

1....24026, 25470, 26384, 27659
5....26384
15....24026, 27659
16....24026, 27659
17....24026, 27659
31....26384
230....24572, 26386
239....26386
240....26386
249....26386
270....26923
Proposed Rules:
230....24160
239....24160
270....24160, 24161
274....24160

18 CFR

284....25842
Proposed Rules:
4....25874
154....24853
375....25874
430....25569

19 CFR

122....24814
351....27296
353....27296
355....27296
Proposed Rules:
111....24374
163....24374
351....25874

20 CFR

429....24328
Proposed Rules:
404....26997
416....26997
718....27000, 27562
722....27000, 27562
725....27000, 27562
726....27000, 27562
727....27000, 27562

21 CFR

172....26225
510....27691
520....27691
522....27692
558....27693
806....27183
812....26228
1310....27693
Proposed Rules:
Ch. I....24619
178....25475
511....25212, 25153
514....25152
558....25477
898....25477
1308....24620, 27214

22 CFR

41....24331, 24332, 24334
42....27693
122....27497

23 CFR

1327....27193

24 CFR

5....24334, 27124
573....24573
941....27124
950....24334, 27124
968....27124
3280....24337
3282....24337
Proposed Rules:
200....27486
960....25728
966....25728
3500....25740

25 CFR

Proposed Rules:
181....27000

26 CFR

1....23657, 25498, 25502, 26740
26....27498
301....25498, 26740
601....26740
602....25502
Proposed Rules:
1....26755, 27563
301....26755
601....26755

27 CFR

Proposed Rules:
9....24622

28 CFR

0....23657
45....23941
527....27872
544....25098
Proposed Rules:
16....26458

29 CFR

1601....26933
4044....26741
Proposed Rules:
4231....23700

30 CFR

Proposed Rules:
251....23705
253....24375
914....25875

31 CFR

1....26934
351....24280
356....25113, 25224
Proposed Rules:
103....27890, 27900, 27909
207....25572
356....24375

32 CFR

199....26939
310....26389
316....26389
317....26389
706....23658, 26742, 26743
Proposed Rules:
285....25875

33 CFR

100....26229, 26744, 27498, 27499
117....24338, 25514
154....25115
155....25115
156....25115
165....23659, 24339, 26390, 26392, 27500
325....26229
334....24034
Proposed Rules:
96....23705
100....24377
110....24378
167....25576

34 CFR

668....27128
685....25515
Proposed Rules:
1100....24860

36 CFR

Proposed Rules:
7....24624

37 CFR

Proposed Rules:
1....24865
2....24865

38 CFR

Proposed Rules:
3....23724
17....23731
36....24872, 24874

39 CFR

20....25136, 25515
111....24340, 25752, 26086
Proposed Rules:
111....25876
502....25876
3001....25578

40 CFR

52....24035, 24036, 24341, 24574, 24815, 24824, 24826, 26393, 26395, 26396, 26399, 26401, 26405, 26745, 26854, 27195, 27198, 27199, 27201, 27204
60....24824
70....26405
81....24036, 24038, 24552, 24826, 26230, 27204
87....25356
148....26998
180....24040, 24045, 24835, 24839, 25518, 25524, 26407,

26412, 26941, 26946, 26949, 26954, 26960
244....24051
261....26998
268....26998
271....26998, 27501
372....23834
721....27694
Proposed Rules:
51....27158
52....24060, 24380, 24632, 24886, 24887, 26459, 26460, 26463, 27158
60....24212, 24887, 25877
63....24212, 25370, 25877, 27707
80....24776, 25879
81....24065, 26266
82....27874
87....25368
131....27707
148....26041
180....24065, 27002, 27132, 27142, 27149
228....26267
260....24212, 25877
261....24212, 25877, 26041
264....24212, 25877
265....24212, 25877
266....24212
268....26041
270....24212, 25877
271....24212, 25877, 26041
300....26463
372....24887

41 CFR
302–1....26374
302–6....26374
Proposed Rules:
101–47....24383

42 CFR
405....25844
413....27210
417....25844
473....25844
493....25855

43 CFR
3800....26966
Proposed Rules:
3400....27563
3410....27563
3420....27563
3440....27563
3450....27563
3460....27563
3470....27563
3480....27563

44 CFR
64....24343, 27503
67....25858
Proposed Rules:
62....23736
67....25880

45 CFR
1610....27695
1626....24054, 24159
1642....25862

46 CFR
13....25115
15....25115
30....25115
35....25115
98....25115
105....25115
108....23894, 27659
110....23894
111....23894
112....23894
113....23894
159....25525
160....25525
161....23894
169....25525
199....25525
Proposed Rules:
2....23705
31....23705
71....23705
91....23705
107....23705
115....23705
126....23705
175....23705
176....23705
189....23705

47 CFR
0....24054
1....24576, 26235
2....24576, 26239, 26684
15....26239
24....27563
64....24583, 24585
68....24587
73....24055, 24842, 24843, 24844, 25557, 26416, 26417, 26418, 26419, 26684, 26966, 27700, 27701, 27702
74....26684
76....25865, 26235, 26245
101....24576
Proposed Rules:
Ch. I....25157
1....26465, 27710
2....24383
24....27507
25....24073
73....24896, 26466, 27710, 27711

48 CFR
1201....26419
1202....26419
1203....26419
1211....26419
1214....26419
1237....26419
1246....26419
1252....26419
1253....26419
1831....24345
6103....25865
6104....25868, 25870
6105....25870
Proposed Rules:
1....26640, 27214
2....26640, 27214
3....26640, 27214
4....26640, 27214
5....26640, 27214
6....26640, 27214
7....26640, 27214
8....27214
9....26640, 27214
11....26640, 27214
12....25786, 26640, 27214
13....26640, 27214
14....25786, 26640, 27214
15....25786, 26640, 27214
16....26640, 27214
17....26640, 27214
19....25786, 26640, 27214
24....26640, 27214
25....26640, 27214
27....26640, 27214
28....26640, 27214
31....26640, 27214
32....23740, 26640, 27214
33....25786, 26640, 27214
34....27214
35....26640, 27214
36....26640, 27214
42....26640, 27214
43....26640, 27214
44....26640, 27214
45....26640, 27214
49....26640, 27214
50....26640, 27214
52....23740, 25786, 26640, 27214
53....25786, 26640, 27214
252....23741
1515....27712

49 CFR
1....23661
8....23661
10....23666
107....24055
171....24690
172....24690
173....24690
175....24690
176....24690
178....24690
190....24055
571....25425
572....27563
801....27702
837....27702
Proposed Rules:
Ch. V....27578
Ch. X....24896
192....27715
195....27715
571....26466
1039....27002, 27003
1121....23742
1150....23742

50 CFR
91....24844
222....24345
227....24345, 24588
285....27518
600....23667
622....23671
630....26427
648....25138
660....24355, 24845, 25872, 27519, 27523
670....24058
674....26428
678....26428, 27703
679....24058, 25138, 26246, 26428, 26429, 26749, 26854, 26992, 27210
Proposed Rules:
17....24387, 24388, 24632, 26757
600....23744, 24897, 27214
622....25158
648....24073

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MAY 21, 1997

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Grapes and plums, exported:
- Black Corinth grape variety; exemption; published 5-20-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Atlantic shark; published 5-21-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- Labeling codes; published 5-21-97
- New drug applications—
  - Oxytetracycline injection; published 5-21-97

JUSTICE DEPARTMENT

Drug Enforcement Administration

List I chemicals; manufacturers, distributors, importers and exporters; registration:
- Combination ephedrine products; published 5-21-97

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:
- Transfer of inmates to or from foreign countries; published 5-21-97

LEGAL SERVICES CORPORATION

Aliens; legal assistance restrictions; published 4-21-97
- Correction; published 4-28-97

Fee-generating cases; published 4-21-97

Fund recipients:
- Application of Federal law; published 4-21-97

Lobbying and certain other activities; restrictions; published 4-21-97

Non LSC funds use:
- Client identity and statement of facts; published 4-21-97
- Statutory restrictions; implementation; published 5-21-97

Priorities in use of resources; published 4-21-97

Prisoners representation; published 4-21-97

Solicitation restriction; published 4-21-97

Subgrants, fees, and dues:
- Prohibition of use of funds to pay membership dues to private or nonprofit organization; published 4-21-97

TRANSPORTATION DEPARTMENT

Equal Access to Justice Act; implementation; Federal regulatory reform; published 4-21-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Boeing; published 5-6-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Limes grown in Florida and imported; comments due by 5-29-97; published 4-29-97

Milk marketing orders:
- Upper Florida; comments due by 5-27-97; published 4-24-97

Soybean promotion, research, and consumer information:
- United Soybean Board; representation adjustments; comments due by 5-30-97; published 4-30-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Animal welfare:
- Rulemaking petitions—
  - Retail pet store; term definition; comments due by 5-27-97; published 3-25-97

Plant-related quarantine, foreign:
- Fruits and vegetables; importation; comments due by 5-27-97; published 3-25-97

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Fees:
- Official inspection and weighing services; comments due by 5-28-97; published 5-13-97

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:
- Electric borrowers; accounting requirements; comments due by 5-29-97; published 4-29-97

BLIND OR SEVERELY DISABLED, COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE

Committee for Purchase From People Who Are Blind or Severely Disabled

Miscellaneous amendments; comments due by 5-27-97; published 3-27-97

COMMERCE DEPARTMENT

International Trade Administration

Uruguay Round Agreements Act (URAA):
- Antidumping and countervailing duties; conformance and Federal regulatory review; comments due by 5-27-97; published 5-12-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Shortraker and rougheye rockfish; comments due by 5-27-97; published 5-14-97
- Atlantic swordfish; drift gillnet emergency closure; comments due by 5-29-97; published 5-14-97
- West Coast States and Western Pacific fisheries—
  - Chinook salmon; comments due by 5-27-97; published 5-12-97

Marine mammals:
- Incidental taking—
  - Naval activities; USS Seawolf submarine shock testing; comments due by 5-28-97; published 4-28-97

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Modular contracting; comments due by 5-27-97; published 3-27-97
- Progress payments; comments due by 5-30-97; published 5-1-97

DEFENSE DEPARTMENT

Engineers Corps

Water resource development projects, public use; shoreline use permits; comments due by 5-30-97; published 4-15-97

ENERGY DEPARTMENT

Acquisition regulations:
- Technical data regulations; revisions to rights; comments due by 5-30-97; published 3-31-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Wool fiberglass manufacturing facilities; comments due by 5-27-97; published 3-31-97

Air programs:
- Outer Continental Shelf air regulations—
  - Corresponding onshore area requirements; consistency update for Florida; comments due by 5-30-97; published 4-30-97

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 5-30-97; published 4-30-97
- New Jersey; comments due by 5-30-97; published 4-30-97
- Oklahoma; comments due by 5-29-97; published 5-14-97
- Washington; comments due by 5-30-97; published 4-30-97

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
- Alabama; comments due by 5-30-97; published 4-30-97

Clean Air Act:
- Enhanced monitoring program; compliance assurance monitoring; credible evidence revisions
  - Document availability; comments due by 5-27-97; published 4-25-97

Water pollution control:

Water quality standards—
Idaho; comments due by 5-28-97; published 4-28-97

FARM CREDIT ADMINISTRATION

Farm credit system:
Funding and fiscal affairs, loan policies and operations, and funding operations—
Cumulative voting by shareholders; comments due by 5-27-97; published 4-25-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
Colorado; comments due by 5-27-97; published 4-11-97
Kansas; comments due by 5-27-97; published 4-11-97
Louisiana; comments due by 5-27-97; published 4-11-97
Missouri; comments due by 5-27-97; published 4-11-97
Nevada et al.; comments due by 5-27-97; published 4-11-97

FEDERAL ELECTION COMMISSION

Contribution and expenditure limitations and prohibitions:
Independent expenditures and party committee expenditure limitations; comments due by 5-30-97; published 5-5-97

FEDERAL RESERVE SYSTEM

Federal Reserve Bank Capital Stock; Issue and Cancellation (Regulation I):
Simplification, update, and regulatory burden reduction; comments due by 5-30-97; published 3-31-97
Membership of State banking institutions (Regulation H):
Simplification, update, and regulatory burden reduction; comments due by 5-30-97; published 3-31-97
Security procedures (Regulation P); comments due by 5-30-97; published 3-31-97

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Thrift savings plan:
Death benefits payments; comments due by 5-27-97; published 3-27-97

FEDERAL TRADE COMMISSION

Hobby Protection Act:
Overall costs, benefits, and regulatory and economic impact; comments due by 5-27-97; published 3-25-97

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Modular contracting; comments due by 5-27-97; published 3-27-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
Polymers—
1,4-benzenedicarboxylic acid, etc.; comments due by 5-28-97; published 4-28-97
Food for human consumption:
White chocolate; identity standard; comments due by 5-27-97; published 3-10-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare and Medicaid programs:
Physical therapy, respiratory therapy, speech language pathology, and occupational therapy services; salary equivalency guidelines; comments due by 5-27-97; published 3-28-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Housing Opportunity Program Extension Act of 1996; implementation:
Section 8 rental certificate, rental voucher, and moderate rehabilitation programs; admission and occupancy requirements; comments due by 5-30-97; published 3-31-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Preble's meadow jumping mouse; comments due by 5-27-97; published 3-25-97

INTERIOR DEPARTMENT

Minerals Management Service

Outer Continental Shelf; geological and geophysical explorations; comments due by 5-30-97; published 5-1-97
Outer Continental Shelf; oil, gas, and sulphur operations:
Oil and gas production measurement, surface commingling, and security; comments due by 5-27-97; published 2-26-97
Royalty management:
Functions; delegation to States; comments due by 5-27-97; published 4-24-97
Oil valuation; Federal leases and Federal royalty oil sale; comments due by 5-28-97; published 4-24-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Alabama; comments due by 5-27-97; published 4-25-97
Indiana; comments due by 5-29-97; published 4-29-97
Missouri; comments due by 5-29-97; published 4-29-97

JUSTICE DEPARTMENT

Justice Programs Office

Public safety officers' death and disability benefits:
Federal law enforcement dependents assistance program; comments due by 5-27-97; published 4-24-97

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

Employee Retirement Income Security Act:
Plan assets; participant contributions; comments due by 5-27-97; published 3-27-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Modular contracting; comments due by 5-27-97; published 3-27-97

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public availability and use:
Reproduction services; fee schedule; comments due by 5-30-97; published 3-31-97

POSTAL SERVICE

Domestic Mail Manual:
Special services reform; implementation standards; comments due by 5-27-97; published 5-12-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules:
Grand Canyon National Park; establishment of corridors; comments due by 5-27-97; published 5-15-97
Airworthiness directives:
Airbus Industrie; comments due by 5-30-97; published 3-31-97
Boeing; comments due by 5-27-97; published 4-17-97
Empresa Brasileira de Aeronautica S.A.; comments due by 5-30-97; published 3-12-97
General Electric Aircraft Engines; comments due by 5-30-97; published 3-31-97
Mooney Aircraft Corp.; comments due by 5-30-97; published 3-26-97
Airworthiness standards:
Special conditions—
Ilyushin Aviation Complex model Il-96T airplane; comments due by 5-27-97; published 4-9-97
Lockheed Martin Aerospace Corp. model L382J airplane; comments due by 5-27-97; published 4-10-97
Class D airspace; comments due by 5-30-97; published 4-14-97
Class E airspace; comments due by 5-27-97; published 3-26-97
VOR Federal airways; comments due by 5-27-97; published 4-9-97

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Antiterrorism and Effective Death Penalty Act of 1996; implementation:
Plastic explosives; marking for purpose of detection; comments due by 5-27-97; published 2-25-97

VETERANS AFFAIRS DEPARTMENT

DIsabilities rating schedule:
Cold injuries; comments due by 5-27-97; published 3-28-97

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 968/P.L. 105–15

To amend title XVIII and XIX of the Social Security Act to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain nursing facilities. (May 15, 1997; 111 Stat. 34)

Last List May 16, 1997