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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 39

[Docket No. 96–CE–53–AD; Amendment 39–10308; AD 98–03–16]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft Corporation Model PA–38–112 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to The New Piper Aircraft Corporation (Piper) Model PA–38–112 airplanes. This action requires repetitively replacing the upper rudder hinge bracket. Reports of fatigue cracks occurring on the upper rudder hinge bracket, and the manufacture of a new upper rudder hinge bracket with a life limited improved design prompted this action. The actions specified by this AD are intended to prevent cracks in the upper rudder hinge bracket, which could result in separation of the rudder from the airplane and loss of control of the airplane.

DATES: Effective March 16, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft Corporation, Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 96–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., suite 450, Atlanta, Georgia 30349; telephone (770) 703–6084; facsimile (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Model PA–38–112 airplanes having serial numbers 38–80A0166 through 38–82A0122, was published in the **Federal Register** on May 7, 1997 (62 FR 24851). The action proposed to require repetitively replacing the upper rudder hinge bracket, part number (P/N) 77610–02 or an FAA-approved equivalent part number, with a new upper rudder hinge bracket, P/N 77610–03. The upper rudder hinge bracket must be replaced regularly because it is life-limited. Accomplishment of the proposed action would be in accordance with Piper Service Bulletin No. 686, dated May 23, 1980.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 153 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $60 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $27,540 for the U.S. fleet or $180 per airplane. The manufacturer has informed the FAA that none of the owners/operators of the affected airplanes have accomplished this action.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

98–03–16 The New Piper Aircraft Corporation: Amendment 39–10308; Docket No. 96–CE–53–AD.

Applicability: Model PA–38–112 airplanes (serial numbers 38–80A0166 through 38–82A0122), certificated in any category.

Note 1: The serial numbers listed in the applicability section of this AD do not match the serial numbers in Piper Aircraft Corporation (Piper) Service Bulletin (SB) No. 686, dated May 23, 1980. This AD takes precedence over the applicability section in the Piper SB 686, dated May 23, 1980.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

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

To prevent cracks in the upper rudder hinge bracket, which could result in separation of the rudder from the airplane and loss of control of the airplane, accomplish the following:

(a) Upon the accumulation of 5,000 hours total time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, remove and replace the upper rudder hinge bracket, part number (P/N) 77610–02 or an FAA-approved equivalent part number, with a new upper rudder hinge bracket, P/N 77610–03. Thereafter, at intervals not to exceed 5,000 hours TIS, replace the upper rudder hinge bracket, P/N 77610–03, with a new upper rudder hinge bracket, P/N 77610–03 in accordance with the Instructions section of Piper SB No. 686, dated May 23, 1980.

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

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Atlanta Aircraft Certification Office.

(d) The removal and replacements required by this AD shall be done in accordance with the Instructions section of Piper Aircraft Corporation Service Bulletin No. 686, dated May 23, 1980. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft Corporation, Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–10308) becomes effective on March 16, 1998.

Issued in Kansas City, Missouri, on January 29, 1998.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2776 Filed 2–10–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–222–AD; Amendment 39–10312; AD 98–03–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that requires one-time inspections to verify proper installation and to detect chafing and/or damage of certain rerouted wire bundles; to verify if certain protective grommets are installed properly and to detect missing grommets; and various follow-on actions. This amendment is prompted by a report of smoke and fire in the lower left-hand side of the E1–1 rack of the electrical equipment bay due to chafing of wire bundles as a result of missing protective grommets. The actions specified by this AD are intended to prevent chafing of wire bundles, which could result in smoke and fire at the E1–1 rack of the electrical equipment bay.

DATES: Effective March 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1998.

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

FOR FURTHER INFORMATION CONTACT: Forrest Keller, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2790; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes was published in the **Federal Register** on April 17, 1997 (62 FR 18726). That action proposed to require one-time inspections to verify proper installation and to detect chafing and/or damage of certain rerouted wire bundles; to verify if certain protective grommets are installed properly and to detect missing grommets; and various follow-on actions.

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

Several commenters support the proposed rule.

Request for Clarification

One commenter suggests that the FAA provide clear and objective criteria in the proposed AD for determining if the wire bundle is too tight or too slack. The commenter states that sufficient clearance is very important when determining the length of a wire bundle. The FAA finds that clarification of this point is necessary. The FAA's intent was that operators refer to Boeing Standard Wiring Practices Manual 20–10–11 (undated) for these procedures. Therefore, the FAA has revised paragraph (a)(1)(iii) of the final rule to include a reference to this manual as the appropriate source of service information for correction of discrepancies.

Conclusion

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

Cost Impact

There are approximately 62 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,360, or $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–03–20 Boeing: Amendment 39–10320. Docket 96–NM–222–AD.

Applicability: Model 757 series airplanes, on which Boeing Alert Service Bulletin 757–24A0025, dated May 10, 1985, and/or Boeing Service Bulletin 757–24A0025, Revision 1, dated December 17, 1987, has been accomplished; excluding variable numbers NA003, NA004, NA007, NA009, NA010, NA012 through NA016 inclusive, and NA021; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of wire bundles, which could result in smoke and fire at the E1–1 rack of the electrical equipment bay, accomplish the following:

(a) Within 6 months after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Perform a one-time inspection to verify proper installation and to detect chafing and/or damage of the wire bundles, having part numbers (P/N) W4508, W2608, and W2604. Pay particular attention to the area where the wire bundles are routed through the web supports and the area over the edge of intercostal R–23L.

(i) If the wire bundles are installed properly and no chafing or damage is detected, no further action is required by this paragraph.

(ii) If any chafing or damage is detected, prior to further flight, repair it in accordance with Boeing Standard Wiring Practices Manual 20–10–13 (not dated).

(iii) If any wire bundle is installed improperly, prior to further flight, loosen the wire bundle clamps, adjust the wire bundles to achieve proper clearances, and retighten the wire bundle clamps, in accordance with Boeing Standard Wiring Practices Manual 20–10–11 (not dated).

(2) Perform a one-time inspection to verify if all protective grommets identified in Boeing Alert Service Bulletin 757–24A0025, dated May 10, 1985, are installed properly and to detect missing grommets. If any grommet is improperly installed or missing, prior to further flight, replace the grommet with a new grommet or install a new grommet, as applicable, in accordance with the alert service bulletin.

(3) Perform a one-time inspection to determine if a protective grommet is installed on the upper edge of intercostal R–23L at approximately station 450 between the intercostal and wire bundles having P/N's W2608 and W4508. If no protective grommet is installed, prior to further flight, install one between the wire bundles and intercostal, in accordance with Boeing Production Installation Drawing 288N4329, Revision H, Sheets 1 and 2 (undated).

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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

(d) Certain actions shall be done in accordance with Boeing Alert Service Bulletin 757–24A0025, dated May 10, 1985, Boeing Production Installation Drawing 288N4329, Revision H, Sheets 1 and 2 (not dated), Boeing Standard Wiring Practices Manual 20–10–11 (not dated), and Boeing Standard Wiring Practices Manual 20–10–13 (not dated). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 18, 1998.

Issued in Renton, Washington, on January 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2827 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–231–AD; Amendment 39–10311; AD 98–03–19]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER), Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires deactivation of certain circuit breakers, and a revision to the Airplane Flight Manual (AFM) to provide operational procedures to prevent loss of electrical power following an engine flameout. This AD also requires modifications of the electrical system, which terminate the requirement for the AFM revision and allow reactivation of the circuit breakers. This amendment is prompted by the issuance of mandatory continued airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent generator overload conditions that could result in loss of electrical power and failure of certain flight and landing control systems, and to prevent power interruption to the attitude heading reference system (AHRS) that could result in the display of erroneous heading information.

DATES: Effective March 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica, S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John W. McGraw, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6098; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes was published in the **Federal Register** on November 28, 1997 (62 FR 63288). That action proposed to require deactivation of certain circuit breakers, and a revision to the Airplane Flight Manual (AFM) to provide operational procedures to prevent loss of electrical power following an engine flameout. That action also proposed to require modifications of the electrical system, which would terminate the requirement for the AFM revision and allow reactivation of the circuit breakers.

Comments

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

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 227 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AFM revisions required by this AD on U.S. operators is estimated to be $13,620, or $60 per airplane.

It will take approximately 90 work hours per airplane to accomplish the required modifications at an average labor rate of $60 per work hour. Required parts will cost approximately $4,150 per airplane. Based on these figures, the cost impact of the modifications required by this AD on U.S. operators is estimated to be $2,167,850, or $9,550 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that 43 U.S. registered airplanes are in compliance in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators is now $11,040 for accomplishment of the AFM revisions, and $1,757,200 for accomplishment of the modifications.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–03–19 Empresa Brasileira De Aeronautica, S.A. (Embraer): Amendment 39–10311. Docket 97–NM–231–AD.

Applicability: Model EMB–120, EMB–120RT, and EMB–120ER series airplanes; up to and including serial number 120291; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent generator overload conditions that could result in loss of electrical power and failure of certain flight and landing control systems, and to prevent power interruption to the attitude heading reference system (AHRS) that could result in the display of erroneous heading information, accomplish the following:

(a) For airplanes not equipped with an auxiliary power unit (APU); except serial numbers 120004, 120006 through 120024 inclusive, 120026 through 120030 inclusive, 120033 through 120035 inclusive, 120037, and 120040; on which Part I, II, or III of EMBRAER Service Bulletin 120–24–0008, Change 03, dated August 19, 1994, or Change 04, dated October 3, 1995, has not been accomplished: Within 3 days after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Trip (pull open) circuit breakers (CB) 534 (auxiliary generator 2 bus control) and CB 535 (auxiliary generator 1 bus control) located in the right-hand direct current (DC) relay box and left-hand DC relay box, respectively.

(2) Install circuit breaker collars to prevent the circuit breakers from closing.

(3) Install, near CB 534 and CB 535, a placard or tag with the following wording: ''Do not close CB 534 or CB 535.''

(b) For all airplanes: Within 30 days after the effective date of this AD, accomplish paragraphs (b)(1), (b)(2), and (b)(3) of this AD.

(1) Revise the Abnormal Procedures section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

''SECTION III—ABNORMAL PROCEDURES:
ENGINE FAILURE
ONE ENGINE INOPERATIVE APPROACH AND LANDING
If auxiliary power unit (APU) is not available
Electrical Load ..... REDUCE TO BELOW 400 AMPS

At least the following systems should be turned off: windshield heating, propeller de-ice, gasper fans, recirculation fans, logo-type lights, and taxi lights.

CAUTION

Should an unexpected electrical power loss occur during a rejected takeoff or landing run, remember:
—Emergency brake will be available
—Below 45 knots (KT), turn anti-skid off to recover one normal brake pair (inboard or outboard).

ELECTRICAL FAILURE
SHORT CIRCUIT IN THE RELAY BOX DIRECT CURRENT (DC) BUS 1

—GEN 1 OFF BUS, BUS 1 OFF. EMERG BUS OFF, CENTRAL BUS OFF, BATT OFF BUS and inverter 2 INOP lights illuminated on the electrical panel.

Note: In some cases, the CENTRAL BUS OFF light may not illuminate.

—ELEC light illuminated on the multiple alarm panel.
—CAUTION light flashing.

Caution: DO NOT TRY TO RESET THE ELECTRICAL SYSTEM.

Electrical Emergency Switch ..... EMERG
Altitude ..... AT OR BELOW 25,000 FT

Airplane is limited to 25,000 ft since the left engine bleed is closed due to loss of the electrical power.
The engines or APU airstart and electrical crossfeed are not possible.
The equipment connected to the relay box DC BUS 1, DC BUS 1, radio master DC buses 1B and 1C are out. Land as soon as practical.

Note:

- For airplanes Pre-Mod SB 120–24–0008, the AHRS 1 and the equipment connected to the radio master DC BUS 1A are out too.
- For airplanes Post-Mod SB 120–33–0033 or S/N 120.273 and on:
  —The emergency lights will be automatically turned on when the electrical system is in emergency operating mode.
  —The emergency lights must be turned off, in order to save the emergency light batteries.
  —The emergency lights must be turned on during approach or when necessary.''

(2) Revise the Normal Procedures section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

''SECTION IV—NORMAL PROCEDURES:
BEFORE TAKEOFF
If APU is available
APU Generator ..... ON

Takeoff must be carried out with APU generator connected to the central DC bus, thus providing another source to avoid overload should one engine flame out.

.
If APU is not available
Electrical Load ..... REDUCE TO BELOW 400 AMPS

At least the following systems should be turned off: windshield heating, propeller de-ice, gasper fans, recirculation fans, logo-type lights, and taxi lights.

AFTER TAKEOFF
If APU is available
APU ..... AS REQUIRED
If APU is not available
Electrical load ..... RESTORE
Windshield heating ..... AS REQUIRED
Emergency lights switch ..... OFF, then ARM

APPROACH
If APU is available
APU Generator ..... ON

Approach and landing must be carried out with APU generator connected to the central DC bus.

BEFORE LANDING
If APU is not available
Electrical Load ..... REDUCE TO BELOW 400 AMPS

At least the following systems should be turned off: windshield heating, propeller de-ice, gasper fans, recirculation fans, logo-type lights, and taxi lights.

CAUTION: Do not set electrical emergency switch to emergency position during approach or landing.''

(3) Revise the Limitations section (Section II) of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

''Both starter/generators must operate normally prior to flight. The APU generator must operate normally prior to flight in known or forecast icing conditions. [Note: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]''

(c) Within 12 months after the effective date of this AD, accomplish paragraphs (c)(1) and (c)(2) of this AD, as applicable.

(1) For all airplanes except serial numbers 120004, 120006 through 120024 inclusive, 120026 through 120030 inclusive, 120033 through 120035 inclusive, 120037, and 120040; on which Part I, II, or III of EMBRAER Service Bulletin 120–24–0008, Change 03, dated August 19, 1994, or Change 04, dated October 3, 1995; has not been accomplished: Modify the electrical system in accordance with Part IV of EMBRAER Service Bulletin 120–24–0008, Change 04, dated October 3, 1995. After this modification is accomplished, the modification required by paragraph (a) of this AD may be removed and the affected circuit breakers reactivated.

(2) For all airplanes: Modify the electrical system in accordance with EMBRAER Service Bulletin 120–24–0051, Change 04, dated March 8, 1995. After this modification is accomplished, the AFM revisions required by paragraph (b) of this AD may be removed from the AFM.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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

(f) The actions shall be done in accordance with the following EMBRAER service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
120–24–0008, Change 04, October 3, 1995	1–4	04	Oct. 3, 1995.
	5–64	03	Aug. 19, 1994.
120–24–0051, Change 04, March 8, 1995	1–4, 41–46, 59, 60, 89–92	04	Mar. 8, 1995.
	5–40, 47–58, 61–88, 93–103	03	Nov. 3, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica, S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directives (DAE) 93–24–01, dated December 31, 1993; 94–03–01R1, dated December 10, 1994, and 93–12–01R1, dated December 12, 1994.

(g) This amendment becomes effective on March 18, 1998.

Issued in Renton, Washington, on January 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2826 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–264–AD; Amendment 39–10322; AD 98–04–09]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes, that requires a one-time visual inspection to detect cracking of the brake torque tube lever, and corrective action, if necessary. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the brake torque tube lever, which could result in a disconnection between the brake pedal and brake system, and consequent reduced directional controllability of the airplane during landing.

DATES: Effective March 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes was published in the **Federal Register** on November 28, 1997 (62 FR 63294). That action proposed to require a one-time visual inspection to detect cracking of the brake torque tube lever, and corrective action, if necessary.

Comments

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

Two commenters support the proposed rule. One commenter states that it has already accomplished the proposed inspection.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 131 Fokker Model F28 Mark 0070 and Mark 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $23,580, or $180 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–04–09 Fokker: Amendment 39–10322. Docket 97–NM–264–AD.

Applicability: All Model F28 Mark 0070 and Mark 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the captain's left-hand brake torque tube lever, which could result in a disconnection between the captain's left-hand brake pedal and left-hand brake system, and consequent reduced directional controllability of the airplane during landing, accomplish the following:

(a) Perform a one-time visual inspection using a mirror or borescope to detect cracking of the brake torque tube lever having part number (P/N) D75669–001, in accordance with Fokker Service Bulletin SBF100–32–108, dated February 7, 1997, at the time specified in paragraph (a)(1) or (a)(2), as applicable, of this AD. If any crack is detected, prior to further flight, replace either the lever or the entire assembly with a new or serviceable component, in accordance with the Accomplishment Instructions of the service bulletin.

(1) For airplanes that have accumulated 15,000 or more total flight cycles as of the effective date of this AD: Inspect within 30 days after the effective date of this AD.

(2) For airplanes that have accumulated fewer than 15,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 10,000 total flight cycles, or within 2 months after the effective date of this AD, whichever occurs later.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators

shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(d) The actions shall be done in accordance with Fokker Service Bulletin SBF100–32–108, dated February 7, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 1997–025(A), dated February 28, 1997.

(e) This amendment becomes effective on March 18, 1998.

Issued in Renton, Washington, on February 4, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3261 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reconsideration of final rule; request for comments.

SUMMARY: On January 5, 1996, the National Oceanic and Atmospheric Administration (NOAA) promulgated final regulations for the assessment of natural resource damages pursuant to section 1006(e) of the Oil Pollution Act of 1990. These final regulations, codified at 15 CFR Part 990, were published at 61 FR 440. The final regulations were challenged, pursuant to section 1017(a) of OPA, and, on November 18, 1997, a ruling on the final regulations was issued by the U.S. Court of Appeals for the District of Columbia Circuit (*General Electric Co.* v. *Commerce*, No. 96–1096 (D.C. Cir., Nov. 18, 1997)). Two issues were remanded to NOAA for further agency decisionmaking—the scope of authorization for recovery of legal costs and authorization for the removal of residual oil by trustees as part of a natural resource restoration action. This request seeks public comment on the issue involved in the authorization for the removal of residual oil by trustees as part of a natural resource restoration action. The issue of the scope of authorization for recovery of legal costs may be sought through publication of a future request for comments.

DATES: Written comments should be received no later than March 30, 1998.

ADDRESSES: Written comments are to be submitted to: Eli Reinharz, c/o Office of General Counsel/Natural Resources, 1315 East-West Highway, Room #15132, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Eli Reinharz, 301–713–3038, ext. 193; (FAX: 301–713–4387; e-mail: ereinharz@exchange.nos.noaa.gov) or Linda Burlington, 301–713–1217 (FAX: 301–713–1229; e-mail: Linda.B.Burlington@noaa.gov).

SUPPLEMENTARY INFORMATION: In the event of a discharge or substantial threat of a discharge of oil (incident), the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides that federal, state, Indian tribal and/or foreign natural resource trustees may determine natural resource injuries, assess natural resource damages, present a claim, recover damages, and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources and services under their trusteeship. The National Oceanic and Atmospheric Administration (NOAA) was directed by Congress to promulgate regulations for the assessment of natural resource damages resulting from an incident.

NOAA promulgated final regulations on January 5, 1996 (see 61 FR 440), codified at 15 CFR Part 990. The regulations are for the use of authorized federal, state, Indian tribe, and foreign natural resource trustees. A major goal of OPA is to make the environment and public whole for harm to natural resources and services as a result of an incident. The regulations provide a framework for conducting natural resource damage assessments that achieve this OPA goal. Under the regulations, assessments are conducted in the open, with responsible parties and the public involved in the planning process to ensure that restoration will be achieved more quickly, transaction costs will decrease, and litigation will be avoided. Restoration plans developed with input from the public and responsible parties are the basis of a claim for natural resource damages, with final restoration plans presented to responsible parties for funding or implementation.

The final regulations were challenged, pursuant to section 1017(a) of OPA. On November 18, 1997, a ruling on the final regulations was issued by the U.S. Court of Appeals for the District of Columbia Circuit (*General Electric Co.* v. *Commerce*, No. 96–1096 (D.C. Cir., Nov. 18, 1997)). Two issues were remanded to NOAA for further agency decisionmaking—the scope of authorization for recovery of legal costs and authorization for the removal of residual oil. This Notice requests comments to address the authorization for the removal of residual oil by trustees.

Section 990.53(b)(3)(i) of the final OPA rule authorizes trustees to ''[r]emove conditions that would prevent or limit the effectiveness of any restoration action (e.g., residual sources of contamination)'' and to consider these actions primary restoration. NOAA's rationale for this provision was that there may be circumstances where trustees need to remove residual oil beyond response actions taken by the lead response agency as part of a restoration action. For example, following the August 1993 Tampa Bay, Florida, oil spill, the trustees initiated an action to remove oil from oyster reefs to further minimize and eliminate injury to the reefs, including erosion that could have affected adjoining mangroves, and other biological resources.

In its ruling, the Court directed NOAA to reconsider the final rule language, posing a series of questions about the standards and circumstances under which removal actions may be taken by trustees. To address these questions, NOAA is inviting the submission of information on both case-specific and other consultation experiences, with the United States Coast Guard, the Environmental Protection Agency, or State response agencies relating to removal actions taken both during and after response. NOAA is also interested in reviewing information regarding the standards, circumstances, and outcomes of incidents where trustees considered additional removal actions beyond those proposed by the lead response agency as part of a natural resource restoration action, as well as the issues and results

of consultations with response agencies to seek oil removal during or after the response phase.

Dated: February 6, 1998.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 98–3455 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–ES–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101, 116, 201, 216 and 352

[Docket No. RM97–6–000; Order No. 598]

Units of Property Accounting Regulations

Issued February 5, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its units of property and oil pipeline regulations to require companies to maintain a written property units listing, to apply the listing consistently, and to furnish the Commission with a justification of any changes in the listing, if requested, and to clarify that companies may use estimates when it is impractical or unduly burdensome for companies to identify the cost of retired property. In addition, the Commission is removing certain regulations which prescribe unit-of-property listings for jurisdictional companies. These changes will allow companies additional flexibility in maintaining their records of units of property. Finally, the Commission also is removing the regulation which prescribes a minimum rule that requires oil pipelines to charge operating expenses for acquisitions, additions and improvements costing less than $500.

EFFECTIVE DATE: March 13, 1998.

FOR FURTHER INFORMATION CONTACT:

Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 (202) 208–0224

Mark Klose, Office of the Chief Accountant, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 219–2595

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2–A, 888 First Street, N.E., Washington, D.C. 20426. The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, also provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user. CIPS can be accessed over the Internet by pointing your browser to the URL address: http://www.ferc.fed.us. Select the link to CIPS. The full text of this document can be viewed, and saved, in ASCII format and an entire day's documents can be downloaded in WordPerfect 6.1 format by searching the miscellaneous file for the last seven days. CIPS also may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

Recordkeeping for Units of Property Accounting Regulations for Public Utilities and Licensees, Natural Gas Companies and Oil Pipeline Companies

The Federal Energy Regulatory Commission (Commission) here adopts a final rule, amending its regulations, which require jurisdictional public utilities and licensees, natural gas companies and oil pipeline companies to maintain a written listing of Units of Property and to apply the listing consistently. These three groups are collectively called ''Companies'' in this final rule.

Under the final rule, Companies will have the opportunity to identify and maintain Units of Property listings that are up-to-date and more in harmony with the needs of their businesses. Companies may reduce the level and number of detailed Units of Property records that they currently maintain.

The final rule eliminates Title 18, Code of Federal Regulations (18 CFR), Parts 116, 216, and 352 (instruction 3–14). Elimination of these parts will not affect the information currently reported in the FERC Forms 1, 1–F, 2, 2–A or 6.[1] These Forms do not report costs at the level of detail prescribed by Parts 116, 216 and 352 (instruction 3–14). Therefore, the final rule would not affect the information contained in these forms.

The elimination of these regulations would not affect the manner in which costs are recognized for accounting or rate-making purposes. Companies will continue to treat all plant as consisting of retirement units and minor items of property. Under the final rule, Companies will account for the additions and retirements of such plant in accordance with instructions contained in 18 CFR under the Commission's Uniform System of Accounts (USofA) for public utilities and licensees, natural gas companies, and oil pipeline companies. [2]

Additionally, the final rule clarifies that Companies may use estimates when it is either impractical or unduly burdensome for Companies to identify the cost of retired property, and it removes the minimum rule requiring oil pipelines to charge operating expenses for acquisitions, additions and improvements costing less than $500.

I. Public Reporting Burden

The Commission estimates that this final rule will reduce the public reporting burden by an annual average of 29,768 hours, for public utilities and licensees, natural gas companies, and oil pipeline companies. The average costs associated with these hours, across all regulated companies, total $5,153,563.

Comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, can be sent to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]; and to the Office of Information and

[1] FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others; FERC Form 1–F: Annual Report for Non-major Public Utilities and Licensees; FERC Form No. 2, Annual Report of Major Natural Gas Companies; FERC Form 2–A, Annual Report of Non-major Natural Gas Companies; FERC Form No. 6, Annual Report of Oil Pipeline Companies.

[2] See 18 CFR Part 101, USofA prescribed for Public Utilities and Licensees, Part 201, USofA prescribed for Natural Gas Companies, and Part 352, USofA prescribed for Oil Pipeline Companies (1996)

Regulatory Affairs of the Office of Management and Budget (OMB) (Attention: Desk Officer for Federal Energy Regulatory Commission), FAX: (202) 395–5167.

II. Background

On July 25, 1997, the Commission issued a Notice of Proposed Rulemaking (NOPR) [3]/ that proposed to amend the Commission's regulations relating to Units of Property listings. The Commission noted that the USofA requires Companies to record the cost of additions and retirements of property and equipment in the appropriate plant accounts.[4] Additionally, Companies maintain a fixed asset recordkeeping system that tracks these plant account costs by property units. Parts 116, 216, and 352 of the Commission's regulations prescribe the detailed property unit listings that Companies must use to identify the items of property and equipment tracked by the fixed asset recordkeeping system.

These listings prescribe a level of detail that companies maintain to support the amounts in the plant accounts. However, the property unit listings do not reflect the technological changes that have taken place in the utility industry. The NOPR proposed to remove the prescribed property unit listings, and allow Companies to identify property units and maintain a level of support determined by their business needs. This would not eliminate the need for Companies to maintain a property recordkeeping system. Companies would continue to maintain support of the amounts shown in the plant accounts.

The Commission observed that the level of detail prescribed by the current property unit listings and regulations place an unnecessary burden on Companies, are not current, are too restrictive, and appear to provide minimal benefit to either the Companies or to the Commission.

For public utilities and natural gas companies, the NOPR proposed to delete 18 CFR Parts 116 and 216 which prescribe a units of property listing for the additions and retirements of electric plant and gas plant, respectively. The NOPR proposed to modify 18 CFR Part 101, Electric Plant Instruction 10, and 18 CFR Part 201, Gas Plant Instruction 10, to require Companies to maintain a written property units listing, to apply the listing consistently, and to furnish the Commission with the justification for any changes to the listing, if requested. In addition, the NOPR proposed to clarify 18 CFR Parts 101 and 201, concerning the use of estimates when it is impractical or unduly burdensome for Companies to identify the cost of retired property.

In the NOPR the Commission concluded that eliminating the property unit listings and regulations would give Companies the flexibility to maintain their own property listings and track the costs of fixed assets at the level of detail tailored to their business. This in turn would reduce the burden Companies experience when tracking fixed assets at a level more detailed than either their business or the Commission needs, and also eliminate the burden placed on the Commission to update the items in the listings to take account of technological advances and items of property that are no longer used by Companies.

For oil pipelines, the NOPR proposed to delete 18 CFR Part 352 (instruction 3–14), which prescribes a units-of-property listing. The NOPR proposed to modify 18 CFR Part 352 (instruction 3–4) to require oil pipelines to maintain a written property units listing, to apply the listing consistently, and to furnish the Commission with the justification for any changes to the listing, if requested. In addition, the NOPR proposed to clarify 18 CFR Part 352 (instruction 3–7), concerning the use of estimates when it is impractical or unduly burdensome for oil pipelines to identify the cost of property retired. This proposal was intended to bring oil pipeline regulations into line with those for public utilities and natural gas companies, which are permitted to use estimates in similar circumstances.

Finally, the NOPR also proposed to delete as inadequate in today's environment 18 CFR Part 352 (instruction 3–2), which prescribes a minimum rule that requires oil pipelines to charge operating expenses for acquisitions, additions and improvements costing less than $500, and to delete any references to the minimum rule in Part 352 (instructions 3–4, 3–5, and 3–6(a)). As a consequence, oil pipelines would be permitted to establish their own dollar threshold in order to avoid undue refinement in accounting for acquisitions, additions, and improvements.

The Commission requested that interested persons submit written comments no later than September 15, 1997. Twenty-one entities submitted comments. [5] All the commenters were supportive of the rulemaking, particularly the proposal to remove the Commission's prescribed Units of Property listing and permit Companies to maintain their own written Units of Property listing.

III. Discussion

Upon review of the comments submitted, the Commission concludes that the rule proposed in the NOPR should be adopted with minor modifications. Specifically, the final rule does not adopt the proposed language requiring Companies, when requested, to furnish justification for any changes to their Units of Property listings, since the USofA already contains instructions requiring Companies to maintain the necessary information to support amounts included in their books and records. Other matters as raised in the comments to the NOPR are discussed below.

A. Clarification of Electric and Gas Plant Instruction 11, Paragraph C

The Commission proposed a minor revision of the language contained in Electric and Gas Plant Instruction 11, Paragraph C, by removing the phrase ''* * * subsequent to the effective date of this system of accounts. * * *''

While no party objected to or commented upon the specific change the Commission proposed, a large number of commenters requested clarification of revised Electric and Gas Plant Instruction (EPI and GPI) 11, Paragraph C. They believe the latter instruction is ambiguous and could be interpreted to require Companies to maintain quantity and cost detail for each separate retirement unit. To remedy this ambiguity, EEI and Ohio Edison recommend that this instruction be clarified to specifically not require detail at the retirement unit level. AGA and CINergy recommend that, to provide more clarity, Paragraph C should be revised to read: ''each utility shall maintain records for each plant account such that the amounts of annual additions and retirements can be audited as to consistent application of the capitalization policy.''

AEP urges that Paragraph C be eliminated, arguing that it is not necessary to require the number and cost of annual additions and retirements for each retirement unit. AEP states that permitting utilities to account for additions to plant following their Units of Property listing while not requiring that they keep individual property cost records for each retirement unit would

[3] Units of Property Accounting Regulations, Docket No. RM97–6-000, FERC Stats. & Regs ¶ 61,113 (1997), 62 FR 40987 (July 31, 1997).

[4] 18 CFR Parts 101, 201 and 352. The USofA for public utilities and natural gas companies specifies in the plant instructions of Parts 101 and 201, respectively, the type of information companies must keep related to their fixed assets.

[5] See Appendix.

provide for the appropriate treatment of asset additions and retirements without the burden of keeping separate continuing property records for each retirement unit.

The Electric and Gas Plant instructions read that Companies shall maintain fixed asset records at a detailed retirement unit level or at a higher record unit level.[6] The Commission has never specifically defined a record unit. The most predominant interpretation of the term record unit is that it is synonymous with the term retirement unit. For the purpose of the rulemaking and in the future, we define a record unit as two or more related retirement units. Therefore, the existing plant instructions permit Companies to maintain fixed asset records at a higher level if they so choose. Consequently, Companies need not maintain cost records at the detail retirement unit level and therefore, it is unnecessary to remove EPI and GPI 11, paragraph C at this time in order to adopt the changes contained in the final rule.

B. Adoption of a Capitalization Policy

The NOPR proposed to remove the prescribed Units of Property listings contained in Parts 116, 216 and 352 (instruction 3–14); requiring Companies to maintain their own written Units of Property Listing for use in accounting for additions and retirements of plant.

AGA, CINergy and PECO Energy state that the new wording requiring Companies to maintain a written Units of Property listing misses the intended purpose for change, which was to have a written capitalization policy of which a property listing would be a by-product. Companies also state that the capitalization policy would establish guidelines that define their assets.

CINergy and PECO Energy suggest that Electric and Gas Plant Instruction 10, paragraph A, requires a written capitalization policy which would establish the guidelines by which a company would define its assets rather than requiring Companies to maintain a written Units of Property listing. Therefore, a Units of Property listing would be a part of the capitalization policy.

The purpose of the proposed rule was not to change the existing accounting framework for additions and retirements to the plant accounts, but it was to reduce the recordkeeping burden placed on Companies. Companies will continue to treat all utility plant as consisting of retirement units and minor items of property. The Commission will continue to require Companies to account for the additions and retirements of such plant in accordance with instructions contained in the Commission's USofA.

The final rule results in Companies having the flexibility to maintain their fixed asset records at a level of detail that meets their business needs. The Commission will no longer prescribe a detailed Units of Property listing for Companies to use in conjunction with their fixed asset accounting systems.

C. Changes to Units of Property Listing

The Commission proposed in the NOPR to require Companies, if requested, to furnish the Commission with a justification for any changes made to their Unit of Property listings.

Four commenters expressed a concern about how far back Companies must keep the justifications for changes they made to their Units of Property listings, as proposed in Electric and Gas Plant Instruction 10, paragraph A. Commonwealth Edison and NYSEG asked whether the time frame would mean changes since Part 116 was eliminated or changes during the past year or changes since the Commission last requested the Company's listing. EEI recommends that the Commission clarify that only changes made during the 12 months before the Commission's request for justification should have to be justified. OG&E recommends that the Commission indicate whether a certain time frame was intended for such a request, or will it be determined on an individual basis.

The Commission's USofA requires Companies to maintain their books and records in such a manner as to be able to furnish information as to any item included in any account.[7] This would also include amounts recorded in Companies' fixed asset record keeping system. We, therefore, do not believe it is necessary to include the proposed language contained in the NOPR that would have required Companies to furnish us with a justification for any changes to their Units of Property listings since the USofA already contains instructions requiring Companies to maintain the necessary information to support amounts included in their books and records.

Furthermore, a Company's Units of Property listing is an integral part of its entire fixed asset recordkeeping system. Therefore, we would anticipate that Companies would maintain the necessary records, including changes to their Units of Property listings, in order to develop the history or facts surrounding transactions recorded in their fixed asset recordkeeping systems.

D. Estimating the Cost of Plant Retirements

The NOPR proposed to clarify existing requirements for public utilities and licensees and natural gas companies that permit the use of estimates for the purpose of determining the actual cost of retired property. The NOPR would also allow oil pipelines to use such estimates.

AGA, CINergy, PECO Energy, OG&E, and Consumers Energy expressed concern that the last sentence of Electric and Gas Plant Instruction 10, paragraph D requires a specific method of retirement cost estimation. They believe that Companies should be able to choose the method of retirement estimation that is appropriate for them.

Even though there is a specific estimation method mentioned in paragraph D, the Commission did not intend it to be the only method a company may use to determine the cost of plant retirements. We believe that Companies should use an appropriate estimation method that would provide a reasonable estimate of the cost of plant retirements based upon the nature of the property involved and information available.

E. Accounting Requirements for Minor Items of Property

The Commission stated in the NOPR that Companies would continue to treat all plant as consisting of retirement units and minor items of property, and account for the additions and retirements of such plant in accordance with instructions contained in 18 CFR under the Commission's USofA for public utilities and licensees, natural

[6] 18 CFR, Part 101, Electric Plant Instruction and Part 201, Gas Plant Instruction paragraph 11(C) read, ''Each utility shall maintain records in which, for each plant account, the amounts of the annual additions and retirements, subsequent to the effective date of this system of accounts, are classified so as to show the number and cost of the various *record units or retirement units* (emphasis added).

[7] 18 CFR Parts 101 and 201, Electric and Gas General Instructions 2(A), respectively and Part 352, Carrier General Instructions (1–2), Records, reads, ''Each utility/carrier shall keep its books of account * * * which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto. 2(b) The books and records referred to herein include not only accounting records in a limited technical sense, but all other records, such as minute books, stock books, reports, correspondence, memoranda, etc., which may be useful in developing the history of or facts regarding any transaction.''

gas companies, and oil pipeline companies.[8]

PSColorado and Cheyenne state that another cause of fixed asset recordkeeping burden is the Commission's prescribed treatment of minor items in Electric and Gas Plant Instruction 10, paragraph C. They say it has created detailed plant ledger unit entries to identify the major parts or components of a retirement unit. Then, when one of these units needs to be replaced, it can be replaced by charging capital for the entire replacement cost rather than charging expense or just the incremental materials cost of replacement in the case of a betterment. They recommend revising paragraph C to allow Companies to capitalize the replacement of major components of a retirement unit without having to use betterment accounting or without having to break down the retirement unit into its component pieces in the fixed asset records.

As previously mentioned, it was not our intention to change the requirements contained in electric and gas plant instructions concerning the accounting for additions or replacements of minor items of property, including the use of betterment accounting. Therefore, we decline to make any changes to our accounting instructions for additions and replacements of minor items of property at this time. Furthermore, the detailed fixed asset recordkeeping requirements contained in Parts 116, 216 and 352 relate only to retirement units and not to minor items of property. Consequently, any additional recordkeeping burdens incurred to track minor items of property, or components of retirement units, should not be attributed to our plant accounting regulations.

F. Other Issues

1. Effective Date

PECO Energy and NEES expressed concern that the NOPR does not give an effective date for implementation of the proposed changes. PECO Energy recommends that the final document provide a reasonable time frame for implementation.

Companies may begin implementing their own Units of Property listings for calendar year 1998.

2. Commenters' Suggestions for Related Changes to Other Sections

Santa Fe suggested that the Commission should revise 18 CFR Part 362—Uniform System of Records and Reports of Property Changes, concerning valuation in regards to the changes proposed in the NOPR.

Marathon expressed disappointment that the Commission took no action to permit alternate methods of depreciation other than the present group depreciation methodology, which it claims is cumbersome when dealing with year 2000 issues as well as implementation of new accounting software.

Although these suggested changes to other sections of the Commission's regulations may have merit, they were not the focus of this rulemaking, and we decline to make changes to Part 362 at this time. Additionally, in the context of this rulemaking, it was not the Commission's intent to permit alternate depreciation methodology, and therefore, the Commission declines making any judgment regarding Marathon's comments.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[9] The Commission is not required to make such analyses if a rule would not have such an effect.

The Commission does not believe that this rule would have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of small entity.[10] Further, the recordkeeping requirements of small entities are reduced by the rule. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

V. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.[11] The promulgation of a rule that is procedural or that does not substantially change the effect of legislation or regulations being amended raises no environmental consideration.[12] The instant rule amends Parts 101 and 201 regulations, eliminates Parts 116, 216 and instruction 3–14 of Part 352 and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. Accordingly, no environmental consideration is necessary.

VI. Information Collection Statement

OMB's regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping (collections of information) imposed by agency rule. The Commission is submitting a copy of this Final Rule to OMB for informational purposes only because the Final Rule is not significantly different from the NOPR. Moreover, the Final Rule eliminates sections of the Commission's regulations which had required reporting and recordkeeping requirements.

Public Reporting Burden

The Commission estimates that this final rule will reduce the public reporting burden by an annual average of 29,768 hours, for public utilities and licensees, natural gas companies, and oil pipeline companies. The Commission received 21 comments on its NOPR and none on its reporting burden or cost estimates. The Discussion portion (Part III) of this Final Rule addresses the Commission's responses to the comments.

This final rule removes the Commission's requirements governing prescribed Units of Property listings contained in Parts 116, 216 and instructions 3–14 of Part 352. This gives companies the flexibility to maintain their own lists and also removes the requirement of the minimum rule for Oil Pipelines, eliminating the need to make expense additions and improvements of less than $500 and then seek the Commission's approval to change this amount. The final rule also amends Parts 101 and 201 by requiring regulated entities to maintain their own Units of Property listings for use in accounting for additions and retirements of plant and apply these listings consistently.

Title: Units of Property.

Respondents: Public utilities and licensees, Interstate natural gas pipeline companies, oil pipeline companies (Business or other for-profit).

Frequency of Responses: On occasion.

[8] See 18 CFR Part 101, USofA prescribed for Public Utilities and Licensees, Part 201, USofA prescribed for Natural Gas Companies, and Part 352, USofA prescribed for Oil Pipeline Companies (1996).

[9] 5 U.S.C. 601–612.

[10] 5 U.S.C. 601(3) citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a ''small business concern'' as a business which is independently owned and operated and which is not dominant in its field of operation.

[11] 18 CFR 380.4.

[12] 18 CFR 380.4(a)(2)(ii).

Necessity of Information: The final rule proposes to provide companies the ability to identify and maintain their units of property records at a level of detail better suited to their own business practices by reducing the level of detail. In addition, oil pipeline companies will no longer be required to charge operating expenses for acquisitions, additions and improvements costing less than $500, or notify and seek Commission approval for using thresholds less than that amount. The Commission requires that Companies maintain this information in order that it may ensure that Companies' financial records and reports comply with Commission's accounting and reporting requirements. These requirements have been established in response to mandates of the Federal Power Act, the Natural Gas Act and the Interstate Commerce Act. Through these requirements, the Commission is able to establish the reliability of financial data of jurisdictional companies and the extent of conformance by the companies to the USofA and other Commission regulations. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

VII. Effective Date and Congressional Notification

This final rule is effective March 13, 1998. The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[13] That reporting requirement applies to this Final Rule. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a ''major rule'' as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 116

Electric power plants, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

[13] Pub. L. No. 104–121, 110 Stat. 847(1996).

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 216

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

By the Commission.

David P. Boergers,

Acting Secretary.

In consideration of the foregoing, the Commission amends Parts 101, 116, 201, 216, and 352 Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

1. The authority citation for Part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7102–7352, 7651–7651o.

2. In part 101, Electric Plant Instruction 10, paragraphs A and D are revised to read as follows:

10. *Additions and Retirements of Electric Plant.*

A. For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of electric plant, all property will be considered as consisting of (1) retirement units and (2) minor items of property. Each utility shall maintain a written property units listing for use in accounting for additions and retirements of electric plant and apply the listing consistently.

* * * * *

D. The book cost of electric plant retired shall be the amount at which such property is included in the electric plant accounts, including all components of construction costs. The book cost shall be determined from the utility's records and if this cannot be done it shall be estimated. Utilities must furnish the particulars of such estimates to the Commission, if requested. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall be used as the book cost of the units retired.

* * * * *

3. In Part 101, Electric Plant Instruction 11, paragraph C is revised to read as follows:

11. *Work Order and Property Record System Required.*

* * * * *

C. In the case of Major utilities, each utility shall maintain records in which, for each plant account, the amounts of the annual additions and retirements are classified so as to show the number and cost of the various record units or retirement units.

PART 116—UNITS OF PROPERTY FOR USE IN ACCOUNTING FOR ADDITIONS TO AND RETIREMENTS OF ELECTRIC PLANT

4. Part 116 is removed.

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

5. The authority citation for Part 201 continues to read as follows:

Authority: 15 U.S.C. 717–717W, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

6. In Part 201, Gas Plant Instruction 10, paragraphs A and D are revised to read as follows:

10. *Additions and Retirements of Gas Plant.*

A. For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of gas plant, all property shall be considered as consisting of (1) retirement units and (2) minor items of property. Each utility shall maintain a written property units listing for use in accounting for additions and retirements of gas plant and apply the listing consistently.

* * * * *

D. The book cost of gas plant retired shall be the amount at which such property is included in the gas plant accounts, including all components of construction costs. The book cost shall be determined from the utility's records and if this cannot be done it shall be estimated. Utilities must furnish the particulars of such estimates to the Commission, if requested. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall

be used as the book cost of the units retired.

* * * * *

7. In Part 201, Gas Plant Instruction 11, paragraph C is revised to read as follows:

11. *Work Order and Property Record System Required.*

* * * * *

C. Each utility shall maintain records in which, for each plant account, the amounts of the annual additions and retirements are classified so as to show the number and cost of the various record units or retirement units.

PART 216—UNITS OF PROPERTY FOR USE IN ACCOUNTING FOR ADDITIONS TO AND RETIREMENTS OF GAS PLANT

8. Part 216 is removed.

PART 352—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

9. The authority citation for Part 352 continues to read as follows:

Authority: 49 U.S.C. 60502, 49 App. U.S.C. 1–85.

10. In Part 352, Instructions for Carrier Property Accounts, instruction 3–2, Minimum rule is removed. In instructions 3–5, introductory text, and 3–6(a) the phrase ''subject to the minimum rule'' is removed.

11. In Part 352, Instructions for Carrier Property Accounts, instruction 3–4 *Additions* is revised to read as follows:

3–4 *Additions.* Each carrier shall maintain a written property units listing for use in accounting for additions and retirements of carrier plant and apply the listing consistently. When property units are added to Carrier plant, the cost thereof shall be added to the appropriate carrier plant account as set forth in the policy.

12. In Part 352, Instructions for Carrier Property Accounts, instruction 3–7 *Retirements* introductory text and paragraph (b)(1) are revised and new paragraph (c) is added to read as follows:

3–7 *Retirements.* When property units are retired from carrier plant, with or without replacement, the cost thereof and the cost of minor items of property retired and not replaced shall be credited to the carrier plant account in which it is included. The retirement of carrier property shall be accounted for as follows:

(a) * * *

(b) Property. (1) The book cost, as set forth in paragraph c below, of units of property retired and of minor items of property retired and not replaced shall be written out of the property account as of date of retirement, and the service value shall be charged to account 31, Accrued Depreciation—Carrier Property.

* * * * *

(c) The book cost of carrier property retired shall be determined from the carrier's records and if this cannot be done it shall be estimated. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall be used as the book cost of the units retired. Oil pipelines must furnish the particulars of such estimates to the Commission, if requested.

13. In Part 352, Instructions for Carrier Property Accounts, instruction 3–14 Accounting units of property is deleted.

Recordkeeping for Units of Property Accounting Regulations for Public Utilities and Licensees, Natural Gas Companies and Oil Pipeline Companies

Docket No. RM97–6–000

Appendix

The commenters on the NOPR are:

1. American Electric Power System (AEP),
2. American Gas Association (AGA),
3. Cinergy Corporation (CINergy),
4. Colonial Pipeline Company (Colonial),
5. Commonwealth Edison Company (Commonwealth Edison),
6. Consumers Energy Company (Consumers Energy),
7. Duke Power Company (Duke),
8. Edison Electric Institute (EEI),
9. Explorer Pipeline Company (Explorer),
10. Interstate Natural Gas Association of America (INGAA),
11. Lakehead Pipe Line Company, Limited Partnership (Lakehead),
12. Marathon Pipe Line Company (Marathon),
13. Minnesota Power & Light Company (Minnesota P & L),
14. New England Electric System (NEES),
15. New York State Electric & Gas Corporation (NSYEG),
16. Ohio Edison Company (Ohio Edison),
17. Oklahoma Gas & Electric Company (OG&E),
18. PECO Energy Company (PECO Energy),
19. Joint comments of Public Service Company of Colorado (PSColorado) and Cheyenne Light, Fuel and Power Company (Cheyenne),
20. SFPP, L.P. (SFPP), and
21. Virginia Electric & Power Company (VEPCO).

[FR Doc. 98–3457 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 97F–0181]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to change the melting point range for propylene homopolymers, intended for use in contact with food, from 160–180 °C to 150–180 °C. This action is in response to a petition filed by Exxon Chemical Co.

DATES: The regulation is effective February 11, 1998; written objections and requests for a hearing by March 13, 1998.

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

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 16, 1997 (62 FR 27060), FDA announced that a food additive petition (FAP 7B4544) had been filed by Exxon Chemical Co., P.O. Box 3272, Houston, TX 77253–3272. The petition proposed to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520), to change the melting point range for propylene polymers, intended for use in contact with food, from 160–180 °C to 150–180 °C. However, the petitioner submitted data and information to support a proposed change in the melting point range from 160–180 °C to 150–180 °C for propylene homopolymers prepared from metallocene catalysts. Therefore, FDA considered a change in the melting point only for propylene homopolymers prepared from metallocene catalysts.

In the **Federal Register** of May 16, 1997 (62 FR 27060), the filing notice for the petition stated that the action resulting from the petition qualified for a categorical exclusion under previous 21 CFR 25.24(9). This was a misprint and should have cited 21 CFR 25.24(a)(9). Upon further review, the agency determined that such a

categorical exclusion, which is based on a technical change in a regulation, is not appropriate for this action because the proposed amendment is not simply a technical change. Consequently, the agency considered the environmental effects of this action.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency determined that the petitioner has adequately demonstrated that propylene homopolymers manufactured by the catalytic polymerization of propylene with a metallocene catalyst, and with a melting point range between 150 °C and 180 °C, conform to the identity and specifications for polypropylene under § 177.1520, in item 1.1(a) in the table in paragraph (c) (previously item 1.1), except for the melting point range specification. Thus, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in § 177.1520 should be amended as set forth in this document.

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

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

Any person who will be adversely affected by this regulation may at any time on or before March 13, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1520 is amended by redesignating paragraph (a)(1) as paragraph (a)(1)(i), by adding paragraph (a)(1)(ii), and in the table in paragraph (c) by redesignating item 1.1 as item 1.1a, and by revising newly redesignated item 1.1a, and by adding item 1.1b to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(a) * * *

(1) * * *

(ii) Propylene homopolymer consists of basic polymers manufactured by the catalytic polymerization of propylene with a metallocene catalyst.

* * * * *

(c) * * *

Olefin polymers	Density	Melting Point (MP) or softening point (SP) (*Degrees Centigrade*)	Maximum extractable fraction (expressed as percent by weight of the polymer) in *N*-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
1.1a Polypropylene described in paragraph (a)(1)(i) of this section	0.880–0.913	MP: 160°–180 °C	6.4 pct at reflux temperature.	9.8 pct at 25 °C
1.1b Propylene homopolymer described in paragraph (a)(1)(ii) of this section	0.880–0.913	MP: 150°–180 °C	6.4 pct at reflux temperature.	9.8 pct at 25 °C

* * * * *

Dated: January 30, 1998.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–3357 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 97N–0301]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations for Nylon 6/66 resins to change the melting point range from 380–400 °F to 380–425 °F. This action is in response to a petition filed by Ube Industries (America), Inc.

DATES: Effective February 11, 1998; written objections and requests for a hearing by March 13, 1998.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 21, 1997 (62 FR 39003), FDA announced that a food additive petition (FAP 7B4548) had been filed by Ube Industries (America), Inc., c/o Center for Regulatory Services, 2347 Paddock Lane, Reston, VA 20191. The petition proposed to amend the food additive regulations in § 177.1500 *Nylon resins* (21 CFR 177.1500), for Nylon 6/66 resins described in the table in paragraph (b), entry 4.2, to change the melting point range from 380–400 °F to 380–425 °F.

The filing notice for the petition (62 FR 39003) stated that the action resulting from the petition qualified for a categorical exclusion under previous 21 CFR 25.24(9). This was a misprint and should have cited 21 CFR 25.24(a)(9). Upon further review, the agency determined that such a categorical exclusion, which is based on a technical change in a regulation, is not appropriate for this proposed action because the proposed amendment is not simply a technical change. Consequently, the agency considered the environmental effects of this action.

FDA has evaluated data in the petition supporting the chemical identity of the additive and other relevant material. The agency finds that the petitioner has adequately demonstrated that Nylon 6/66 with a melting point that includes the range from 400–425 °F meets the specifications under § 177.1500(b), entry 4.2. Based on this information the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and that therefore, (3) the regulations in § 177.1500 should be amended as set forth below.

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

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

Any person who will be adversely affected by this regulation may at any time on or before March 13, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 177.1500 [Amended]

2. Section 177.1500 *Nylon resins* is amended in the table in paragraph (b) for entry ''4.2'' under the heading ''Melting point (degrees Fahrenheit)'' by removing ''380–400'' and adding in its place ''380–425''.

Dated: January 30, 1998.

Janice F. Oliver,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–3356 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 312 and 314

[Docket No. 95N–0010]

Investigational New Drug Applications and New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations pertaining to new drug applications (NDA's) to clearly define in the NDA format and content regulations the requirement to present effectiveness and safety data for important demographic subgroups, specifically gender, age, and racial subgroups. FDA

also is amending its regulations pertaining to investigational new drug applications (IND's) to require sponsors to tabulate in their annual reports the numbers of subjects enrolled to date in clinical studies for drug and biological products according to age group, gender, and race. This action is intended to alert sponsors as early as possible to potential demographic deficiencies in enrollment that could lead to avoidable deficiencies later in the NDA submission. This rule does not address the requirements for the conduct of clinical studies and does not require sponsors to conduct additional studies or collect additional data. It also does not require the inclusion of a particular number of individuals from specific subgroups in any study or overall. The rule refers only to the presentation of data already collected.

DATES: Effective August 10, 1998. Submit written comments on the information collection provisions of this final rule by April 13, 1998.

ADDRESSES: Submit written comments on the information collection provisions of this final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Derr, Center for Drug Evaluation and Research (HFD–5), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400, FAX 301–827–6197.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 8, 1995 (60 FR 46794), FDA proposed to amend its NDA regulations at § 314.50(d)(5) (21 CFR 314.50(d)(5)) to require sponsors of NDA's to include in their applications analyses of effectiveness and safety data for important demographic subgroups, specifically gender, age, and racial subgroups and, as appropriate, other subgroups of the population of patients being treated, such as patients with renal failure or patients with different severity levels of the disease. This action codifies expectations that FDA has described in previous guidance. FDA also proposed to amend its IND regulations at § 312.33(a)(2) (21 CFR 312.33(a)(2)) to require IND sponsors to characterize in their annual reports the numbers of subjects enrolled in a clinical study for a drug or biological product according to age group, gender, and race.

FDA's regulations on NDA content and format require the clinical data section of the NDA to include, among other things, an integrated summary of the data demonstrating substantial evidence of effectiveness for the claimed indications. Evidence also is required to support the dosage and administration section of the labeling, including support for the dosage and dose interval recommended, and modifications for specific subgroups (e.g., pediatrics, geriatrics, patients with renal failure) * * * [and] an integrated summary of all available information about the safety of the drug product * * *. However, as discussed in section I of this document, a review of various agency studies and examinations of NDA data bases has revealed that in many cases (about half) data collected and submitted as part of an NDA still are not being analyzed consistently to look for differences in response to drugs among various population subgroups.

This final rule reflects the growing recognition within the agency and the health community that: (1) Different subgroups of the population may respond differently to a specific drug product and (2) although the effort should be made to look for differences in effectiveness and adverse reactions among such subgroups that effort is not being made consistently.

Since the early 1980's, FDA has been concerned about possible differences in response to drugs among subsets of the overall population, such as age, gender, or racial subsets. The agency has addressed in various ways the question of how to obtain information that would permit individualization of therapy. Evaluation of potential differences among demographic subsets requires that individuals from these subsets be included in studies and that analyses to seek differences in response be carried out. During the past decade, FDA has encouraged demographic subgroup analyses in various guidance documents and other regulatory actions. FDA also has examined the extent of participation of patient subgroups in drug development programs.

In 1983 and again in 1989, FDA examined the relative numbers of individuals in NDA data bases from two important demographic subgroups, women and the elderly (58 FR 39406 at 39412, July 22, 1993). The agency found that, in general, the proportions of women and men included in the clinical trials were similar to the respective proportions of women and men who had the diseases for which the drugs were being studied, taking into account the age range of the population studied. The agency also found that, in general, the elderly were reasonably well represented in clinical trials.

In a study of drugs approved during the period 1988 through 1991, conducted by the General Accounting Office (GAO) entitled ''FDA Needs to Ensure More Study of Gender Differences in Prescription Drug Testing,'' GAO/HRD–93–17, women were found to typically represent a majority of patients in NDA data bases of drugs used to treat conditions more common, or more commonly treated, in women, and a minority, generally a sizable one, in tests of drugs for conditions that occur predominantly in males in the age range usually included in the clinical trials. Analysis also showed that, even when enough women are included in testing, trial data often are not analyzed to determine if women's responses to a drug differed from those of men. The study also showed that the participation of women took place primarily during the later phases of drug development.

FDA's first formal encouragement to analyze population subsets appeared in the 1985 version of § 314.50, in which paragraph (d)(5)(v) (integrated summary of effectiveness) called for evidence to support modifications of dosage for specific subgroups, e.g., pediatrics, geriatrics, patients with renal failure. In 1988, the agency developed the ''Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications'' to explain aspects of the 1985 revision of § 314.50. In that guidance, FDA discussed the importance of analyzing data from population subsets within NDA data bases to look for differences in effectiveness and adverse reactions to drugs. The guidance addressed the importance of subgroup analyses of both safety and effectiveness and of analyses in subgroups other than those mentioned in the regulations.

In 1989, after several years of public discussion, the agency addressed the need to develop information on the elderly in a guideline entitled ''Guideline for the Study of Drugs Likely to be Used in the Elderly.'' The guideline provides guidance regarding the inclusion of elderly patients in clinical trials and the assessment of clinical and pharmacokinetic differences between older and younger patients. In addition, the agency issued a final rule in the **Federal Register** of August 27, 1997 (62 FR 45313), entitled ''Specific Requirements on Content and Format of Labeling for Human Prescription Drugs; Addition of 'Geriatric Use' Subsection in the Labeling,'' which, among other things, requires the inclusion of a subsection on geriatric use in the labeling of drugs.

In the **Federal Register** of July 22, 1993 (58 FR 39406), FDA published a guideline entitled ''Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs.'' The guideline provides guidance on FDA's expectations regarding including both men and women in drug development, the need to analyze clinical data by gender, the assessment of potential pharmacokinetic differences between genders, and the conduct of specific additional studies in women, where indicated. The 1993 guideline also describes how concerns about the adequacy of data on the effects of drugs in women have arisen within the context of an increasing awareness of the need to individualize treatment in the face of the wide variety of demographic, disease-related, and individual patient-related factors that can lead to different responses in subsets of the population. Optimal use of drugs requires identification of these factors so that appropriate adjustments in dose, concomitant therapy, or monitoring can be made.

In 1993, FDA also published guidance on the agency's use of the refusal-to-file (RTF) option. The guidance states that the agency generally can exercise its RTF authority under 21 CFR 314.101(d)(3) if there is ''inadequate evaluation for safety and/or effectiveness of the population intended to use the drug, including pertinent subsets, such as gender, age, and racial subsets * * *.''

Despite repeated agency encouragement in both regulations and guidance, FDA and GAO have found that the analysis of effectiveness and safety data in relevant population subgroups, including age, gender, and racial subgroups, is not being carried out consistently. This rule makes the need for these subgroup analyses completely clear.

II. Highlights of the Final Rule

This final rule revises current IND annual report regulations at § 312.33(a)(2) to require that the number of subjects entered to date into a clinical study for drug or biological products be tabulated by age group, gender, and race. This action is intended to alert sponsors and the FDA as early as possible to potential demographic deficiencies in enrollment that could lead to avoidable deficiencies in the NDA submission.

The current wording of NDA content and format regulations at § 314.50(d)(5) does not fully reflect the need to present in the NDA the safety and effectiveness data by subgroup. It also omits specific mention of some important subgroups, including those of gender and race. Therefore, this final rule also revises NDA content and format regulations at § 314.50(d)(5) to require that effectiveness and safety data be presented for demographic subgroups including age group, gender, and race and, when appropriate, other subgroups of the population of patients treated, such as patients with renal failure, or patients with different severity levels of the disease.

In response to comments received on the proposed rule, the agency is making minor changes to the wording to clarify the intent of the rule. In § 312.33(a)(2), ''characterized'' has been changed to ''tabulated'' to make clear that the numbers of the subjects enrolled to date in clinical studies need only be counted and listed in tabular form in annual reports according to age group, gender, and race. No analysis of data is being required for annual reports. Some comments asked for clarification of the phrase, ''as appropriate'' in § 314.50(d)(5)(v) and (d)(5)(vi). When data suggest a different response to a drug product in a subgroup other than age group, gender, or race, it is appropriate to present the data for such a subgroup in the NDA. Examples of such subgroups include subjects who seem to respond differently because of a concomitant disease, renal failure, or different severity level of the disease. The agency is changing the phrase ''as appropriate'' to ''when appropriate.'' The phrase ''and shall identify any modifications of dose or dose interval needed for specific subgroups'' has been added to the end of the second sentence in § 314.50(d)(5)(v) to restore wording that was removed in the proposal. The agency believes that the reinsertion of this wording makes the intent of the rule clearer than the proposed wording.

FDA believes this final rule will help focus drug sponsors' attention throughout the drug development process on the enrollment in clinical drug trials of subjects representing the various subgroups of the population expected to use the drug being tested once it is approved and marketed. Although enrollment generally is broad and reflects the population with the disease, this is not always the case. The rule also will help sponsors better evaluate in their NDA's the safety and efficacy profiles of drugs for various subgroups. Because this rule clarifies agency expectations about the analysis of data that should be included in the NDA to evaluate possible differences in response among gender, age, and racial subgroups, an RTF action based on failure to carry out such critical analyses will be less likely.

III. Comments on the Proposed Rule

FDA received 13 comments on the proposed rule, 8 from representatives of pharmaceutical companies and 5 from health professional, pharmaceutical, and special interest associations. Most comments supported FDA's proposal. One comment called it ''a major step forward.'' Another called it ''a catalyst to uncover potential gender-related differences in drug response.'' Others commended the agency for efforts to safeguard public safety by codifying previously announced FDA policy regarding demographic subgroup analyses.

Two comments were less supportive. One comment said that the proposal ''is premature and substitutes the real risk of false positives for the largely theoretical risks of false negatives.'' This comment recommended that the conduct of subgroup analyses be addressed ''in a scientifically driven manner to avoid increasing the expenditure of resources without a clear or likely benefit.'' The other comment said that the proposal is ''relatively meaningless'' as it requires only the reporting of data already collected; if the sponsor has not collected any data relevant to subgroup analysis, the proposed rule will not cure the deficiency. Several comments also raised specific issues for consideration by the agency. The specific issues raised in the public comments are discussed in sections III.A, B, and C of this document.

A. IND Annual Reports

Current IND annual report regulations, at § 312.33(a)(2), require sponsors to include in annual reports the total number of subjects initially planned for inclusion in the study, the number entered into the study to date, the number whose participation in the study was completed as planned, and the number who dropped out of the study for any reason. FDA proposed to amend § 312.33(a)(2) to require sponsors to characterize the number of subjects entered into the study to date by age group, gender, and race.

1. Three comments opposed the proposal because they felt that presentation of demographic information in IND annual reports would provide little or no useful information and would add an unnecessary layer of bureaucracy and cost to drug development at a time when pending proposals for FDA reform seek to reduce these costs. One comment said that the agency's expectations and policy in this area are well known through guidelines and

would be made more explicit through codification of the proposed amendments to § 314.50(d)(5), but that the proposal to change reporting requirements in IND's would not provide additional assurance that these expectations would be met.

2. Two comments stated that the proposed change to the IND regulations was redundant because of the proposal to evaluate subgroup information in NDA applications. One of the comments requested that FDA limit subgroup reporting to NDA's.

3. Two comments noted that reporting demographic information in IND annual reports would not provide accurate information and could be misleading because early studies would have small numbers of subjects and may not necessarily be representative of the final study population. One of the comments stated that recruitment of sufficient numbers of patients distributed across subgroups is the responsibility of the sponsor and, if necessary, enrollment demographics could be discussed with the FDA at the appropriate stages of development. Another comment said that current regulations require IND sponsors to submit a clinical plan that would inform the agency of the sponsor's intentions regarding the inclusion of various subgroups in clinical trials. The comment noted that the agency would not be provided with a complete picture of the overall clinical trial program because many drug development programs include substantial amounts of clinical data from studies conducted outside the United States, which are not necessarily conducted under the IND.

FDA believes that all of these comments reflect a misunderstanding of the intent and scope of the proposed IND amendment. This rulemaking only requires drug sponsors to tabulate the number of subjects enrolled to date in clinical drug trials by demographic subgroup, including age group, gender, and race, to enable sponsors and FDA to track enrollment in clinical trials of members of the various subgroups of the population expected to use the drug once it is marketed. FDA believes that the effort and cost imposed by this requirement will be negligible and that the requirement is important for IND submissions because it will give sponsors an early warning of a possible significant deficiency in the developing data base that could lead to avoidable deficiencies in the NDA submission.

4. One comment requested that FDA only require inclusion of demographic data in IND annual reports after it is available in the clinical data base. The comment noted that, when patient case records are still in the field, demographic information would not be available in a ''verifiable'' form.

FDA declines to revise the proposed amendment to limit the submission of demographic information in IND annual reports to data in clinical data bases because, in most cases, much of the required demographic data already will be available upon subject enrollment. The amendment does not require that the data be absolutely verifiable prior to reporting. The agency emphasizes that this amendment is not intended to change information-gathering methods. It only requires the tabulation of available demographic data on the participants enrolled in clinical drug trials.

5. Four comments addressed the conduct of subgroup analyses in IND annual reports even though FDA had not proposed to require such analyses. One comment said that it would be unproductive and burdensome to split summarized data in IND annual reports into subgroups because data in these reports already have little power. Another comment assumed that safety and efficacy of individual subgroups need not be demonstrated while one other comment requested that FDA clearly state that this assumption is true. These comments requested that FDA state that statistical demonstration of subgroup safety and efficacy would be required only if a claim is being made relative to the subgroup. One of the comments also requested that FDA state that a lack of significant findings in a subgroup would not be adversely reflected in the labeling. Another comment said that subgroup analyses may pose special problems because IND annual reports are sometimes prepared using interim data bases that contain data intended for a variety of purposes that may, or may not, include those identified in the proposal.

FDA emphasizes that this rule only requires the tabulation in IND annual reports of the numbers of subjects enrolled to date by demographic subgroups, including age group, gender, and race. FDA believes that it is important to tabulate demographic information in IND annual reports to track the enrollment of subjects representing those who are expected to use the drug product. The agency is aware that many clinical trials do not contain enough patients from various subgroups to perform statistically rigorous comparisons of outcomes between subgroups. As a result, this rule does not require analysis of subgroup data in IND annual reports.

6. One comment requested that FDA require a sponsor to file gender accrual data *and* analyze the data in IND annual reports. The comment noted that on January 19, 1995, the National Task Force on AIDS Drug Development recommended conducting gender accrual analysis in IND annual reports. The comment pointed out that under the proposal such an analysis would not be required if subgroup data did not exist and, if available, would yield a very limited and inaccurate gender accrual analysis. The comment also noted that, from a scientific perspective, use of the data thus far collected would most likely result in a statistically skewed by-gender analysis.

FDA declines to revise the proposed amendment to require the analysis of subgroup data in IND annual reports. The final rule requires only that the number of subjects be tabulated by age group, gender, and race in annual reports to alert drug sponsors to potential demographic deficiencies in their enrollment. The rule does not require an analysis of such data at this stage in drug development.

B. NDA Content and Format

FDA proposed to revise the requirements for the content and format of NDA's, under § 314.50, to require sponsors to submit effectiveness (§ 314.50(d)(5)(v)) and safety (§ 314.50(d)(5)(vi)(*a*)) data by gender, age, and racial subgroups and, as appropriate, other subgroups of the population of patients to be treated, such as patients with renal failure or patients with different severity levels of the disease.

7. Two comments supported these amendments when they pertained to NDA integrated summaries of efficacy and safety, but did not support their inclusion in individual study reports. The comments noted that the integrated summaries of safety and efficacy are the most appropriate place for subgroup analyses because the full NDA data base provides sample sizes that can more likely withstand such analyses and also allows an evaluation of consistency of effects across studies. One of the comments said that subgroup analyses in individual study reports would increase bulk and add nothing to the evaluation of either safety or efficacy because, in isolation, these analyses can be misleading at worst and at best amount to needless replication of results that still need to be presented in context, i.e., in light of other relevant studies. The comment requested that FDA revise proposed § 314.50(d)(5)(v) by adding the following sentences: ''These gender, age, and racial subgroup summaries (and, when appropriate, other subgroup summaries) should be

based on all parts of the NDA database that are relevant to the efficacy of the drug product in those subgroups. Therefore, in general, the appropriate place for these subgroup analyses will [be] in the Integrated Summary of Efficacy (rather than in individual study reports).'' The comment proposed similar language for safety data, under proposed § 314.50(d)(5)(vi)(*a*).

FDA agrees that the most appropriate place for the conduct of subgroup analyses in an NDA is in the integrated summaries of effectiveness and safety. This is why the agency is codifying the requirement for subgroup summaries under the paragraphs of the clinical data section of the format and content requirements that pertain to the integrated summary of effectiveness (§ 314.50(d)(5)(v)) and safety (§ 314.50(d)(5)(vi)(*a*)).

FDA declines, however, to add language saying that, in general, it *is* inappropriate for sponsors to conduct subgroup analyses in individual study reports because sometimes it is useful to conduct such analyses. The 1988 ''Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications,'' the 1989 ''Guideline for the Study of Drugs Likely to be Used in the Elderly,'' and the 1993 ''Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs'' advise sponsors to carry out subset analyses that consider the entire efficacy and safety data bases (i.e., in integrated summaries), but also suggest that, if individual studies are large enough, it may be useful to consider subsets in individual studies. Even in integrated summaries, subset analyses may be based on pooled data or may examine subset results by looking at the range of results in individual studies. FDA recognizes that although the analysis of subsets with particular characteristics in individual studies often detects only relatively large differences, such differences could be useful in suggesting hypotheses worth examining in other studies and help refine labeling information, patient selection, dose selection, and other information.

To better clarify the requirement for subgroup summaries for effectiveness data, FDA changed proposed § 314.50(d)(5)(v) by adding a phrase, ''and shall identify any modifications of dose or dose interval needed for specific subgroups,'' to the end of the second sentence in paragraph (v). The phrase ''and modifications for specific subgroups'' had been removed in the proposed amendment. The reinsertion of similar wording makes it clear that one important reason for presenting effectiveness data by age group, gender, and race is to identify any modifications of dose or dose interval that might be needed for those subgroups.

8. One comment contended that the proposal requires data to be presented by subgroups without a clear rationale. The comment suggested that sponsors use a screening hypothesis test in the integrated summaries to see if groups are behaving differently or provide summary information by appropriate subgroups to look for trends. The comment requested that FDA require sponsors to perform subgroup analyses only when there is a biologically plausible, data-driven reason for concern. The comment indicated that such a scientific approach would result in more appropriate labeling and avoid drawing conclusions from poorly powered data. Another comment asked whether interaction tests (e.g., by-gender treatment) would be acceptable for purposes of exploring whether there are differences among subgroups.

Another comment noted that regulatory misinterpretations regarding compliance could result because some indications are specific to one or more subgroups and FDA personnel, who will be deciding on the appropriate type of analysis, may not be familiar with all indications of the group and subgroup.

Two comments requested that FDA only require analyses of primary or key efficacy and safety variables to allow for a more efficient review and to avoid drawing inferences that lack a statistical basis. One of the comments said that it might be appropriate to perform such analyses only when sample sizes are ''large enough.''

In the ''Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications,'' FDA indicates that examination of subsets need not routinely involve formal statistical analysis. In comparisons of safety and effectiveness results in subsets, differences of clinically meaningful size are of interest. If these are not observed, the minor differences that are an expected consequence of random variation should be displayed, but need not be analyzed further and would not ordinarily appear in labeling. This guideline reflects current FDA perspectives on the importance of subgroup evaluations and should provide the guidance requested by the comments.

9. One comment requested clarification of the proposed phrase ''as appropriate.'' The comment asked whether ''other subgroups'' would be determined by or discussed with the FDA on a case-by-case basis for each clinical trial or clinical trial setting.

For clarity, FDA has changed the phrase ''as appropriate'' to ''when appropriate.'' FDA advises that the phrase ''when appropriate'' means: When a subset of the population can be identified that might require a modification of dosing to ensure safe and effective administration of the drug product, it is appropriate to present an analysis of data for that subgroup. In particular, sponsors should consider subgroups for whom the metabolism or excretion of the drug might be altered, e.g., patients with renal or hepatic, or cardiac failure, or patients with different severity levels of the disease. The sponsor may request advice on this matter from the division responsible for review of their application.

C. General

10. Many comments questioned the extent to which the proposal would affect clinical trial design because they believed that the proposal could lead to a request for subgroup sample sizes that are adequate to interpret results. One comment noted that an RTF action could result if a clinical trial does not yield sufficient dosing data for each gender, for every racial subgroup, and for every age group of patient that may be treated. Another comment asked whether the National Institutes of Health (NIH) ruling of 1993, which calls for ''sufficient numbers to allow valid analyses,'' would affect the proposal. The comment asked whether larger trials would be required to adequately power subgroup analyses, or, if subgroup differences are shown to be descriptively or statistically significant, would additional studies be required to confirm or explain the results. The comment noted that statistically significant differences found in ad hoc statistical hypothesis testing could yield a high false-positive rate.

Another comment asked whether subsets were more or less important than centers because it has been their practice to attempt to achieve balance in the assignment of treatment arms in clinical trials by center.

One comment requested clarification of the following phrases discussed in the preamble to the proposed rule (60 FR 46795): ''There must be an effort to use the data to discover such [subgroup] differences'' and ''the need to present safety and effectiveness data by gender, age, and racial subgroups to allow a determination, to the extent the data permit, of whether these factors affect results of treatment or alter dosing requirements.''

Another comment requested clarification of the phrase ''[the] rule refers only to the presentation of data already collected.''

Another comment said that the proposed reporting requirement to ''characterize'' the number of subjects in a clinical study according to age group, gender, and race is inconsistent with the statement in the proposal that it does ''not require sponsors to conduct any more studies than they have already conducted.''

One comment requested that FDA revise the statement to clarify that the rule's criteria can be met by enhanced analysis of existing data.

One comment requested that FDA require sponsors who do not have data pertaining to the differences of the investigational new drug's effects by gender to conduct additional studies to obtain such data. The comment contended that the proposal appears to be an empty gesture because it requires nothing more than a report of numbers and would not cure the lack of knowledge about how drugs affect women. The comment also requested that FDA require sponsors to assess potential differences between genders including a record of side effects or treatment response differences and appropriate pharmacokinetic and pharmacodynamic data as well as a report on hormonal influences. The comment indicated that, if a sponsor has such data, it can be used to predict when specific interactions are important.

The agency believes that all of these comments reflect a misunderstanding of the intent and scope of the proposed amendments. This rule does not require any change in the number of studies a drug sponsor needs to conduct, nor does it impose any new requirements on the conduct of those studies. The rule refers only to the presentation of data that already have been collected. FDA's expectations for inclusion of subgroups in clinical trials and analysis of data generated from such groups are described in FDA guidelines entitled ''Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications,'' ''Guideline for the Study of Drugs Likely to be Used in the Elderly,'' and ''Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs''. This rule does not affect those recommendations.

In the ''Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications,'' FDA recommends analyzing NDA data to identify variations among population subsets in favorable responses (effectiveness) and unfavorable responses (adverse reactions) to drugs. The population subsets that should be evaluated routinely include demographic subsets, such as different age groups, genders, and races; people receiving other drug therapy; and people with concomitant illness. The guideline refers only to the analyses needed. It does not address the question of what the extent of drug exposure (number of patients) of any particular subset of the population should be.

The ''Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs'' does set forth recommendations for subgroup enrollment. The guideline states that sponsors are expected to enroll a full range of patients in their studies; carry out appropriate analyses to evaluate potential subset differences in the patients they have studied; study possible pharmacokinetic differences in patient subsets; and carry out targeted studies to look for subset pharmacodynamic differences that are especially probable, that are suggested by existing data, or that would be particularly important if present. In general, the patients included in clinical studies should reflect the population that will receive the drug when it is marketed. Although it may be reasonable to exclude certain patients at early stages because of characteristics that might make evaluation of therapy more difficult (e.g., patients on concomitant therapy), such exclusion should be abandoned as soon as possible in later development so that possible drug-drug and drug-disease interactions can be detected. The guideline also describes specific guidance for gender-related studies. The ''Guideline for the Study of Drugs Likely to be Used in the Elderly'' likewise provides specific guidance for age-related studies in the elderly.

11. A number of comments requested that FDA provide definitions for subgroups. Two comments requested a definition for the age categories to avoid the potential need to rework existing data. One of the comments suggested that FDA consider the following subgroups for the pediatric population: Newborns (birth to 3 months), infants (3 months to 2 years), children (2 to 12 years) and adolescents (12 to 18 years). The comment requested that FDA require that all available safety, pharmacokinetic, and efficacy data be presented for each of these subgroups. One comment requested that FDA define subpopulations of women. The comment indicated that safety, pharmacokinetic, and efficacy data for pregnant women should be presented separately from data for women who are not pregnant. Two comments requested that FDA define categories for race. One of the comments noted that it may be somewhat problematic to implement the proposal because race descriptions used in the United States may not be appropriate in other countries.

In its final rule on the revision of the pediatric use subsection in labeling (59 FR 64240, December 13, 1994), FDA offered the following guidance for defining the pediatric population: (1) Birth to 1 month (neonates), (2) 1 month to 2 years of age (infants), (3) 2 years to 12 years (children), and (4) 12 years to 16 years (adolescents). Where possible, data should be analyzed according to these groups. Alternatively, it usually would not be necessary to establish a drug product's effectiveness in each group. On the other hand, it may be important to have some pharmacokinetic information in each group, especially the younger age groups, to guide dosing and additional information, such as a specific study in neonates, to establish safety.

In the final rule on geriatric labeling (62 FR 45313 at 45316, August 27, 1997), the agency defined ''elderly'' as persons aged 65 years and over. FDA recommends that sponsors use this definition for analysis of data for the elderly population.

FDA declines to define subpopulations of women because it is not necessary. Usually, pregnant women would only participate in clinical trials intended specifically to study drug effects during pregnancy. The data generated from such trials would, therefore, reflect use in this subpopulation of women.

FDA also does not believe it necessary to define specific racial categories in this rule because drug sponsors have been very successful thus far in identifying the relevant racial categories to help them examine safety and efficacy profiles of drugs in relation to race and to identify potential metabolic differences in accordance with race that could have important biomedical implications. Because of the diversity of the U.S. population, the changing racial composition of the population, and the sensitivities of categorizing individuals according to race, FDA recommends that sponsors use the approach common in such efforts to capture demographic data, by asking subjects in clinical trials to identify their racial group. If they desire, sponsors may use the categories and definitions offered in The Office of Management and Budget (OMB) Directive No. 15, which currently identifies the following racial groups:

American Indian or Alaskan Native: A person having origins in any of the original peoples of North America.

Asian or Pacific Islander: A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

Black: A person having origins in any of the black racial groups of Africa.

White: A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Many subjects may choose to identify their race as Hispanic, which can include a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race. Technically, however, the term ''Hispanic'' is used to describe an ethnic, rather than a racial, group.[1]

12. One comment requested that FDA ensure that the proposal is consistent with International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) initiatives, in particular, Topic E3: Structure and Content of Clinical Reports. The comment noted that such consistency is important for global harmonization.

FDA notes that the final rule is consistent with ICH initiatives. In the **Federal Register** of July 17, 1996 (61 FR 37320), FDA issued an ICH guideline entitled ''E3 Structure and Content of Clinical Study Reports.'' This guideline recommends that an individual clinical study report describe demographic characteristics of the study population and, where the study is large enough to permit this, present data for demographic and other subgroups (e.g., renal or hepatic function) so that possible differences in efficacy or safety can be identified. The guideline also notes that subgroup responses usually should be examined in the larger data base used in the overall analysis. This is the only ICH guideline to date that contains information relevant to this final rule.

13. One comment requested that FDA describe how the proposal will be implemented. The comment suggested that it be implemented on an incremental basis, especially with regard to the required changes in content and format of submissions and the required updates. The comment noted that it is important to publicize the timing and effective date of the rule prior to enforcement. Otherwise, the comment contended, it could cause an enormous burden and expense to sponsors and manufacturers. The comment also requested that FDA state its position on the subject of retroactivity, i.e., when the agency would require reports to be changed and how much advance notice the agency would give.

FDA is requiring that this final rule become effective on August 10, 1998. All IND annual reports and NDA applications submitted to the agency on or after the effective date must be in the format specified in the final rule. FDA believes that this period of time is sufficient for preparation of these documents because the final rule does not change information-gathering methods nor does it require sponsors to conduct additional studies or collect additional data. The final rule codifies expectations that the agency has described in previous guidance regarding the presentation of data already collected.

14. One comment suggested that FDA consider sponsorship of an educational forum such as a workshop or an interactive telecast (e.g., FDA/Food and Drug Law Institute telecast) to inform sponsors of the new regulations.

At present, FDA is not planning a workshop or interactive telecast on this subject, but may consider sponsoring one if sufficient interest exists. FDA will make information regarding this rule available on its World Wide Web site at http://www.fda.gov/cder/guidance.htm. Interested persons may submit requests for a workshop or interactive telecast to the Dockets Management Branch (address above) under Docket No. 95N–0010.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that will not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA of 1995) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Presentation of Safety and Effectiveness Data for Certain Subgroups of the Population in Investigational New Drug Application Reports and New Drug Applications.

Description: This final rule amends the new drug application format and content regulations to require the presentation of effectiveness and safety data for important demographic subgroups, specifically gender, age, and racial subgroups and, when appropriate, other subgroups of the population of patients being treated, such as patients with renal failure or patients with different severity levels of the disease. The final rule also amends FDA's regulations pertaining to IND's to require sponsors to tabulate in their annual reports the numbers of subjects enrolled to date in clinical studies for drug and biological products according to age group, gender, and race. This action is intended to alert sponsors as early as possible to potential demographic deficiencies in enrollment that could lead to avoidable deficiencies later in the NDA submission.

This rule does not address the requirements for the conduct of clinical studies and does not require sponsors to conduct additional studies or collect additional data. It also does not require the inclusion of a particular number of individuals from specific subgroups in any study or overall. The rule refers only to the presentation of data already collected.

The data required to be presented under this final rule will assist the sponsor and the agency in monitoring the enrollment in clinical drug trials of subjects representing various subgroups of the population expected to use the drug once it is approved and marketed. The data also will help the sponsor and the agency to evaluate the safety and efficacy profiles of drugs for various subgroups.

Description of Respondents: Businesses, nonprofit institutions, small businesses.

Although the proposed rule of September 8, 1995 (60 FR 46794), provided a 90-day comment period under the PRA of 1980, FDA is providing an additional opportunity for public comment under the PRA of 1995, which became effective after the publication of the proposed rule and applies to this final rule. Therefore, FDA now invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether

[1] OMB has proposed adding the ethnic category ''Hispanic'' to Directive No. 15 (62 FR 36874, July 9, 1997).

the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Individuals and organizations may submit comments on the information collection provisions of this final rule by April 13, 1998. Comments should be directed to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review and approval. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. 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.

TABLE 1.—ESTIMATED ADDITIONAL ANNUAL REPORTING BURDEN[1]

21 CFR Section	Anuual No. of Respondents	Annual Frequency	Average Burden per Respons	Annual Hours
312.33(a)(2)	1,616 (noncommercial)[2]	1	2 hours	3,232
312.33(a)(2)	362 (commercial)	1	8 hours	2,896
314.50(d)(5)	50	1	40 hours	2,000
Total				8,128

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] For purposes of this document, a commercial study under an IND is conducted by a sponsor that is in the process of developing a drug to the point of commercial marketing. A noncommercial study under an IND is sponsored, generally, by government agencies or academic institutions for the purpose of gaining knowledge about the drug. The agency or institution does not own marketing rights for the drug nor is it intended that the marketing rights holder will submit the results for marketing approval.

For the amendments to § 312.33(a)(2), the estimates are based on the average number of IND annual reports that FDA receives annually. For the amendments to § 314.50(d)(5)(v) and (d)(5)(vi)(*a*), the estimates are based on the average number of NDA's FDA receives annually that do not currently include the information that would be required by the final rule. An average of 100 NDA's are submitted to FDA annually. As indicated elsewhere in the final rule, in half of the cases that FDA and GAO examined, the information that would now be required is currently being presented and analyzed, so the additional cost imposed by the rule has been calculated only for the 50 remaining NDA's. In addition, the agency expects that for the most part, a tabular presentation of descriptive statistics, such as the mean change in a parameter for a particular subgroup, will be sufficient. Only occasionally will it be necessary to do more substantive analysis, when the descriptive statistics suggest a significant difference.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles set forth in Executive Order 12866. The final rule does not require a change in the studies a drug manufacturer needs to conduct or impose any requirements on the conduct of those studies. It requires only a presentation of data already collected. In addition, the final rule is not a significant regulatory action as defined in Executive Order 12866 and so is not subject to review under the Executive Order.

The final rule amends IND regulations to enable drug sponsors and FDA to monitor the extent to which patient populations that are likely to receive the drug once it is approved are being enrolled and studied. The final rule amends § 312.33(a)(2) to require that the IND annual report include the number of subjects entered into the study ''tabulated by age group, gender, and race.'' The rule does not require any analysis of collected data for the IND annual report.

The rule also amends NDA regulations at § 314.50(d)(5)(v) and (d)(5)(vi) to clearly define in the format and content regulations the requirement to present effectiveness and safety data for important demographic subgroups including age group, gender, race, and when appropriate, other subgroups of the population of patients to be treated. The rule refers only to the presentation of data already collected and codifies recommendations that FDA has made in previous guidance.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Since the rule will not impose significant costs on any affected firm, it will therefore not impose a significant impact on a substantial number of small entities. The agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 312 and 314 are amended as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371; 42 U.S.C. 262.

2. Section 312.33 is amended by revising paragraph (a)(2) to read as follows:

§ 312.33 Annual reports.

* * * * *

(a) * * *

(2) The total number of subjects initially planned for inclusion in the study; the number entered into the study to date, tabulated by age group, gender, and race; the number whose participation in the study was completed as planned; and the number who dropped out of the study for any reason.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

3. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e.

4. Section 314.50 is amended by revising the second sentence and adding two new sentences after the second sentence in paragraph (d)(5)(v), and by adding two new sentences after the first sentence in paragraph (d)(5)(vi)(*a*) to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(d) * * *

(5) * * *

(v) * * * Evidence is also required to support the dosage and administration section of the labeling, including support for the dosage and dose interval recommended. The effectiveness data shall be presented by gender, age, and racial subgroups and shall identify any modifications of dose or dose interval needed for specific subgroups. Effectiveness data from other subgroups of the population of patients treated, when appropriate, such as patients with renal failure or patients with different levels of severity of the disease, also shall be presented.

(vi) * * *

(*a*) * * * The safety data shall be presented by gender, age, and racial subgroups. When appropriate, safety data from other subgroups of the population of patients treated also shall be presented, such as for patients with renal failure or patients with different levels of severity of the disease. * * *

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Dated: February 2, 1998.

William B. Schultz,

Deputy Commisioner for Policy.

[FR Doc. 98–3422 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Monensin

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 two supplemental new animal drug applications (NADA's) filed by Elanco Animal Health, Division of Eli Lilly & Co. The supplemental NADA's provide for transferring the data and information in one NADA into another and withdrawing approval of the vacated NADA. The NADA's provide for use of monensin Type A medicated articles to make a free-choice Type C medicated feed/mineral granules for pastured cattle for increased rate of weight gain.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Russell G. Arnold, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1674.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, is the sponsor of NADA's 95–735 and 119–823, both of which provide for use of a monensin Type A medicated article to make a monensin Type C medicated feed/free-choice mineral granules containing 810 milligrams monensin per pound (1,620 grams monensin per ton) to be fed free-choice to pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers) for increased rate of weight gain (see 21 CFR 520.1448b and 558.355(f)(3)(x)).

Elanco Animal Health, Division of Eli Lilly & Co. filed supplemental NADA's that provide for combining data and information in NADA 119–823 into NADA 95–735 and withdrawing approval of NADA 119–823. Supplemental NADA 95–735 is approved as of November 3, 1997, and the regulations are amended in part 520 (21 CFR part 520) by removing § 520.1448b to reflect the approval.

Approval of the supplemental NADA 95–735 or withdrawal of approval of NADA 119–823 does not require a freedom of information summary because the actions concern a change in status of existing applications and do not change the conditions of use of the products. This change does not affect the product's safety or effectiveness.

The agency has determined under 21 CFR 25.33(a)(1) and (g) that these actions are of a type that do 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 520

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 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

Authority: 21 U.S.C. 360b.

§ 520.1448b [Removed]

2. Section 520.1448b *Monensin-mineral granules* is removed.

Dated: January 22, 1998.

Andrew J. Beaulieau,

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

[FR Doc. 98–3355 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA No. 173F]

Schedules of Controlled Substances: Placement of Sibutramine Into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Acting Deputy Administrator of the Drug Enforcement Administration (DEA) places the substance,

sibutramine, including its salts and optical isomers, into Schedule IV of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of Schedule IV will be applicable to the manufacture, distribution, importation and exportation of sibutramine and products containing sibutramine.

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Sibutramine is an amphetamine analogue pharmacologically similar to other anorectic agents that produce central nervous system stimulation and amphetamine-like effects in humans and animals. Sibutramine hydrochloride will be marketed under the trade name of Meridia as an oral anorectic for the long-term management of obesity.

The Acting Deputy Administrator of the DEA received a letter dated November 12, 1997, from the Acting Assistant Secretary of Health, on behalf of the Secretary of the Department of Health and Human Services (DHHS), recommending that the substance, sibutramine, and its salts and isomers, be placed into Schedule IV of the CSA (21 U.S.C. 801 *et seq.).* Encloded with the letter from the Assistant Secretary was a document prepared by the Food and Drug Administration (FDA) entitled ''Basis for the Recommendation for Control of Sibutramine and its Salts in Schedule IV of the Controlled Substances Act (CSA).'' The document contained a review of the factors which the CSA requires the Secretary to consider [21 U.S.C. 811(b)] and the summarized recommendations regarding the placement of sibutramine into Schedule IV of the CSA. The Acting Deputy Administrator of the DEA, in a December 8, 1997, **Federal Register** notice (62 FR 64526), proposed placement of sibutramine into Schedule IV of the CSA. The notice provided an opportunity for all interested persons to submit their comments, objections, or requests for hearing in writing to be received by the DEA on or before January 7, 1998. The DEA received no comments, objections or requests for hearing.

Based on the scientific and medical evaluation and the recommendation of the Assistant Secretary for Health, the FDA New Drug Application (NDA) approval on November 22, 1997, and a DEA review, the Acting Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Sibutramine has a low potential for abuse relative to the drugs or other substances in Schedule III.

(2) Sibutramine has a currently accepted medical use in treatment in the United States.

(3) Abuse of sibutramine may lead to limited physical and psychological dependence relative to drugs or other substances in Schedule III.

Based on these findings, the Acting Deputy Administrator of the DEA concludes that sibutramine, including its salts and isomers, warrants control in Schedule IV of the CSA. In order to make sibutramine pharmaceutical products available for medical use as soon as possible, the Schedule IV controls of sibutramine will be effective February 11, 1998. In the event that the regulations impose special hardships on the registrants, the DEA will entertain any justified request for an extension of time to comply with the Schedule IV regulations regarding sibutramine. The applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports sibutramine or who engages in research or conducts instructional activities with sibutramine, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Part 1301 of Title 21 of the Code of Federal Regulations.

2. *Security.* Sibutramine must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72 (b), (c), and (d), 1301.73, 1301.74, 1301.75 (b) and (c) and 1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels on commercial containers of, and all labeling of, sibutramine which is distributed shall comply with the requirements of §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations.

4. *Inventory.* Registrants possessing sibutramine are required to take inventories pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations.

5. *Records.* All registrants must keep records pursuant to §§ 1304.03, 1304.04 and 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

6. *Prescriptions.* All prescriptions for sibutramine are to be issued pursuant to §§ 1306.03–1306.06 and 1306.21–1306.26 of Title 21 of the Code of Federal Regulation.

7. *Importation and Exportation.* All importation and exportation of sibutramine shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

8. *Criminal Liability.* Any activity with sibutramine not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful.

In accordance with the provisions of the CSA [21 U.S.C. 811(a)], this action is a formal rulemaking on the record after opportunity for a hearing. Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, Section 3(d)(1).

The Acting Deputy Administrator, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this final rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small-business entities. Sibutramine is a new drug in the United States; recent approval of the product and its labeling by the FDA will allow it to be marketed once it is placed into Schedule IV of the CSA. This final rule, will allow these entities to have access to a new pharmaceutical product.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

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

List of Subjects in 21 CFR Part 1308

Administraitve practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney general by section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Acting Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is amended by redesignating the existing paragraph (e)(10) as (e)(11) and adding a new paragraph (e)(10) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(e) * * *

(10) Sibutramine 1675

* * * * *

Dated: February 5, 1998.

Peter F. Gruden,

Acting Deputy Administrator.

[FR Doc. 98–3439 Filed 2–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 397

Removal of Part

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes obsolete information in Title 32 of the Code of Federal Regulations addressing the organizational establishment of the Defense Printing Service. This part has served the purpose for which it was intended in the CFR and is no longer necessary.

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: L. Bynum or Patricia Toppings, 703–697–4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 397

Organization and functions.

PART 397—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 397 is removed.

Dated: February 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3351 Filed 2–10–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[HCFA–1731–F]

RIN 0938–AG00

Medicare Program; Payment for Preadmission Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to public comments on the January 12, 1994, interim final rule with comment period that provided that inpatient hospital operating costs include certain preadmission services furnished by the hospital (or by an entity that is wholly owned or operated by the hospital) to the patient up to 3 days before the date of the patient's admission to that hospital. These provisions implement amendments made to section 1886(a)(4) of the Social Security Act by section 4003 of the Omnibus Budget Reconciliation Act of 1990.

EFFECTIVE DATE: These regulations are effective on March 13, 1998.

FOR FURTHER INFORMATION CONTACT: Sandy Hetrick, (410) 786–4542.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1886 of the Social Security Act (the Act) addresses Medicare payment for hospital inpatient operating costs. Before the enactment of section 4003 of Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), section 1886(a)(4) of the Act defined the operating costs of inpatient hospital services to include ''all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis * * *.'' In 1966, the Medicare program established an administrative policy regarding payment for services furnished before admission to a hospital. Specifically, if a beneficiary with coverage under Medicare Part A was furnished outpatient hospital services and was thereafter admitted as an inpatient of the same hospital before midnight of the next day, our longstanding policy provided that outpatient hospital services furnished to the beneficiary were treated as inpatient services and included in the hospital's Part A payment.

When the prospective payment system for hospitals was implemented in 1983, the costs related to the longstanding policy concerning the payment for preadmission outpatient services as inpatient services were included in the base year costs used to calculate the standardized payment amount and the diagnosis-related group (DRG) weighting factors. (Hospitals excluded from payment under the prospective payment system continue to be paid for inpatient hospital services they furnish, as well as for the preadmission services described above, on the basis of reasonable costs up to the ceiling on the allowable rate of the increase for Medicare hospital inpatient operating costs, as set forth in the Act.) Therefore, these preadmission services could not be billed separately from the covered inpatient admission that follows, since payment for them was included in the payment made under Part A for the inpatient stay (that is, the DRG payment for hospitals under the prospective payment system or, for excluded hospitals, the reasonable cost payment subject to the rate-of-increase limit).

Section 4003(a) of Pub. L. 101–508 amended the statutory definition of ''operating costs of inpatient hospital services'' at section 1886(a)(4) of the Act to include the costs of certain services furnished prior to admission. These preadmission services are to be included in the Part A payment for the subsequent inpatient stay. As amended, section 1886(a)(4) of the Act defines the operating costs of inpatient hospital services to include certain preadmission services furnished by the hospital (or by an entity that is wholly owned or operated by the hospital) to the patient up to 3 days before the date of the patient's admission to the hospital.

The provisions of section 4003(b) of Public Law 101–508 provided for implementation of the 3-day payment window in the following three phases:

- The first phase, effective from November 5, 1990 (the enactment date of Public Law 101–508) through September 30, 1991, included any services furnished during the day before the date of admission regardless of

whether the services are related to the admission.

- The second phase, which was effective on January 1, 1991, and is ongoing, includes diagnostic services (including clinical diagnostic laboratory tests) that are furnished during the 3 days immediately preceding the date of admission.
- The third phase, which was effective October 1, 1991, and is ongoing, includes other services related to the inpatient admission that are furnished during the 3 days immediately preceding the date of admission.

On January 12, 1994, we published an interim final rule with comment period (59 FR 1654) implementing section 4003 of Pub. L. 101–508. To implement this provision, we revised the regulations at 42 CFR 412.2(c) for prospective payment hospitals and § 413.40(c)(2) for hospitals excluded from the prospective payment system. At the time of publication of the interim final rule, the 3-day payment window applied to hospitals under the prospective payment system as well as to excluded hospitals.

Since publication of the interim final rule, section 1886(a)(4) was further amended by section 110 of the Social Security Act Amendments of 1994 (Pub. L. 103–432). That amendment revised the payment window for hospitals excluded from the prospective payment system to include only those services furnished during the 1 day (not 3 days) before a patient's hospital admission. In the September 1, 1995 final rule containing changes to the hospital inpatient prospective payment system, we revised § 413.40(c)(2) of the regulations to provide for the 1-day payment window for hospitals and hospital units excluded from the prospective payment system (60 FR 45840). We also noted that the term ''day'' refers to the calendar day immediately preceding the date of admission, not the 24-hour time period that immediately precedes the hour of admission. (In this document, we will continue to refer to the provision as the ''3-day payment window'' with the understanding that, for excluded hospitals, the applicable period of the window is 1 day, not 3.)

II. Provisions of the Interim Rule With Comment Period

In the January 12, 1994 interim final rule with comment period, we specified that payment for inpatient operating costs includes certain preadmission services furnished by the hospital or by an entity wholly owned or operated by the hospital to the patient during the 3 days immediately preceding the date of the patient's admission. We revised §§ 412.2(c)(5) and 413.40(c)(2) to provide that a hospital is considered the sole operator of an entity if the hospital has exclusive responsibility for conducting or overseeing the entity's routine operations, regardless of whether the hospital also has policymaking authority over the entity. In addition, we stated that ambulance services are excluded from preadmission services subject to the payment window. Finally, in §§ 412.2(c)(5)(ii) and 413.40(c)(2)(ii), we defined ''services related to the admission'' as those non diagnostic services that are furnished in connection with the principal diagnosis assigned to the inpatient admission. We specifically invited comment on several other approaches to defining ''services related to the admission.'' We suggested the following four alternatives:

- Presume that all services provided during the 3 days before admission are related.
- Presume that certain services are never related to the admission, for example, chronic maintenance dialysis.
- Develop an inclusive list of services that are medically related, against which all claims could be electronically screened.
- Define services related to the principal diagnosis to include any services that fall within the same major diagnostic category (MDC).

III. Discussion of Public Comments

We received 11 comments in response to the interim final rule published on January 12, 1994. The majority of the comments we received responded to our definition of services related to the inpatient admission and, thus, subject to the payment window. We received four comments in support of our determination that ambulance services are not subject to the payment window, even when furnished during the preadmission period by the admitting hospital or by an entity that it wholly owns or operates. One commenter expressed agreement with our statement that ambulance services are distinct from the type of hospital services that Congress designed the payment window provision to address. All four commenters stated that many hospitals that operate ambulance services do so at a financial loss, and that hospitals continue to furnish the ambulance services primarily as a means of ensuring access to hospital care for individuals who otherwise would be unable to reach hospitals. According to the commenters, subjecting hospitals that operate ambulance services to still greater fiscal constraints under the payment window provision could have a major adverse impact on their availability, particularly in remote rural areas. We also received several comments suggesting that there are other services that should always be excluded from the payment window.

Comment: We received three comments that questioned whether the 3-day payment window provision was intended to apply to home health services. One national organization made the point that home health agencies should be exempt from these provisions on much the same basis that ambulance services are. That is, home health services were never included in the hospital inpatient payment. Therefore, they could not be part of the services that hospitals have sought to unbundle in order to maximize payment.

Two commenters believed that it is unfair to single out hospital-based home health agencies for this provision while independent agencies would be exempt. The commenters also believed that it would be difficult to determine if the condition for which the home health agency provided treatment is related to the admitting diagnosis and that home health agencies would not know at the time they provided a service that it would be subject to the payment window. They pointed out that home health agencies have separate provider numbers and that their bills are processed by regional fiscal intermediaries; accordingly, including home health services on the payment window would greatly increase administrative burden on both the provider and the fiscal intermediaries.

Response: We agree with the commenters that home health services are distinct from the types of services that Congress intended to address in the payment window provision. The House Budget Committee Report accompanying the payment window legislation explained that the underlying objective of this provision is ''* * * to curb further unbundling which has occurred since the introduction of the DRG payment system. * * *'' (H.R. Budget Committee Report No. 881, 101st Cong., 2d Sess. 250 (1990).) That report further states that the services included in the window are not separately reimbursable under Part B. Home health services are generally covered under Part A and, thus, generally are not paid under Part B. Therefore, we are clarifying that services provided by home health agencies are excluded from the payment window provisions. In addition, we are clarifying that this exclusion extends to

other services provided under Part A, that is, services furnished by skilled nursing facilities and hospices. We have revised the regulations at §§ 412.2(c)(5) and 413.40(c)(2) to reflect this policy. We note that diagnostic services provided by these facilities that would be payable under Part B are subject to the window.

Comment: Three commenters requested that maintenance renal dialysis not be subject to the payment window. These commenters noted that patients must have dialysis on an ongoing basis. Because most patients receive dialysis three times a week, for any hospitalization, the patient will have at least one dialysis treatment falling in the payment window period. Regardless of the reason for the hospitalization, the patient would have received the dialysis treatment.

One of the commenters expressed the opinion that inclusion of dialysis services in the payment window provision would increase administrative costs for hospital-owned dialysis units because, prior to billing, they would have to research the diagnosis involved in every hospitalization and decide whether or not it is ''related to dialysis.'' The commenter stated that, in such cases, dialysis units might seek payment or credit from the hospital rather than from Medicare, and that this would disrupt billing patterns and subject hospital-owned units to still greater fiscal constraints in the form of further administrative costs. Another commenter believes that excluding all outpatient chronic maintenance dialysis treatments would be easy to implement and administer. A simple directive could be issued to all Medicare contractors with instructions that dialysis services are not subject to the payment window provision.

Response: We agree with the commenters that outpatient chronic renal dialysis services are distinct from the type of hospital services that Congress designed the payment window provision to address. Maintenance dialysis must be provided to patients on a scheduled basis as long as they suffer from end-stage renal disease. Thus, it is not an inpatient service that hospitals have attempted to move outside the inpatient stay and corresponding hospital prospective payment. Therefore, in this rule, we are revising §§ 412.2(c) and 413.40(c) to exclude maintenance renal dialysis services from the preadmission services that are subject to the payment window.

Comment: Only one commenter responded to our request for comment on different approaches to defining ''services related to the inpatient admission.'' The commenter suggested that one possible approach would be to define certain preadmission services that are never considered to be related to the admission. The commenter provided the following list of preadmission services (in addition to maintenance renal dialysis) that should always be considered not related to the subsequent admission:

- Outpatient chemotherapy.
- Blood transfusions for chronic conditions (e.g., hemophilia and renal failure).
- Physical therapy, occupational therapy, speech therapy, other types of rehabilitative therapy, and respiratory therapy for chronic or long-term care conditions.
- Radiation therapy.

In addition, the commenter believed that any diagnostic tests associated with these services should also be excluded from the window.

Response: We agree with the commenter that certain services should not be subject to the provisions of the payment window. As noted above, we have determined that Part A services (such as home health, hospice, and skilled nursing facility services), ambulance services, and chronic maintenance renal dialysis should be excluded from the payment window.

With regard to the additional services requested by the commenter to be added to that list, we are not persuaded that these services should be excluded from the payment window. Outpatient chemotherapy and radiation therapy are time-limited treatments for specific medical conditions. This is also true of the rehabilitation services listed by the commenter. We do not believe that these services fall into the same category as maintenance dialysis. We are also not convinced that blood transfusions for chronic conditions should be excluded. These transfusions are often related to a change in condition or an injury; unlike dialysis, they are not generally provided to patients on a weekly schedule. Therefore, we are not adding any of these services to our list of exclusions. We note that we have defined services as being related to the admission only when there is an exact match between the ICD–9–CM diagnosis code assigned for both the preadmission services and the inpatient stay. Concerning the request to exclude diagnostic services associated with excluded services, we believe that the statute requires that all diagnostic services be included in the payment window.

Comment: One commenter stated that the hospital industry is making new arrangements for the provision of health care. Many hospitals are establishing facilities licensed as free-standing clinics, owned and operated under a corporate umbrella, with a hospital responsible for conducting or overseeing the clinic's routine operations. The commenter requested that we address the difficulty of converting outpatient charges for preadmission testing from the HCFA–1500 to the UB–92 inpatient hospital billing form.

Response: We believe that the current procedures for billing Medicare for preadmission services, as set forth in section 415.6 of the Medicare Hospital Manual (HCFA–Pub. 10), are clear. When services are furnished within the 3-day payment window, they are included on the Part A bill, the HCFA–1450 (also known as the UB–92), for the inpatient stay. They are not separately billed under Part B. The charges, revenue codes, and ICD–9–CM diagnosis and procedure codes are all included on the HCFA–1450.

In the context of this comment concerning hospital arrangements, we would like to address the numerous telephone and written inquiries we have received concerning the definition of an entity ''wholly owned or operated'' by the hospital. The inquiries we have received include descriptions of various ownership/operation arrangements and requests to verify whether or not the 3-day payment window applies to each case. In general, if a hospital has direct ownership or control over another entity's operations, then services provided by that other entity are subject to the 3-day window. However, if a third organization owns or operates both the hospital and the entity, then the window provision does not apply. The following are examples of how this general policy is applied.

Arrangement: A hospital owns a physician clinic or a physician practice that performs preadmission testing for the hospital.

Policy: A hospital-owned or hospital-operated physician clinic or practice is subject to the payment window provision. The technical portion of preadmission diagnostic services performed by the physician clinic or practice must be included in the inpatient bill and may not be billed separately. A physician's professional service is not subject to the window.

Arrangement: Hospital A owns Hospital B, which in turn owns Hospital C. Does the payment window apply if preadmission services are performed at Hospital C and the patient is admitted to Hospital A?

Policy: Yes. We would consider that Hospital A owns both Hospital B and Hospital C, and the payment window would apply in this situation.

Arrangement: Corporation Z owns Hospitals A and B. If Hospital A performs preadmission services and the patient is subsequently admitted as an inpatient to Hospital B, are the services subject to the payment window?

Policy: No. The payment window does not apply to situations in which both the admitting hospital and the entity that furnishes the preadmission services are owned by a third entity. The payment window includes only those situations in which the entity furnishing the preadmission services is wholly owned or operated by the admitting hospital itself.

Arrangement: A hospital refers its patient to an independent laboratory for preadmission testing services. The laboratory does not perform testing by arrangement with the admitting hospital. Are the laboratory services subject to the payment window provisions?

Policy: No. The payment window does not apply to situations in which the admitting hospital is not the sole owner or operator of the entity performing the preadmission testing.

Arrangement: Hospital A is owned by Corporations Y and Z in a joint venture. Corporation Z is the sole owner of Hospital B. Does the payment window apply when one of these hospitals furnishes preadmission services and the patient is admitted to the other hospital?

Policy: No. As noted above, the payment window provision does not apply to situations in which both the admitting hospital and the entity that furnishes the preadmission services are owned or operated by a third entity.

Arrangement: A clinic is solely owned by Corporation Z and is jointly operated by Corporation Z and Hospital A. Does the payment window apply if preadmission services are furnished by the clinic and the patient is subsequently admitted to Hospital A?

Policy: No. The payment window does not apply because Hospital A is neither the *sole* owner nor operator of the clinic.

Comment: We received one comment on our interpretation of the statutory language of section 1886(a)(4) of the Act. The commenter asserted that we are reading the statute incorrectly, arguing that the statute requires us to include in the payment window only those diagnostic services related to the admission rather than all diagnostic services furnished during the 3 days preceding an inpatient admission. The commenter believes that since section 1886(a)(4) of the Act, as amended, reads, ''*if such services are diagnostic services* (including clinical diagnostic laboratory tests) *or are other services related to the admission*'' (emphasis added), Congress meant that both diagnostic and nondiagnostic services must be related to the admission in order to be subject to the payment window. The commenter claims that the use of the word ''other'' in ''other services related to the admission'' clearly indicates that the qualifier ''related to the admission'' also applies to the first type of services listed, diagnostic services. The commenter stated that by including all diagnostic services in the 3-day window, we could be unfairly denying hospitals payment for separate treatment that they have furnished.

In addition, the commenter believes that our interpretation is contrary to Congressional intent since the House Budget Committee Report states that the purpose of the provision is to ''curb further unbundling which has occurred since the introduction of Medicare's hospital DRG payment system.'' (H.R. Budget Comm. Rep. No. 881, 101st Cong., 2d Sess. 250 (1990).) The commenter contends that since Congress expanded the definition of ''operating costs of inpatient hospital services'' as part of the legislation, it sought to prevent hospitals from unbundling services that traditionally were included in an inpatient hospital stay and had been included when the initial DRG rates were set.

The commenter also asserted that the way Congress worded the three-phase implementation period of the payment window legislation proves that the legislation was intended to apply only to diagnostic services related to the admission. Therefore, the commenter believes that both diagnostic and nondiagnostic services must be related to the admission in order to be subject to the window.

Response: We believe that our reading of the statute is the proper one. Section 1886(a)(4) of the Act, as amended, defines ''operating costs of inpatient hospital services'' to include certain preadmission services ''if such services *are diagnostic services* (including diagnostic laboratory tests) or *are other services related to the admission* (as defined by the Secretary).'' (Emphasis added.) We believe that the phrase ''related to the admission'' modifies the term ''other services'' and not ''diagnostic services.''

A careful reading of the statute demonstrates that our interpretation is the most natural reading of the statute, if not the only reasonable one. It is significant that the language includes the word ''are'' *after* the word ''or.'' The subject that relates to this use of the word ''are'' is ''such services.'' Thus, the payment window includes certain services ''if such services are diagnostic services (including diagnostic laboratory tests) or [such services] are other services related to the admission (as defined by the Secretary).'' The most natural reading of this language is that the phrase ''related to the admission'' modifies only ''other services.'' In fact, it is difficult to see how this language is consistent with the commenter's reading.

The commenter argues that *all* services must be ''related to the admission'' to be included in the payment window. If Congress had intended that result, Congress could have simply referred to ''services related to the admission'' in section 1886(a)(4) of the Act. It would not have been necessary for Congress to refer separately to diagnostic services related to the admission and other services related to the admission.

Even if the statute is not entirely clear, our interpretation is certainly consistent with the language. Similarly, our interpretation is consistent with the statutory language concerning the transition from a 1-day window to a 3-day window. For these reasons, we believe our interpretation of section 1886(a)(4) is the proper one, if not the only reasonable one.

We note that, in Pub. L. 103–342, enacted on October 31, 1994, Congress amended section 1886(a)(4) to clarify application of the payment window to services furnished by hospitals excluded from the prospective payment system, but did not address application of the window to diagnostic services. If Congress had disagreed with our interpretation concerning diagnostic services—as reflected in the interim final rule published on January 12, 1994—Congress could have further amended the statute to clarify its intent.

Finally, we would like to address the commenter's statement that, by including all diagnostic services in the 3-day payment window, we could be unfairly denying hospitals payment for separate treatment that they have furnished. The vast majority of diagnostic services furnished by a hospital, or an entity it owns or operates, to a patient who is admitted to that hospital within 3 days are services that are related to the admission. Thus, we believe there are few diagnostic services unrelated to the admission for which hospitals would be unable to receive a separate payment.

IV. Provisions of the Final Regulations

In this final rule, we are adopting the provisions as set forth in the interim final rule with comment period with two revisions. Specifically, as a result of

public comments, we are revising the regulations as follows:

- We are revising paragraphs (c)(5) and (c)(5)(i) of § 412.2 and paragraphs (c)(2) and (c)(2)(i) of § 413.40 to provide that Part A services furnished by home health agencies, skilled nursing facilities, and hospices are excluded from the payment window provisions.
- We are revising § 412.2(c)(5)(iii) and § 413.40(c)(2)(iii) to exclude outpatient maintenance dialysis services from the preadmission services that are subject to the payment window.

V. Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a final rule such as this will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

In the interim final rule with comment period, we discussed in detail the impact that implementation of section 4003 of Public Law 101–508 would have on hospitals. Section 4003 amended section 1886(a)(4) of the Act to include certain preadmission services, furnished by the hospital, or by an entity that is wholly owned or operated by the hospital, up to 3 days before the date of the patient's admission. We stated that the interim final rule would result in continuing Medicare program savings from terminating separate payment under Part B for services performed up to 3 days before the date of admission instead of 1 day, without an immediate, corresponding increase in the DRG payments under Part A. We also noted that the interim final rule would result in some savings to beneficiaries by shifting payment for services from Part B outpatient to Part A inpatient rates. Beneficiaries will not be responsible for copayment if the same services are performed up to 3 days before the date of a hospital admission and are folded into the hospital's inpatient payment. This final rule will not have a significant impact for purposes of the RFA because it merely responds to comments on the interim final rule and makes a few clarifying changes. Therefore, we have not prepared a regulatory flexibility analysis.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We believe the 3-day payment window provisions will affect small rural hospitals to a lesser degree than larger facilities where complex procedures are performed and specialized medical conditions are treated requiring additional preadmission testings. Therefore, we are not preparing a rural impact statement since we have determined, and certify, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 42 CFR chapter IV which was published at 59 FR 1654, on January 12, 1994, is adopted as final with the following changes:

A. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

2. In § 412.2, the introductory text of paragraph (c) is republished and paragraph (c)(5) is revised to read as follows:

§ 412.2 Basis of payment.

* * * * *

(c) *Inpatient operating costs.* The prospective payment system provides a payment amount for inpatient operating costs, including—

* * * * *

(5) Preadmission services otherwise payable under Medicare Part B furnished to a beneficiary during the 3 calendar days immediately preceding the date of the beneficiary's admission to the hospital that meet the following conditions:

(i) The services are furnished by the hospital or by an entity wholly owned or operated by the hospital. An entity is wholly owned by the hospital if the hospital is the sole owner of the entity. An entity is wholly operated by a hospital if the hospital has exclusive responsibility for conducting and overseeing the entity's routine operations, regardless of whether the hospital also has policymaking authority over the entity.

(ii) For services furnished after January 1, 1991, the services are diagnostic (including clinical diagnostic laboratory tests).

(iii) For services furnished on or after October 1, 1991, the services are furnished in connection with the principal diagnosis that requires the beneficiary to be admitted as an inpatient and are not the following:

(A) Ambulance services.

(B) Maintenance renal dialysis.

* * * * *

B. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart C—Limits on Cost Reimbursement

2. In § 413.40, paragraph (c)(2) is revised to read as follows:

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

* * * * *

(c) Costs subject to the ceiling. * * *

* * * * *

(2) Preadmission services otherwise payable under Medicare Part B

furnished to a beneficiary during the calendar day immediately preceding the date of the beneficiary's admission to the hospital that meet the following conditions:

(i) The services are furnished by the hospital or any entity wholly owned or operated by the hospital. An entity is wholly owned by the hospital if the hospital is the sole owner of the entity. An entity is wholly operated by a hospital if the hospital has exclusive responsibility for conducting and overseeing the entity's routine operations, regardless of whether the hospital also has policymaking authority over the entity.

(ii) For services furnished after January 1, 1991, the services are diagnostic (including clinical diagnostic laboratory tests).

(iii) For services furnished on or after October 1, 1991, the services are furnished in connection with the principal diagnosis that requires the beneficiary to be admitted as an inpatient and are not the following:

(A) Ambulance services.

(B) Maintenance renal dialysis.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: October 17, 1997.

Nancy-Ann Min DeParle,

Deputy Administrator, Health Care Financing Administration.

Dated: December 11, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 98–3362 Filed 2–10–98; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7678]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New Jersey: Monroe, township of, Middlesex County.	340269	Feb. 25, 1973, Apr. 17, 1985, Feb. 4, 1998, Emerg.; Reg.; Susp.	Feb. 4, 1998	Feb. 4, 1998.
Region III				
Pennsylvania: North Heidelberg, township of, Berks County.	421086	Dec. 23, 1976, Mar. 18, 1983, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region IV				
South Carolina: Mullins, city of, Marion County.	450143	Aug. 4, 1975, June 3, 1986, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region V				
Wisconsin:				
Chetek, city of, Barron County	550012	Nov. 8, 1974, June 3, 1986, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Chippewa County, unincorporated areas	555549	Mar. 26, 1971, June 22, 1973, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Chippewa Falls, city of, Chippewa County.	550044	Apr. 16, 1971, Sept. 1, 1977, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Eau Claire, city of, Chippewa & Eau Claire Counties.	550128	Mar. 19, 1971, June 1, 1977, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region VI				
Arkansas:				
Faulkner County, unincorporated areas	050431	Sept. 24, 1990, Sept. 27, 1991, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Springdale, city of, Washington County	050219	Sept. 26, 1974, June 15, 1981, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Washington County, unincorporated areas.	050212	Jan. 24, 1991, Sept. 18, 1991, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region VIII				
South Dakota: Montrose, city of, McCook County.	460052	Dec.16, 1975, Aug. 5, 1986, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region X				
Oregon: Curry County, unincorporated areas	410052	Mar. 19, 1971, Apr. 3, 1978, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region I				
Connecticut: Wilton, town of, Fairfield County	090020	July 31, 1974, Nov. 17, 1982, Feb. 18, 1998, Emerg.; Reg.; Susp.	Feb. 18, 1998 ...	Feb. 18, 1998.
Region III				
Pennsylvania:				
Landingville, borough of, Schuylkill County.	420774	June 28, 1973, Aug. 15, 1977, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Port Clinton, borough of, Schuylkill County.	420784	Dec. 15, 1972, Feb. 1, 1980, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Winslow, township of, Jefferson County	421215	Dec. 30, 1976, July 3, 1990, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Virginia: Spotsylvania County, unincorporated areas.	510308	Feb. 25, 1977, Dec. 1, 1987, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region VI				
Arkansas: Cave City, city of, Sharp and Independence Counties.	050313	Dec. 10, 1982, May 1, 1985, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Texas:				

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Hays County, unincorporated County	480321	Sept. 23, 1982, June 16, 1993, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Kyle, city of, Hays County	481108	Apr. 15, 1975, Dec. 12, 1978, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
San Marcos, city of, Hays County	485505	Oct. 9, 1970, Aug. 27, 1971, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Woodcreek, city of, Hays County	481641	May 21, 1992, June 2, 1993, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region VII				
Missouri: Park Hills, city of, St. Francois County.	290920	Mar. 22, 1995, Feb. 18, 1998, Reg: Susp. ...	.....do	Do.
Region VIII				
Montana:				
Wibaux, town of, Wibaux County	300084	Sept. 26, 1974, Mar. 4, 1988, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Wibaux County, unincorporated areas ...	300173	Mar. 22, 1978, Mar. 4, 1988, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
South Dakota: Rapid City, city of, Pennington County.	465420	Apr. 2, 1971, Sept. 14, 1973, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region IX				
Nevada: Eureka County, unincorporated areas.	320028	Mar. 9, 1984, Apr. 1, 1988, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region X				
Oregon:				
Bandon, city of, Coos County	410043	Oct. 11, 1974, Aug. 15, 1984, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Glendale, city of, Douglas County	410063	Feb. 18, 1975, Sept. 29, 1978, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Riddle, city of, Douglas County	410066	July 22, 1975, Aug. 1, 1979, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: January 30, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–3438 Filed 2–10–98; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7681]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from

the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Ohio: Edon, village of, Williams County	390827	December 4, 1997	October 6, 1978.
Kentucky:			
Cadiz, city of, Trigg County	210354	December 15, 1997	September 29, 1978.
Trigg County, unincorporated areas	210315	.....do	August 26, 1977.
Michigan:			
Blendon, township of, Ottawa County	261005	December 22, 1997.	
Burlington, township of, Lapeer County	261010	.....do	
Fremont, township of, Tuscola County	261008	.....do	
Higgins, township of, Roscommon County	261011	.....do	
Juniata, township of, Tuscola County	261007	.....do	
Marathon, township of, Lapeer County	260609	.....do	
Metamora, village of, Lapeer County	261009	.....do	
Olive, township of, Ottawa County	261006	.....do	
Georgia:			
Ashburn, city of, Turner County	130557	December 29, 1997.	
Lamar County, unincorporated areas	130556	.....do	
New Eligibles—Regular Program			
Illinois: Greenwood, village of, McHenry County [1]	171057	December 4, 1997	May 19, 1997.
California: Carmel-By-The-Sea, city of, Monterey County.	060196	December 18, 1997	NSFHA.
Reinstatements			
Pennsylvania:			
North Belle Vernon, borough of, Westmoreland County.	422182	March 7, 1978, Emerg.; September 30, 1980, Reg.; August 5, 1997, Susp.; December 4, 1997, Rein.	August 5, 1997.
Unity, township of, Westmoreland County	420964	December 26, 1973, Emerg.; July 17, 1978, Reg.; August 5, 1997, Susp.; December 4, 1997, Rein.	Do.
New York: Smithfield, town of, Madison County	361294	November 24, 1975, Emerg.; April 17, 1985, Reg.; June 15, 1988, Susp.; December 16, 1997, Rein.	April 17, 1985.
Regular Program Conversions			
Region I			
New Hampshire:			
Bridgewater, town of, Grafton County	330046	December 5, 1997, Suspension Withdrawn	December 5, 1997.
Region III			
Pennsylvania:			
Albany, township of, Berks County	421046	.....do	Do.
Alsace, township of, Berks County	421376	.....do	Do.
Amity, township of, Berks County	420124	.....do	Do.
Bern, township of, Berks County	421050	.....do	Do.
Bernville, borough of, Berks County	421051	.....do	Do.
Bethel, township of, Berks County	421052	.....do	Do.
Birdsboro, borough of, Berks County	420127	.....do	Do.
Boyertown, borough of, Berks County	420128	.....do	Do.
Brecknock, township of, Berks County	421053	.....do	Do.
Centerport, borough of, Berks County	420129	.....do	Do.
Colebrookdale, township of, Berks County	421057	.....do	Do.
Cumru, township of, Berks County	420130	.....do	Do.
District, township of, Berks County	421378	.....do	Do.
Douglass, township of, Berks County	420131	.....do	Do.
Earl, township of, Berks County	420132	.....do	Do.
Greenwich, township of, Berks County	421067	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Hamburg, borough of, Berks County	420134	.....do	Do.
Heidelberg, township of, Berks County	421069	.....do	Do.
Hereford, township of, Berks County	421379	.....do	Do.
Jefferson, township of, Berks County	421071	.....do	Do.
Kenhorst, borough of, Berks County	420135	.....do	Do.
Kutztown, borough of, Berks County	420136	.....do	Do.
Leesport, borough of, Berks County	420138	.....do	Do.
Lenhartsville, borough of, Berks County	420139	.....do	Do.
Lower Alsace, township of, Berks County.	420140	.....do	Do.
Lower Heidelberg, Township of, Berks County	421077	.....do	Do.
Maiden Creek, township of, Berks County.	421078	.....do	Do.
Marion, township of, Berks County	421079	.....do	Do.
Maxatawny, township of, Berks County	421381	.....do	Do.
Mohnton, borough of, Berks County	420142	.....do	Do.
Muhlenberg, township of, Berks County	420144	.....do	Do.
Oley, township of, Berks County	420965	.....do	Do.
Ontelaunee, township of, Berks County	420966	.....do	Do.
Penn, township of, Berks County	421091	.....do	Do.
Perry, township of, Berks County	421093	.....do	Do.
Pike, township of, Berks County	421382	.....do	Do.
Reading, city of, Berks County	420145	.....do	Do.
Richmond, township of, Berks County	421096	.....do	Do.
Robeson, township of, Berks County	420146	.....do	Do.
Robesonia, borough of, Berks County	420147	.....do	Do.
Rockland, township of, Berks County	421098	.....do	Do.
Ruscombmanor, township of, Berks County	421099	.....do	Do.
Shillington, borough of, Berks County	420148	.....do	Do.
Sinking Spring, borough of, Berks County.	420150	.....do	Do.
South Heidelberg, township of, Berks County	421107	.....do	Do.
Spring, township of, Berks County	421108	.....do	Do.
St. Lawrence, borough of, Berks County	420151	.....do	Do.
Strausstown, borough of, Berks County	420152	.....do	Do.
Temple, borough of, Berks County	420153	.....do	Do.
Tilden, township of, Berks County	421112	.....do	Do.
Topton, borough of, Berks County	420154	.....do	Do.
Tulpehocken, township of, Berks County	421115	.....do	Do.
Union, township of, Berks County	420155	.....do	Do.
Upper Bern, township of, Berks County	421118	.....do	Do.
Upper Tulpehocken, township of, Berks County	421120	.....do	Do.
Washington, township of, Berks County	421383	.....do	Do.
Wernersville, borough of, Berks County	421374	.....do	Do.
West Reading, borough of, Berks County.	420156	.....do	Do.
Womelsdorf, borough of, Berks County	420157	.....do	Do.
Wyomissing, borough of, Berks County	421375	.....do	Do.
Virginia: Pulaski County, unincorporated areas	510125	December 19, 1997 Suspension Withdrawn	December 19, 1997.
Region V			
Ohio: Beachwood, city of, Cuyahoga County	390094	.....do	Do.
Region VI			
Arkansas: Calhoun County, unincorporated areas	050421	.....do	Do.
Oklahoma:			
Chelsea, city of, Rogers County	400187	.....do	Do.
Ottawa County, unincorporated areas	400154	.....do	Do.
Texas:			
Collin County, unincorporated areas	480130	.....do	Do.
Murphy, city of, Collin County	480137	.....do	Do.
Parker, city of, Collin County	480139	.....do	Do.
Region VII			
Kansas: Lindsborg, city of, McPherson County	200215	.....do	Do.
Missouri: Lamar, city of, Barton County	290025	.....do	Do.
Region IX			
Arizona:			
Camp Verde, town of, Yavapai County	040131	.....do	Do.
Yavapai County, unincorporated areas	040093	.....do	Do.
California: Sunnyvale, city of, Santa Clara County	060352	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

[1] The Village of Greenwood has adopted the McHenry County (CID# 170732) Flood Insurance Rate Map dated May 19, 1997.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Issued: January 30, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–3437 Filed 2–10–98; 8:45 am]

BILLING CODE 6718–05–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1156

Nondiscrimination on the Basis of Age

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Arts (NEA) is the Federal grantmaking agency that Congress created to support the visual, literary, design and performing arts, to benefit all Americans. The NEA's mission is to foster the excellence, diversity and vitality of the arts in the United States and to broaden public access to the arts. The NEA is adopting regulations to carry out its responsibilities under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) (the Act). The regulations are consistent with and reflect standards and procedures included in general government-wide regulations issued by the Department of Health and Human Services and published in the **Federal Register** June 12, 1979, 44 FR 33768 (1979).

The Act of 1975 prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

DATES: Effective February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Karen Elias, Deputy General Counsel, (202) 682–5418.

SUPPLEMENTARY INFORMATION:

Background

The regulations are consistent with and reflect standards and procedures included in general government-wide regulations issued by the Department of Health and Human Services (HHS) and published in the **Federal Register** June 12, 1979, 44 FR 33768 (1979). The Act prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

45 CFR Section 90.31(b) of the HHS government-wide regulations required Federal agencies with statutory authority to extend Federal financial assistance to issue agency regulations applicable to the specific programs and activities administered by that agency. In addition to publishing specific regulations consistent with HHS government-wide regulations, the following actions are required to be taken by the NEA in connection with implementation of the Act.

(1) An appendix is required to be included in NEA regulations listing all age distinctions which appear in federal statutes and regulations and effect the agency's programs of financial assistance. A review of the National Foundation on the Arts and the Humanities Act of 1965, as amended, 20 U.S.C. 951 et seq., and NEA regulations reveals no statutory age distinctions used by the NEA in the administration of agency programs.

(2) As a second step in the public administration process, the NEA must review any age distinctions it imposes on its recipients by regulation, policy or administrative practice in order to determine whether these distinctions are permissible under the Act. The results of this review must be included in a report that the agency shall publish, for public comment, in the **Federal Register**, no later than 12 months from the date the agency publishes its final regulations. The NEA will conduct and publish this review no later than 12 months from the date of the publication of its Final Rule.

(3) The NEA is required to report annually to the Congress through HHS on its compliance and enforcement activities. The NEA regularly files this report.

(4) The NEA is required to provide written notices to each recipient of the recipient's obligations under the Act, to provide technical assistance to the recipients where necessary, and to make available educational materials explaining the rights and obligations of beneficiaries and recipients.

(5) The NEA is required to establish a procedure for processing complaints of age discrimination. The complaint handling procedure must include an initial screening by the NEA and notice to complainants and recipients of their rights and obligations in the complaint process. All complaints which fall within the coverage of the Act will be referred to the agency designated by the Secretary of HHS to manage the mediation process.

(6) The NEA must review the effectiveness of its regulations 30 months after their effective date. The review is to be published in the **Federal Register** with an opportunity for public comment.

The NEA received comments on its proposed rulemaking from the HHS Office of Civil Rights. After analyzing the comments received, all except for one of HHS's comments have been incorporated into the final rule.

The proposed regulations listed Sections 1156.11 *Notice to Subrecipients,* 1156.12 *Self-Evaluation,* 1156.13 *Information Requirements,* 1156.15 *Complaints,* 1156.16 *Mediation,* 1156.17 *Investigation,* and 1156.21 *Exhaustion of administrative remedies* as containing information collection requirements which must be submitted to OMB under the *Paper Reduction Act of 1980,* 44 U.S.C. 5301 *et seq.* (1982). HHS's conclusion that these sections do not contain information collection requirements subject to OMB clearance was adopted for the reasons listed below.

Section 3518(c)(1)(B) of the Paper Reduction Act exempts from OMB approval, collections of information ''* * * during the conduct of * * * (ii) an administrative action or investigation involving an agency against specific individuals or entities.'' Therefore, as originally stated in the Proposed Regulations, the NEA need not submit Sections 1156.13, 1156.16, 1156.17 and 1156.21 to OMB for approval since all four of these requirements are tied to the agency's authority to investigate.

Moreover, the mandatory self-evaluation requirement contained in 1156.12 of the proposed regulation requiring recipients to complete a self-evaluation was disapproved and invalidated by OMB. NEA will, therefore, adopt the approach used in the HHS regulations set forth at 45 CFR 91.33(b). This approach provides NEA with discretionary authority to require a self-evaluation requirement as part of an investigation thereby eliminating any Paperwork Reduction Act problems because it is discretionary and tied to the authority to investigate.

Sections 1156.15 and 1156.11 are also not subject to OMB clearance because neither provision involves a ''collection of information'' within the meaning of the Act. Section 1156.15 provides individuals ''may file'' complaints and Section 1156.11 requires notice to subrecipients of their obligations under the Act and the regulations.

In accordance with HHS's comments, NEA has adopted a section on Special Benefits added to Section 1156.7 at (c) permitting a recipient to provide special benefits to children or the elderly provided that the benefits do not result in the exclusion of persons who are eligible to participate in a recipient's program.

Section 1156.1 was amended to include ''and as required by the general age discrimination regulations at 45 CFR Part 90'' where both the Act and the general guidelines provide authority for the promulgation of regulations.

Section 1156.2(a) was amended to include the language ''and these regulations'' after ''1975.'' The new section now reads ''The Age Discrimination Act of 1975 and these regulations apply to any program or activity receiving financial assistance from the NEA and to each program or activity that receives or benefits from such assistance.''

Section 1156.3 defining ''action'' was amended to include the language ''or the use of any policy, rule, standard or method of administration.'' The new section now reads ''action means any act, activity, policy, rule, standard or method of administration; or the use of any policy, rule, standard, or method of administration.''

Section 1156.6 on Rules Against Age Discrimination was amended to include the language ''[t]he rules stated in this section are limited by the exceptions contained in § 1156.7(b) and (c) of these regulations.''

Section 1156.6(b)(1) was amended to include the word ''or'' to clarify that either of these effects constitutes a violation.

Section 1156.11 was amended to include the words ''the Act and'' after the word ''under.'' The new section now reads ''When a recipient passes on Federal financial assistance from the NEA to subrecipients, the recipient shall provide the subrecipients with written notice regarding the subrecipient's obligation under the Act and these regulations.''

Section 1156.14 regarding ''Compliance Reviews'' was revised to provide requirements consistent with 45 CFR Part 90. The proposed regulation limited agency action to compliance reviews and pre-award reviews. The language is amended to include ''and other similar procedures to investigate and correct violations of the Act and regulations.'' This amendment eliminates the limit on the NEA's authority to conduct compliance reviews only where the agency has reason to believe there may be a violation of the regulations. No similar limitation is found in the government-wide regulations.

Section 1156.15 was amended to include the language ''the Act and'' after the language ''prohibited by.'' The second sentence requiring a complainant to file a complaint within 180 days from the ''time'' that the complainant first had knowledge of an alleged discriminatory act, is clarified by stating ''180 days from the date that the complainant first had knowledge of the alleged discriminatory act.'' Following 45 CFR 91.42(b), the language, ''[t]he Endowment will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed'' is added to identify when a complaint will be deemed filed for purposes of the 180-day requirement.

Section 1156.16(a) was amended to include ''promptly,'' after ''Endowment'' for consistency with § 90.43(c)(3). After the language ''refer to,'' Section 1156.16(a) was amended to include the language ''the agency designated by the Secretary of HHS to manage the mediation process'' and delete the language ''[f]ederal Mediation Service.''

Section 1156.16(c) was amended to include for clarity the language ''by the endowment'' after the language ''shall be taken.''

Section 1156.19(a)(1) provides that cases settled in mediation or prior to a hearing will not involve termination of a recipient's Federal financial assistance from the NEA. However, a case settled in mediation could eventually go to enforcement if the recipient fails to abide by the agreement. In addition, a recipient could fail to abide by the provisions in a settlement agreement between the NEA and the recipient. Section 1156.19(a)(1) also was amended to include the language ''unless it is reopened because of a violation of the agreement'' to accurately reflect the intent of the provision.

Section 1156.19(b) is amended to include the language ''or portion thereof'' after ''particular program or activity'' to comply with the language contained in the statute and in government-wide regulations.

Section 1156.19(d) was amended to include ''(a)(1)'' for the sake of clarity.

Section 1156.19(d)(2) was amended to include ''(a)(1) after 1156.19'' for the sake of clarity.

The last sentence of Section 1156.19(d)(2) was changed from ''[i]f a hearing results in a finding against the recipient, the Endowment shall continue a deferral until such time as the recipient demonstrates that it will operate in a non-discriminatory manner'' to ''[i]f the hearing results in a finding against the recipient, the Endowment must terminate funds.'' This language was changed because an indefinite deferral is not authorized.

Section 1156.20(a) was amended to include ''any public or nonprofit private organization or agency, or State or political subdivision of the State'' after ''recipient.''

Section 1156.20(b)(2) was amended deleting the language ''the Endowment's enabling legislation'' and adding the language ''[t]he ability to achieve the goals of the Federal statute authorizing the program or the activity'' from § 90.48.

Section 1156.21, Remedial and Affirmative Action by Recipients was deleted as repetitive of sections 1156.7 and 1156.19. Section 1156.21 is now Exhaustion of Administrative Remedies.

Section 1156.22(b)(3)(iii) was amended to clarify that the 30-day notice predicate to filing a civil action must be provided to the ''Chairperson of the Arts Endowment, the Secretary, the Attorney General of the United States, and the recipient.''

Summary of Regulation

The NEA's regulations are divided into four subparts: Subpart A—General; Subpart B—Standards for Determining Age Discrimination; Subpart C—Responsibilities of Endowment recipients; Subpart D—Investigation, Conciliation and Enforcement Procedures.

Subpart A of the regulations explains the purpose of the NEA's age discrimination regulations and sets forth general definitions. Section 1156.3(h) defines the term ''recipient.'' As indicated recipient includes any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient. Recipient includes any successor, assignee, or transferee but excludes the ultimate beneficiary of the assistance. This language points out the inapplicability of these regulations to assistance programs administered directly by the Federal government to beneficiaries. With respect to direct assistance programs, the regulations may apply whenever direct aid is provided to an individual on conditions that the aid be spent in providing services or benefits to others. The general and specific prohibitions against discrimination on the basis of age as well as the exceptions to those prohibitions are set forth in Subpart B.

As a general rule, under the regulations, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving NEA financial assistance.

The Act contains several exceptions which limit the general prohibition against age discrimination. Section 304(b)(1) of the Act permits the use of age distinctions which are based on reasonable factors other than age. The regulations provide definitions for two terms which are essential to an understanding of those exceptions: ''normal operation'' and ''statutory objective.'' ''Normal operation'' means the operation of a program or activity, without significant changes that would impair its ability to meet its objectives. ''Statutory objective'' is defined to mean any purpose which is explicitly stated in a Federal statute, State statute or local statute or ordinance.

The regulations establish a four-part test, all parts of which must be met for an explicit age distinction to satisfy one of the statutory exceptions and to continue in use in a Federally assisted program. This four-part test will be used to scrutinize age distinctions which are imposed in the administration of NEA assisted programs, but which are not explicitly authorized by a Federal, State or local statute.

Recipients of NEA funds also are permitted to take an action otherwise prohibited by the Act, if the action is based on ''reasonable factors other than age.'' In that event the action may be taken even though it has a disproportionate effect on persons of different ages. However, according to the regulations, the factor other than age must bear a direct and substantial relationship to the program's normal operation or to the achievement of a statutory objective.

Subpart C sets forth the duties of NEA recipients. NEA recipients are responsible for ensuring that their programs and activities are in compliance with the Act and NEA regulations. Where an NEA recipient passes on financial assistance to subrecipients, the recipient must notify subrecipients of their obligations under the regulations. Under these regulations, each recipient and each subrecipient could be required to complete a written self-evaluation of its compliance with the regulations. The self-evaluation must be kept on file for three years from its effective date and made available to the public upon request.

Subpart D of the regulations establishes the procedures for investigation, conciliation, and enforcement of the Act. This Subpart closely reflects the procedural requirements included in HHS's government-wide regulations.

Section 1156.16 requires mediation as an initial step in the complaint process. The NEA will refer all complaints of discrimination under the Act to the federal agency designated by the Secretary of HHS to manage the mediation process. Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint. Mediation may last no more than 60 days from the date the NEA first receives the complaint. The NEA will, however, investigate complaints that are unresolved after mediation or are reopened because the mediation agreement is violated.

Finally, the regulations permit the NEA to disburse withheld funds to an appropriate alternate recipient. The alternate recipient must be in compliance with the regulations and must demonstrate the ability to comply with the agency's regulations issued under this Act and to achieve the goals of the Federal statute authorizing the program or activity.

List of Subjects in 45 CFR Part 1156

Administrative practice and procedure, Civil rights, Discrimination, Grant programs, Investigations, Reporting and recordkeeping requirements.

Dated: February 4, 1998.

Karen Elias,

Deputy General Counsel, National Endowment for the Arts.

In consideration of the forgoing, part 1156 is hereby added to Title 45 of the Code of Federal Regulations to read as set forth below.

PART 1156—NONDISCRIMINATION ON THE BASIS OF AGE

Subpart A—General

Sec.

1156.1 Purpose.
1156.2 Application.
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Subpart B—Standards for Determining Discriminatory Practices

1156.5 Purpose.
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1156.9 [Reserved].
1156.10 General responsibilities.
1156.11 Notice to subrecipients.
1156.12 Self-evaluation.
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Subpart D—Investigation, Conciliation, and Enforcement Procedures

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1156.17 Investigation.
1156.18 Prohibition against intimidation or retaliation.
1156.19 Compliance procedure.
1156.20 Alternate funds disbursal procedure.
1156.21 Exhaustion of administrative remedies.

Authority: 42 U.S.C. 6101 *et seq.*; 45 CFR part 90.

Subpart A—General

§ 1156.1 Purpose.

The purpose of this part is to implement the Age Discrimination Act of 1975 (''Act''), as amended, and as required by the general age discrimination regulations at 45 CFR part 90. The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and the regulations in this part.

§ 1156.2 Application.

(a) The Age Discrimination Act of 1975 and the regulations in this part apply to any program or activity receiving financial assistance from the National Endowment for the Arts and to each program or activity that receives or benefits from such assistance.

(b) The Age Discrimination Act of 1975 does not apply to:

(1) Any age distinction contained in that part of Federal, State, or local statute or ordinance adopted by an elected general purpose legislative body which:

(i) Provides benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Job Training Partnership Act (JTPA).

§ 1156.3 Definitions.

As used in the regulation in this part, the term:

(a) *Act* means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94–135).

(b) *Action* means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) *Age* means how old a person is or the number of elapsed years from the date of a person's birth.

(d) *Age distinction* means any action using age or any age-related term.

(e) *Age-related term* means a word or words which necessarily imply a particular age or range of ages (for example, ''children,'' ''adult,'' ''older person,'' but not ''student'').

(f) *Federal financial assistance* means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal government.

(g) *Normal operation* means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(h) *Recipient* means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

(i) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal statute, state statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

(j) *Sub-recipient* means any of the entities in the definition of recipient to which a recipient extends or passes on Federal financial assistance and has all the duties of a recipient in the regulations in this part.

(k) *Endowment* means the National Endowment for the Arts.

(l) *Chairperson* means the Chairperson of the National Endowment for the Arts.

(m) *Secretary* means the Secretary of the Department of Health and Human Services.

(n) *United States* means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Somoa, Guam, Wake Island, the Canal Zone, the Federated States of Micronesia and the Republic of Palau, the Northern Marianas, and the territories and possessions of the United States.

§ 1156.4 [Reserved]

Subpart B—Standards for Determining Discriminatory Practices

§ 1156.5 Purpose.

The purpose of this subpart is to set forth the prohibitions against age discrimination and the exceptions to those prohibitions.

§ 1156.6 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 1156.7 (b) and (c).

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list of discriminatory actions.

§ 1156.7 Exceptions to the rules against age discrimination.

(a) *Normal operation or statutory objective of any program or activity.* A recipient is permitted to take an action otherwise prohibited by § 1156.6 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure or approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

(b) *Reasonable factors other than age.* A recipient is permitted to take an action otherwise prohibited by § 1156.6 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

(c) *Remedial and affirmative action by recipients.* If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 1156.8 Burden of proof.

The recipient of Federal financial assistance bears the burden of proving that an age distinction or other action falls within the exceptions outlined in § 1156.7.

Subpart C—Responsibilities of Endowment Recipients

§ 1156.9 [Reserved]

§ 1156.10 General responsibilities.

A recipient has primary responsibility to ensure that its programs and activities are in compliance with the Age Discrimination Act, to take steps to eliminate violations of the Act, and to provide notice to beneficiaries of its programs and activities concerning protection against discrimination provided by the Act and the regulations in this part. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to the Endowment to the extent required to determine whether it is in compliance with the Act.

§ 1156.11 Notice to subrecipients.

Where a recipient passes on Federal financial assistance from the Endowment to subrecipients, the recipient shall provide the subrecipients with written notice regarding the subrecipient's obligations under the Act and the regulations in this part.

§ 1156.12 Self-evaluation.

(a) Each recipient employing the equivalent of 15 or more full time employees may be required to complete a written self-evaluation, in a manner specified by the responsible Endowment official during the course of an investigation, of any age distinction imposed in its program or activity receiving Federal financial assistance from the Endowment to assess the recipient's compliance with the Act.

(b) Each recipient shall take corrective and remedial action whenever a self-evaluation indicates a violation of the Act.

(c) Each recipient shall make the self-evaluation available on request to the Endowment and to the public for a period of three years following its completion.

§ 1156.13 Information requirements.

Each recipient shall:

(a) Make available to the Endowment, upon request, information necessary to determine whether the recipient is complying with the regulations in this part.

(b) Permit reasonable access by the Endowment to the books, accounts and other recipient facilities and sources of information to the extent necessary to determine whether the recipient is in compliance with the Act.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 1156.14 Compliance reviews.

The Endowment may conduct compliance reviews, pre-award reviews and other similar procedures in order to investigate and correct violations of the Act and regulations. The Endowment may conduct these reviews in the absence of a compliant against the recipient. In the event a compliance review or pre-award review indicates a violation of the regulations in this part, the Endowment will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, enforcement efforts will proceed as described in § 1156.19.

§ 1156.15 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with the Endowment, alleging discrimination prohibited by the Act and the regulations in this part based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date that the complainant first had knowledge of the alleged act of discrimination. However, for good cause, the Endowment may extend this time limit. The Endowment will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed.

(b) Complaints must include a written statement identifying the parties involved, describing the alleged violation, and stating the date on which the complainant first had knowledge of the alleged violation. Complaints must be signed by the complainant. The Endowment will return any complaint that does not contain the necessary information, that is not signed by the complainant, or that is not within the Endowment's jurisdiction for any other reason. The Endowment will provide an explanation for all such returned complaints.

(c) The Endowment will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Widely disseminating information regarding the obligations of recipients under the Act and the regulations in this part.

(2) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(3) Notifying the complainant and the recipient (or their representatives) of their right to contact the Endowment for information and assistance regarding the complaint resolution process.

§ 1156.16 Mediation.

(a) *Referral of complaints for mediation.* The Endowment will promptly refer all complaints to the agency designated by the Secretary of HHS to manage the mediation process that:

(1) Fall within the jurisdiction of the regulations in this part; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informal judgment that an agreement is not possible. There must be at least one meeting with the mediator before the Endowment will accept a judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and recipient reach a mutually satisfactory resolution of the complaint during the mediation period, they shall reduce the agreement to wiring. The mediator shall send a copy of the settlement to the Endowment. No further action shall be taken by the Endowment based on that complaint unless it appears that the complainant or the recipient has failed to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) Not more than 60 days after the Endowment receives the complaint, the mediator shall return a still unresolved complaint to the Endowment for initial investigation. The mediator may return a complaint at any time before the end of the 60-day period if it appears that the complaint cannot be resolved through mediation. The mediator may extend this 60-day period, provided the Endowment concurs, for not more than 30 days, if the mediator determines that resolution is likely to occur within such period.

§ 1156.16 Investigation.

(a) *Informal investigation.* (1) The Endowment will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, the Endowment will use informal fact-finding methods, including joint or separate discussions with the complainant and the recipient to establish the facts, and, if possible, resolve the complaint to the mutual satisfaction of the parties. The Endowment may seek the assistance of any involved State program agency.

(3) The Endowment will put any agreement in writing and have it signed by the parties and an authorized official at the Endowment.

(4) The settlement shall not affect the operation of any other enforcement effort of the Endowment, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation, conciliation, and hearing.* If the Endowment cannot

resolve the complaint during the early stages of the investigation, it shall:

(1) Complete the investigation of the complaint.

(2) Attempt to achieve voluntary compliance satisfactory to the Endowment, if the investigation indicates a violation.

(3) Arrange for enforcement as described in § 1156.19, if necessary.

§ 1156.18 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act; or

(b) Cooperates in any mediation, investigation, hearing, or other part of the Endowment's investigation, conciliation and enforcement process.

§ 1156.19 Compliance procedure.

(a) The Endowment may enforce the Act and the regulations in this part through:

(1) Termination of a recipient's Federal financial assistance from the Endowment under the program or activity involved where the recipient has violated the Act and the regulations in this part. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, a case which is settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from the Endowment unless it is reopened because of a violation of the agreement.

(2) Any other means authorized by law including, but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or the regulations in this part.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or the regulations in this part.

(b) The Endowment will limit any termination under paragraph (a)(1) of this section to the particular recipient and particular program or activity or portion thereof that the Endowment finds in violation of the regulations in this part. The Endowment will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from the Endowment.

(c) The Endowment will not take action under paragraph (a) of this section until:

(1) The Chairperson has advised the recipient of its failure to comply with the Act and the regulations in this part and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Chairperson has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The Chairperson will file a report whenever any action is taken under paragraph (a) of this section.

(d) The Chairperson also may defer granting new Federal financial assistance from the Endowment to a recipient when a hearing under paragraph (a)(1) of this section is initiated.

(1) New Federal financial assistance from the Endowment includes all assistance for which the Endowment requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from the Endowment does not include assistance approved prior to the beginning of a termination hearing under paragraph (a)(1) of this section or increases in funding as a result of changed computation of formula awards.

(2) The Endowment will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under paragraph (a)(1) of this section. The Endowment will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Chairperson. The Endowment will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient. If the hearing results in a finding against the recipient, the Endowment must terminate funds.

§ 1156.20 Alternate funds disbursal procedure.

(a) When the endowment withholds funds from a recipient under the regulations in this part, the Chairperson may disburse the withheld funds directly to an alternate recipient otherwise eligible for Endowment support: any public or nonprofit private organization or agency, or State or political subdivision of the State.

(b) The Chairperson will require any alternate recipient to demonstrate:

(1) The ability to comply with the regulations in this part; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or the activity.

§ 1156.21 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the Endowment has made no finding with regard to the complaint; or

(2) The Endowment issues a finding in favor of the recipient.

(b) If the Endowment fails to make a finding within 180 days or issues a finding in favor of the recipient, the Endowment will:

(1) Promptly advise the complainant if either of the conditions of paragraph (a) of this section has been met;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief that will effect the purpose of the Act;

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in the United States district court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Chairperson of the Endowment, the Secretary, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not the attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

[FR Doc. 98–3334 Filed 2–10–98; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. R–170]

RIN 2133–AB29

Regulated Transactions Involving Documented Vessels and Other Maritime Interests: Elimination of Mortgagee and Trustee Restrictions

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule to conform its existing regulations to statutory changes that eliminate restrictions on mortgagees and trustees, thereby eliminating the need for approval by MARAD of mortgagees, trustees and mortgages held by noncitizens on U.S. documented vessels.

DATES: This rule is effective February 13, 1998.

FOR FURTHER INFORMATION CONTACT: Edmund T. Sommer, Jr., Chief, General and International Law Division, Telephone 202–366–5181.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), prior to amendment in 1996 by Pub. L. 104–324, required the approval of MARAD, pursuant to authority delegated by the Secretary of Transportation, to mortgage a U.S. documented vessel to a person not a citizen of the United States. Provisions in Chapter 313 of Title 46 U.S.C. likewise required MARAD approval of noncitizen mortgagees and U.S. trustees who would hold mortgages for noncitizens. Pub. L. 104–324 amended those statutes to eliminate the requirement for those approvals. Accordingly, MARAD is hereby conforming its regulations by removing requirements reflecting provisions formerly found in the above statutes for MARAD approval of mortgagees and trustees and mortgages to noncitizens. Existing mortgagees and trustees who have written approval from MARAD which may call for reapproval need not do so.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review), Department of Transportation (DOT) Regulatory Policies and Procedures, and Pub. L. 104–121

This procedural rulemaking is not considered to be an economically significant regulatory action under E.O. 12866, and is also not considered a major rule for purposes of Congressional review under Pub. L. 104–121. It is not considered to be a significant rule under DOT's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Accordingly, it has not been reviewed by the Office of Management and Budget. This rule merely conforms MARAD's regulations at 46 CFR Part 221 to changes in statutory authority for MARAD's administrative responsibilities for approving the foreign transfer of certain vessels and interests therein by removing restrictions in the regulations that may no longer be legally imposed. Accordingly, pursuant to provisions of the Administrative Procedure Act, 5 U.S.C. 553 (c) and (d), MARAD finds that notice and public procedure are unnecessary and that this rule may become effective in less that 30 days after its publication.

Federalism

MARAD has analyzed this rulemaking in accordance with principles and criteria contained in E.O. 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility

The Acting Maritime Administrator certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Because fewer applications for approval will need to be filed, the affected public will save money.

Environmental Assessment

MARAD has concluded that this final rule will have no environmental impact and that an environmental impact statement is not required.

Paperwork Reduction Act

This rulemaking contains no new information collection requirements.

This rule does not impose any unfunded mandates or requirements that will have an impact on the quality of the human environment.

List of Subjects in 46 CFR Part 221

Maritime carriers, Reporting and recordkeeping requirements, Trusts and trustees.

Accordingly, Part 221 of 46 CFR Chapter II, Subchapter B is amended as follows:

PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

1–2. The authority citation for part 221 continues to read as follows:

Authority: 46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 1114 (b), 1195; 46 U.S.C. chs. 301 and 313; 49 U.S.C. 336; 49 CFR 1.66.

§ 221.1 [Amended]

3. § 221.1 Purpose, is amended as follows:

a. By removing existing paragraph (a)(1)and redesignating paragraphs (a)(2) and (a)(3) as (a) (1) and (a)(2).

b. In paragraph (b), by removing the words ''(1) through (3)'' and replacing them with the words ''(1) and (2)'' and by replacing the word ''of'' after ''Secretary'' with the word ''to''.

§ 221.3 [Amended]

4. § 221.3 Definitions, is amended as follows:

a. By removing paragraphs (f) *Federally insured depository institution*, and (k) *Mortgagee*.

b. In paragraph (t) *Trust*, by removing paragraph (t)(2) and the designation ''(1)'' in paragraph (t)(1).

c. By redesignating paragraphs (g) through (j) and (l) through (w) as (f) through (u).

§ 221.7 [Amended]

5. § 221.7 Applications and fees, is amended in paragraph (b) as follows:

a. In paragraph (b)(1)(ii) by removing the introductory words ''Mortgage of, or''.

b. By removing paragraph (b)(1)(v).

c. By removing paragraph (b)(2)(iv).

§ 221.11 [Amended]

6. § 221.11 Required approvals, is amended as follows:

a. In paragraph (a) by removing the words ''sections 31322(a)(1)(d) and 31328'' and inserting in their place ''section 12106(e)''.

b. In paragraph (a)(1) by removing the word ''mortgage'' and the comma thereafter .

§ 221.13 [Amended]

7. § 221.13 General approval, is amended as follows:

a. In the introductory sentence of paragraph (a)(1) by removing the word ''mortgage'' and the comma thereafter.

b. By removing paragraph (a)(1)(iii) and redesignating existing paragraph (a)(1)(iv) as (a)(1)(iii).

c. In paragraph (a)(3), by removing the words ''or mortgage'' and the preceding comma.

§ 221.15 [Amended]

8. § 221.15 Approval for transfer of registry or operation under authority of a foreign country or for scrapping in a foreign country, is amended by replacing the phrase in paragraph (c)(4)(i) ''Federally Insured Depository Institution'' with the phrase ''federally insured depository institution''.

§ 221.17 [Amended]

9. § 221.17 Sale of a documented vessel by order of a district court, is amended by replacing the word ''Mortgagee'' wherever it appears with the word ''mortgagee''.

§ 221.19 [Amended]

10. § 221.19 Possession or sale of vessels by mortgagees or trustees other than pursuant to court order, is amended by replacing the word ''Mortgagee'' wherever it appears with the word ''mortgagee''.

11. Subpart C—Preferred Mortgagees on Documented Vessels: Mortgagees and Trustees, is hereby removed and the subpart is reserved.

§ 221.61 [Amended]

12. § 221.61 Purpose is amended by removing in the **Note** thereto the words ''31328 or'' and ''or mortgages'', and inserting the word ''or'' before the word ''transfers''.

By Order of the Acting Maritime Administrator.

Dated: February 5, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98–3346 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208295–7295–01; I.D. 020598D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area.

DATES: 1200 hrs, Alaska local time (A.l.t.), February 7, 1998, until the effective date of the Final 1998 Harvest Specification of Groundfish, as published in the *Federal Register.*

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim specification of pollock total allowable catch in Statistical Area 620 was established by the Interim 1998 Harvest Specifications (62 FR 65622, December 15, 1997) as 10,165 metric tons (mt), determined in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 interim specification of pollock in Statistical Area 620 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 9,665 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 1998 harvest specifications for groundfish for the GOA. It must be implemented immediately to prevent overharvesting the 1998 interim TAC of pollock in Statistical Area 620 of the GOA. A delay in the effective date is impracticable and contrary to public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

Dated: February 6, 1998.

Gary C. Matlock,

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

[FR Doc. 98–3462 Filed 2–6–98; 3:57 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 28
Wednesday, February 11, 1998

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 39

[Docket No. 97–CE–132–AD]

RIN 2120–AA64

Airworthiness Directives; Diamond Aircraft Industries Models HK 36 TTS and HK 36 TTC Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Diamond Aircraft Industries (Diamond) Models HK 36 TTS and HK 36 TTC sailplanes. The proposed action would require inspecting the engine turbocharger oil-pressure line for the correct banjo bolt. The correct banjo bolt would have a valve seat, instead of a built-in orifice. If the banjo bolt does not have a valve seat, then the proposed action would require replacing the banjo bolt with one that has a valve seat, and repairing or replacing the turbocharger. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria. The actions specified by the proposed AD are intended to prevent possible loss of engine power, which, if not corrected, could result in possible loss of control of the sailplane.

DATES: Comments must be received on or before March 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–132–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Diamond Aircraft Industries, G.m.b.H., N.A. Otto-Strabe 5, A–2700, Wiener Neustadt, Austria. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–CE–132–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–132–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Austro Control GmbH, which is the airworthiness authority for Austria, recently notified the FAA that an unsafe condition may exist on certain Diamond Aircraft Industries (Diamond) Models HK 36 TTS and HK 36 TTC sailplanes equipped with Bombardier ROTAX (ROTAX) 912 F series engines (serial numbers 4,420.011 through 4,420.058). The Austro Control GmbH reports that during a routine maintenance inspection, Diamond found that some of the affected sailplanes equipped with turbocharged ROTAX engines have the wrong banjo bolt installed in the oil-pressure line. The correct banjo bolt, part number (P/N) 941 782, should have a valve seat instead of a built-in orifice. The wrong banjo bolt could cause excessive wear to the turbine bearing in the turbocharger because of too much oil entering the muffler system. This increased oil in the muffler would be evident by excessive smoke in the exhaust. These conditions, if not corrected, could result in loss of engine power, with possible loss of control of the sailplane.

Relevant Service Information

Bombardier ROTAX has issued Technical Bulletin No. 914–04, dated August 1997, which specifies procedures for inspecting the sailplane's oil-pressure line in the turbocharged engine for the correct banjo bolt (P/N 941 782), replacing any banjo bolt that has a built-in orifice, and repairing or replacing the turbocharger.

The Austro Control GmbH classified this service bulletin as mandatory and issued Austrian AD No. 90, undated, in order to assure the continued airworthiness of these sailplanes in Austria.

The FAA's Determination

This sailplane model is manufactured in Austria and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Austro Control GmbH has kept the FAA informed of the situation described above.

The FAA has examined the findings of the Austro Control GmbH, reviewed all available information including the

service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Diamond Aircraft Ltd. Model HK 36 TTS and HK 36 TTC sailplanes of the same type design registered in the United States, the proposed AD would require inspecting the banjo bolt for a valve seat. If the banjo bolt does not have a valve seat, the proposed AD would require replacing the banjo bolt, and repairing or replacing the turbocharger. Accomplishment of the proposed installation would be in accordance with Bombardier ROTAX Technical Bulletin No. 914–04, dated August, 1997.

Cost Impact

The FAA estimates that 4 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per sailplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $240 or $60 per sailplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

Diamond Aircraft Industries: Docket No. 97–CE–132–AD.

Applicability: Model HK 36 TTS and HK 36 TTC sailplanes (all serial numbers), certificated in any category, equipped with Bombardier ROTAX engines (serial numbers 4,420.011 through 4,420.058).

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 10 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent possible loss of engine power, which, if not corrected, could result in possible loss of control of the sailplane, accomplish the following:

(a) Inspect the Bombardier ROTAX engine's turbocharger oil-pressure line for a banjo bolt with a valve seat, part number (P/N) 941 782 (or an FAA-approved equivalent part number), in accordance with the Instructions section of Bombardier ROTAX Technical Bulletin No. 914–04, dated August, 1997.

Note 2: An incorrect banjo bolt would have a built-in orifice, instead of a valve seat.

(b) If an incorrect banjo bolt is installed, prior to further flight, replace the banjo bolt with one that has P/N 941 782 (or an FAA-approved equivalent part number), and repair or replace the turbocharger in accordance with the Instructions section of Bombardier ROTAX Technical Bulletin No. 914–04, dated August, 1997.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to ROTAX Technical Bulletin No. 914–04, dated August 1997, should be directed to Diamond Aircraft Industries, G.m.b.H., N.A. Otto-Strabe 5, A–2700, Wiener Neustadt, Austria. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in Austrian AD No. 90, undated.

Issued in Kansas City, Missouri, on February 4, 1998.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3413 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 971014245–8014–02]

[RIN 0645–AK45

Anchoring on Tortugas Bank Within the Florida Keys National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; environmental assessment.

SUMMARY: The National Oceanic and Atmospheric Administration is proposing to amend the regulations for the Florida Keys National Marine

Sanctuary (FKNMS or Sanctuary) to make permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length on Tortugas Bank. The preamble to this rule contains an environmental assessment for this proposed action. The intent of this proposed rule is to protect the coral reef at Tortugas Bank.

DATES: Comments must be received by March 13, 1998.

ADDRESSES: Comments should be sent to Billy Causey, Superintendent, Florida Keys National Marine Sanctuary, Post Office Box 500368, Marathon, Florida, 33050. Comments will be available for public inspection at the same address.

FOR FURTHER INFORMATION CONTACT: Bill Causey at (305) 743–2437.

SUPPLEMENTARY INFORMATION:

I. Background

The Sanctuary was designated by an act of Congress entitled the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA, Pub. L. 101–605) which was signed into law on November 16, 1990. The FKNMSPA directed the Secretary of Commerce to develop a comprehensive management plan and regulations for the Sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (NMSA) (also known as Title III of the Marine Protection Research and Sanctuaries Act of 1972), as amended, 16 USC 1431 *et seq.* The NMSA authorizes the development of management plans and regulations for national marine sanctuaries to protect their conservation, recreational, ecological historical, research, educational, or aesthetic qualities.

The authority of the Secretary to designate national marine sanctuaries and implement designated sanctuaries is delegated to the Under Secretary of Commerce for Ocean and Atmosphere by the Department of Commerce, Organization Order 10–15, § 3.01(x) (Jan. 26, 1996). The authority to administer the other provisions of the NMSA is delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83–38, Directive 05–50 (September 21, 1983, as amended). The final Sanctuary regulations implementing the designation was published in the **Federal Register** on June 12, 1997, (62 FR 32154) and were effective July 1, 1997, and codified at 15 CFR part 922, Subpart P.

In September 1997, NOAA became aware that significant injury to, and destruction of, living coral on the Tortugas Bank, west of the Dry Tortugas National Park, was being caused by the anchoring of vessels 50 meters or greater in registered length.

Section 922.165 of the Sanctuary regulations provides that, where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resources, any and all activities are subject to immediate temporary regulation, including prohibition, for up to 120 days. Emergency regulations cannot take effect until approved by the Governor of the State of Florida. In accordance with 15 CFR 922.165, and the Co-Trustees Agreement for Cooperative Management between NOAA and the State of Florida, in October 1997, NOAA consulted with and received approval by the Governor of the State of Florida to issue a temporary rule prohibiting the anchoring by vessels 50 meters or greater in length on Tortugas Bank west of the Tortugas National Park within the Sanctuary. The temporary rule (62 FR 54381; October 20, 1997), took effect at 12:01 a.m. October 17, 1997 and will remain in effect until February 12, 1998.

II. Summary of the Proposed Regulatory Amendment

The proposed rule would make permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length on the Tortugas Bank west of the Dry Tortugas National Park within the Sanctuary. Current 15 CFR 922.163(a)(5)(ii) of the final Sanctuary regulations prohibits vessels from anchoring in the Sanctuary on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen. However, this regulation does not protect the coral located in the area covered by this proposed rule because the water there is deeper than 40 feet.

Anchoring of vessels 50 meters or greater in registered length on Tortugas Bank has been documented as having caused significant injury to living coral reef resources. Vessels of such size have anchor gear (ground tackle) of massive weight and size with heavy chains hundreds of feet in length weighing as much as 8 to 10 tons. Proper anchoring requires that a length of chain five to seven times the depth of the water be lowered, this act of product seamanship allows for safe anchoring under any sea conditions. In most circumstances, much of this chain will drop to and remain on the bottom. The weight of the chain holds the vessel in place. In this area, the heavy chain crushes the coral and sponges. In addition, as the tide changes or the wind shifts, vessels often change position and drag their anchor chain over the seabed, further damaging the reef.

For example, a 180 foot Coast Guard Cutter uses a 2000 pound anchor and chain sized appropriately to deploy it; whereas a Coast Guard 110 foot Patrol Boat uses an 80 pound anchor and rather than chain, nylon line is used as ground tackle (anchor gear).

Coast Guard patrol boats regularly in the area around Tortugas Bank report that they encounter either very large vessels (50 meters or greater in length), or fishing vessels or pleasure craft generally less than 35 meters in length.

Vessels smaller than 50 meters in registered length have not been documented as having caused injury or loss of living coral on Tortugas Bank. Their anchoring gear is less massive in size, length and weight. Therefore, this rule would not prohibit anchoring by vessels less than 50 meters in registered length on the Tortugas Bank. The location by coordinates of the prohibited anchoring area is set forth in the text of the proposed rule. Vessels greater than 50 meters in registered length are already prohibited by the FKNMSPA for operating in certain other areas of the Sanctuary, referred to in that statute and Sanctuary regulations as Areas to be Avoided (15 CFR 922.164(a)).

Transit, fishing and all other activities currently allowed in the area would not be affected by this rule. Alternative anchor sites for vessels 50 meters or greater in length are located within approximately two nautical miles of the prohibited area. The close proximity of these alternative anchoring sites should mitigate any potential economic impact on such vessels since cost of the time and fuel to maneuver to this area and the additional time and labor in letting out and pulling in the additional anchor chain should be minimal.

The recommended alternative anchoring location in the vicinity of the area closed to anchoring by vessels 50 meters or greater in registered length is the area outside the sanctuary boundary located approximately 2 nautical miles west of the living coral reefs that form the Tortugas Bank, where the water depth contour is 20 fathoms or greater as indicted on NOAA Nautical Chart Numbers 11434 and 11420. The bottom type in this area is sand/mud or sand/shell. Mariners should note the existence of a submerged shipwreck located at 24°38′N 83°08.00′W. This shipwreck is a landing ship transport which was lost in 1948.

III. Miscellaneous Rulemaking Requirements

National Environmental Policy Act

NOAA has prepared an environmental assessment (EA), pursuant to the National Marine Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., for the Florida Keys National Sanctuary on this proposed rule. The text of the EA follows.

Environmental Assessment

I. Description of the Affected Environment

The Dry Tortugas Banks are located at the westernmost extent of the Florida Keys. These banks are separated from the remainder of the Keys by a 24 meter deep channel. The Banks have a rim of Holocene coral reef development surrounding an inner basin containing several sandy islands including Loggerhead Key, Garden Key, Bush Key, and Hospital Key. A little-known deep-water coral reef, informally named Sherwood Forest, is found at Tortugas Bank. The seabed includes corals, sponges, and other delicate coral reef organisms.

Human uses of the affected environment includes snorkeling and diving, shrimping, day tours on charter boats, and pleasure boating on private boats. All of these vessels are less than 50 meters in registered length and none have been documented as causing damage to the reef by anchoring.

II. Need for the Proposed Rule

The region within the Sanctuary known as Tortugas Bank has traditionally been an anchoring area for large, foreign flag vessels holding up and waiting order to enter a port within the region.

However, personnel from the adjacent Dry Tortugas National Park have noticed that in the past six months, vessels have begun to anchor on the Bank itself.

On August 30, Florida Keys National Marine Sanctuary staff received a video from a recreational diver charter captain documenting anchoring damage caused by a large, foreign-flagged vessel anchored within state waters on the Tortugas Bank, within the Sanctuary.

Shortly thereafter, Sanctuary biologists visited the reported anchoring site to conduct a biological assessment of the injury to the living coral reef. When they arrived on Tortugas Bank, there were four foreign ships ranging from over 400 to 800 feet in length anchored on the 60′ deep coral reef bank. Although staff was unable to locate the original site which was reported in the video, they were able to assess and photo-document the reef damage caused by the four vessels.

Staff noted significant damage to corals, sponges, and other delicate coral reef organisms. Wide swaths of barren seabed and overturned coral heads were evidence of the ongoing disruption to the coral reef community caused by the ships' anchors and anchor chains.

The proposed rule would make permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length in an area approximately 39.53 square nautical miles. Transit, fishing and all other activities currently allowed in the area would not be affected by this rule.

NOAA has identified and recommended alternative anchor sites within approximately two nautical miles of the prohibited area. Vessels greater than 50 meters in registered length are already prohibited by the FKNMSPA from operating in certain other areas of the Sanctuary, referred to in that statute and Sanctuary regulations as Areas to be Avoided (15 CFR 922.164(a)).

III. Alternatives, Including the Proposed Action and Their Environmental Impacts

No Action

One alternative is to take no action, thus maintaining the status quo. This alternative is not acceptable because the coral reef located at Tortugas Bank would continue to be injured or destroyed by the anchoring of vessels 50 meters or greater in length.

Prohibit Anchoring by Vessels 50 Meters or Greater in Registered Length on Tortugas Bank Within the Florida Keys National Marine Sanctuary

The preferred alternative is to make permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length on Tortugas Bank within the Florida Keys National Marine Sanctuary. This alternative would protect the coral reef at Tortugas Bank while not unduly restricting the passage and anchoring of vessels which have not been documented as having caused harm in the area.

Prohibit Anchoring by All Vessels on Tortugas Bank Within the Florida Keys National Marine Sanctuary

This alternative, to prohibit anchoring by all vessels on Tortugas Bank within the Florida Keys National Marine Sanctuary would unduly restrict the vessels which have not been documented as having caused harm in the area. Vessels smaller than 50 meters in registered length have not been documented as having caused injury or loss of living coral on Tortugas Bank. Their anchoring gear is less massive in size, length and weight than that of vessels of 50 meters or greater in registered length.

Current uses of the Tortugas Bank, west of the Dry Tortugas National Park, include snorkeling and diving, shrimping, day tours on charter boats, and pleasure boating on private boats. All of these vessels are less than 50 meters in registered length and none have been documented as causing damage to the reef by anchoring. To prohibit anchoring by these vessels on the Tortugas Bank, west of the Dry Tortugas National Park, would likely be an unreasonable economic burden on small businesses and an unnecessary impact on the public relative to the apparently minimal environmental benefit of such a restriction.

Extend the Area to be Avoided to Include Tortugas Bank West of the Dry Tortugas National Park

Extending the existing statutory Area To Be Avoided to include Tortugas Bank west of the Dry Tortugas National Park is an alternative that was considered and rejected. This alternative would eliminate the safe passage and transit through the area by all vessels greater than 50 meters registered length. The passage of vessels through this area has not been determined to be detrimental to the environment. Vessels 50 meters or greater in registered length frequently pass through this area enroute to major Gulf Coast ports, including Galveston and Houston, Texas; Mobile, Alabama; New Orleans, Louisiana; Tampa, Florida and the ships transit this area enroute to the Panama Canal. The overly broad restriction that would be caused if this alternative was accepted would cause a great economic burden to the shipping industry, and therefore was not selected as the preferred alternative.

IV. List of Agencies and Persons Consulted

In an effort to inform all affected parties of the temporary rule, NOAA sent electronic mail messages to major international shipping companies, and notified the U.S. Coast Guard which resulted in a Notice to Mariners. NOAA issued a press release which was reported by the media throughout the area. Sanctuary staff notified all international underwriters for the relevant shipping companies to apprise them of the temporary rule and soliciting their help in notifying their shipping clients. Additionally, Sanctuary staff contacted all the Pilots'

Associations around the Gulf Coast and solicited their help in spreading the word to the shipping companies about the rule. In addition, NOAA consulted with, and received approval from, the State of Florida. NOAA will continue to consult, as appropriate, with all relevant parties during the pendency of this rule.

End of Environmental Assessment

Executive Order 12866

The Office of Management and Budget (OMB) has concurred that this rule is not significant within the meaning of Section 3(f) of Executive Order 12866.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have sufficient federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

This regulatory action if adopted as proposed is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, and the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration.

This proposed rule would make permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length in a relatively small, sensitive area. Alternative anchoring sites for vessels subject to this regulation are within close proximity, which should mitigate any potential economic impact on such vessels since the cost of the time and fuel to maneuver to this area and the additional time and labor in letting out and pulling in the anchor chain should be minimal. Vessels smaller than 50 meters in registered length have not been documented as having caused injury or loss of living coral on Tortugas Bank and, therefore, would not be subject to this rule's prohibition. Accordingly, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule would not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 et seq.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program)

Dated: February 5, 1998.

Captain Evelyn J. Fields,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR Part 922, Subpart P is proposed to be amended as follows:

PART 922—[AMENDED]

1. The authority citation for Part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

Subpart P—Florida Keys National Marine Sanctuary

1. Section 922.164 is amended by adding the following paragraph (g) as follows:

§ 922.164 Additional activity regulations by Sanctuary area.

* * * * *

(g) *Anchoring on Tortugas Bank.* Vessels 50 meters or greater in registered length are prohibited from anchoring on the Tortugas Bank. The coordinates of the area on the Tortugas Bank, west of the Dry Tortugas National Part, closed to anchoring by vessels 50 meters or greater in registered length are:

(1) 24°45.75′N 82°54.40′W
(2) 24°45.60′N 82°54.40′W
(3) 24°39.70′N 83°00.05′W
(4) 24°32.00′N 83°00.05′W
(5) 24°37.00′N 83°06.00′W
(6) 24°40.00′N 83°06.00′W

[FR Doc. 98–3405 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Self-Rescue Devices; Use and Location Requirements

AGENCY: Mine Safety and Health Administration, (MSHA) Labor.

ACTION: Extension of comment period.

SUMMARY: Due to issues involving the use of Self-Contained Self-Rescuer's (SCSR), MSHA is extending the comment period on its draft policy letter (PPL) relating to the approval guidelines for storage plans for Self-Contained Self-Rescue (SCSR) Devices in underground coal mines.

DATES: Submit all comments on or before April 13, 1998.

ADDRESSES: Comments may be transmitted by electronic mail, fax or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: comments@msha.gov. Comments by fax must be clearly identified as such and sent to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT: Milton D. Conley, Division of Health, Coal Mine Safety and Health, (703) 235–1358.

SUPPLEMENTARY INFORMATION: On September 26, 1997, (62 FR 50541), MSHA published a notice in the **Federal Register** requesting comments on a draft policy letter (PPL) relating to the approval guidelines for storage plans for Self-Contained Self-Rescue (SCSR) Devices in underground coal mines. MSHA published the notice to voluntarily afford an opportunity for interested persons to comment on the PPL before its anticipated issuance and effective date.

The comment period was scheduled to close on February 23, 1998; however, in response to commenters' requests for additional time to prepare their comments, MSHA is extending the comment period until April 13, 1998. The Agency believes that this extension will provide sufficient time for all interested parties to review and comment on the draft policy. All interested parties are encouraged to submit their comments on or prior to April 13, 1998.

Dated: February 5, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–3417 Filed 2–10–98; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Public Meetings on Supplementary Proposed Rule—Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Minerals Management Service (MMS) is giving notice of five public meetings concerning the supplementary proposed Federal oil valuation rule published in the **Federal Register** on February 6, 1998 (63 FR 6113). The proposed rule amends the royalty valuation regulations for crude oil produced from Federal leases.

DATES: The public meeting dates are:

1. Houston, TX, February 18, 1998, 9 a.m. to 3 p.m., Central time.
2. Washington, D.C., February 25, 1998, 10 a.m. to 4 p.m., Eastern time.
3. Lakewood, CO, March 2, 1998, 9 a.m. to 3 p.m., Mountain time.
4. Bakersfield, CA, March 11, 1998, 9 a.m. to 1 p.m., Pacific time.
5. Casper, WY, March 12, 1998, 9 a.m. to 1 p.m., Mountain time.

In addition to this **Federal Register** notice, these meeting dates and locations were announced to oil and gas industry representatives on February 3, 1998, at the Rocky Mountain Mineral Law Foundation, Special Institute on Federal and Indian Oil and Gas Royalty Valuation and Management.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for meeting location addresses.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Christnacht, Royalty Valuation Division, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3151, Denver, Colorado 80225–0165, telephone number (303) 275–7252; or, Mr. David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165, telephone number (303) 231–3432, fax number (303) 231–3385, e-Mail address RMP.comments@mms.gov.

SUPPLEMENTARY INFORMATION: The meetings will be open to the public in order to discuss the supplementary proposed rule and gather comments. The meeting locations are:

1. Houston—Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, TX 77032, telephone number (281) 987–6802.
2. Washington, D.C.—Main Interior Building, Large Buffet Room, in the Cafeteria, Basement Floor, 1849 C Street, N.W., Washington, D.C. 20240, telephone number (202) 208–3512.
3. Lakewood—Veterans Administration Building, 155 Van Gordon St., Lakewood, CO 80228, telephone number (303) 914–5800.
4. Bakersfield—Bakersfield District Office, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308–6837, telephone number (805) 391–6000.
5. Casper—Casper District Office, Bureau of Land Management, 1701 East ''E'' Street, Casper, WY 82601, telephone number (307) 261–7600.

We encourage members of the public to attend these meetings. Those wishing to make formal presentations should sign up upon arrival. The sign up sheet will determine the order of speakers. For building security measures, each person will be required to sign in and may be required to present a picture identification to gain entry to the meetings.

Dated: February 5, 1998.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 98–3444 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–MR–P

Notices

Federal Register
Vol. 63, No. 28
Wednesday, February 11, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–123–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the gypsy moth program.

DATES: Comments on this notice must be received by April 13, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–123–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–123–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the gypsy moth identification worksheet, contact Ms. Coanne O'Hern, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247. For copies of more detailed information on the information collection, contact Mr. Gregg Ramsey, Information Collection Coordinator, at (301) 734–5682.

SUPPLEMENTARY INFORMATION:

Title: Gypsy Moth Identification Worksheet.

OMB Number: 0579–0104.

Expiration Date of Approval: September 30, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for preventing the introduction of foreign plant pests into the United States, preventing the spread of plant pests not widely distributed in the United States, and eradicating those plant pests when eradication is feasible.

To this end, the Plant Protection and Quarantine Service (PPQ) of the Animal and Plant Health Inspection Service (APHIS), USDA, engages in detection surveys to monitor for the presence of, among other things, the European gypsy moth and the Asian gypsy moth.

The European gypsy moth was introduced into the United States in the 1860's and has been damaging woodland areas in the Northeast for the last 100 years. The Asian gypsy moth, which is not established in this country, is considered to pose an even greater threat to trees and forested areas.

Unlike the flightless European gypsy moth female adult, the Asian gypsy moth female adult is capable of strong directed flight between mating and egg deposition, significantly increasing its ability to spread over a much greater area and become widely established within a short period of time.

In order to determine the presence and extent of a European gypsy moth or an Asian gypsy moth infestation, we set traps in high risk areas to collect specimens. Once an infestation is identified, control and eradication work (usually involving State cooperation) is initiated to eradicate the moths.

APHIS personnel, with assistance from State agriculture personnel, check traps for the presence of gypsy moths. If a suspicious moth is found in the trap, it is sent to APHIS laboratories at the Otis Methods Development Center so that it can be correctly identified through DNA analysis. (Since the European gypsy moth and the Asian gypsy moth are strains of the same species, they cannot be visually distinguished from each other. DNA analysis is the only way to accurately identify these insects.)

The individual submitting the moth for analysis (whether a PPQ employee or State employee) completes a gypsy moth identification worksheet (PPQ Form 305), which accompanies the insect to the laboratory. The worksheet enables both Federal and State regulatory officials to identify and track specific specimens through the DNA identification tests that we conduct.

The information provided by the gypsy moth identification worksheets is vital to our ability to monitor, detect, and eradicate gypsy moth infestations.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .0841 hours per response.

Respondents: State cooperators.

Estimated annual number of respondents: 120.

Estimated annual number of responses per respondent: 1.7833.

Estimated annual number of responses: 214.

Estimated total annual burden on respondents: 18 hours. (Due to

rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 5th day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–3418 Filed 2–10–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Giant Multi-Resource Management Project

AGENCY: Forest Service, USDA.

ACTION: Cancellation of Notice of Intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Tahoe National Forest has changed the proposed action for this EIS, which has reduced the scope of the project. An Environmental Assessment rather than an Environmental Impact Statement will be prepared for this proposed action.

A Notice of Intent was published in the **Federal Register** on June 2, 1997 on page 29706. A revised Notice of Intent was published in the **Federal Register** on October 24, 1997 on page 55389.

FOR FURTHER INFORMATION CONTACT: John Bradford, EIS Team Leader, Foresthill Ranger District, 530–478–6254.

Dated: February 3, 1998.

Judie L. Tartaglia,

Acting Forest Supervisor.

[FR Doc. 98–3359 Filed 2–10–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: Bureau of Economic Analysis.

Title: Direct Transactions of U.S. Reporter with Foreign Affiliate.

Form Number(s): BE–577.

Agency Approval Number: 0608–0004.

Type of Request: Revision of a currently approved collection.

Burden: 64,000 hours.

Number of Respondents: 12,800 respondents, 4 responses each per year.

Avg Hours Per Response: 1¼ hours.

Needs and Uses: The survey collects quarterly sample data on transactions and positions between U.S.-owned foreign business enterprises and their U.S. parents. Universe estimates are developed from the reported sample data. The data are needed to compile the U.S. international transactions, input-output, and national income and product accounts, and the international investment position of the United States. The data are also needed to measure the economic significance of U.S. direct investment abroad, measure changes in such investment, and assess its importance.

In addition, the data are needed by the Departments of Treasury, State, and Commerce, the Office of the U.S. Trade Representative, and the Council of Economic Advisers to carry out U.S. international economic policy. They are also needed by the Federal Reserve Board in the conduct of U.S. monetary policy. Such policy must be based upon an informed analysis of current information on cross border transactions, including transactions between U.S. affiliates and their foreign parents. The data are particularly valuable to these agencies because they are collected, analyzed, and published within 90 days after the end of each calendar quarter, allowing data users to see the consequences of changes in economic conditions almost immediately.

Affected Public: Businesses or other for-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5732, 14th Street 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 Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–3481 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census 2000 Dress Rehearsal Integrated Coverage Measurement (ICM)/Post Enumeration Survey (PES) Person Followup Interview

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 April 13, 1998.

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 Magdalena Ramos, Staff Group Leader for ICM Operations, Bureau of the Census, Room 2126, Washington, DC 20233, (301)457–4295.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of the Census developed the Integrated Coverage Measurement (ICM) approach for measuring coverage of housing units and population counts during the decennial census. In the Census 2000 Dress Rehearsal, we will be conducting a rehearsal of both the ICM and Post Enumeration Survey (PES) methodologies which can be alternatively used to measure the coverage of the census for housing units and people. The ICM/PES is a survey of sample block clusters within the Dress Rehearsal sites. The Census 2000 Dress Rehearsal sites include an urban site (Sacramento, California), a non-urban site (Columbia, South Carolina, and surrounding area), and one American Indian Reservation (Menominee

Reservation, Wisconsin which includes Menominee County).

The PES methodology will be tested only in the Columbia, South Carolina (and surrounding area) site, while ICM will be tested in the other two sites. The two main differences between the ICM and the PES approaches are: (1) The ICM methodology combines the initial count estimates with ICM coverage results to produce the ''one number'' census estimates, while the PES produces evaluation coverage estimates separately; (2) The time-frame. The time frame differences result because the PES is a test of the nonsampling census methods. Because of this, the Nonresponse Follow-up (NRFU) operation of the initial census phase for the South Carolina site will be expanded two weeks beyond that of the other two sites where ICM operation will be tested. As a result, the South Carolina PES activites that occur after the census initial phase NRFU activities will start two weeks later than similar ICM activities in the other two sites.

The first activities of the ICM/PES consisted of the Independent Listing and the Housing Unit Follow-up operations. During the Independent Listing, the Bureau of the Census will obtain a complete inventory of all housing unit addresses in the ICM sample blocks within the Census 2000 Dress Rehearsal sites just before the beginning of the dress rehearsal. The resulting address listing will be used in the ICM Person interview activities from where a roster of people in the ICM/PES addresses will be created.

As soon as census enumeration is complete, the ICM/PES Person Interview will be conducted using a Computer Assisted Personal Interviewing (CAPI) instrument, on a laptop computer. During this operation, the Bureau of the Census will target ICM/PES sample cases for either telephone or personal visit interviews.

After the person interview, person matching is conducted. The people enumerated in the ICM sample are matched to the people enumerated in the census for the same addresses. Unresolved cases will then be reconciled in the field during the *ICM Person Follow-up interview.* An automated CAPI instrument will be used for data collection. The automated instrument will code each person in the follow-up as a matched resident/non-resident or a nonmatched resident/non-resident of the block cluster on census day. The completed follow-up interview files will be reviewed and used to resolve a person's residence status and match status. This information will then be used in the census 2000 dress rehearsal coverage estimates and the ''one number'' census estimates.

The materials for the approval of the independent listing, HU and Person Interview operations have been submitted to the Office of Management and Budget separately and approval for the listing operations was already granted.

II. Method of Collection

This operation will be conducted using person-to-person interviewing and a CATI instrument administered on a laptop computer.

III. Data

OMB Number: Not available.

Form Number: CAPI Person Follow-up Interview (no form number).

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 8,520 Housing units.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 2,130 hours (8,520 × 15 minutes).

Estimated Total Annual Cost: There is no cost to respondents except for their time to respond.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S. Code, Sections 141, 193, and 221.

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: February 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–3480 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6–98]

Foreign-Trade Zone 37, Orange County, New York Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the County of Orange, New York, grantee of FTZ 37, requesting authority to expand its zone in the Orange County, New York area, adjacent to the New York Seaport Area Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 2, 1998.

FTZ 37 was approved on May 4, 1978 (Board Order 130, 43 F.R. 20526, 5/12/78). The general-purpose zone currently consists of two sites: Site 1 (117,000 sq. ft.)—within the Regal Distribution Center, 61 Regal Way, Newburgh, adjacent to Stewart Airport; and, Site 2 (5 acres)—Newburgh Foreign-Trade Zone Industrial Incubator facility, adjacent to Port Newburgh, 302 North Water Street.

The applicant, in a major revision to its zone plan, now requests authority to expand the general-purpose zone to include 7 new sites (11,400 acres) in Orange, Dutchess and Rockland Counties (Proposed Sites 3–9): *Site 3* (9,933 acres)—Stewart International Airport/Northeast Business Center, near the intersection of I–87 and I–84, New Windsor/Newburgh (Orange County); *Site 4* (520 acres)–IBM/Hudson Valley Research Park, 1580 Route 52, Hopewell Junction (Dutchess County); *Site 5* (63 acres)–AT&T Rockland Export Center, 22 Hemion Road, Suffern (Rockland County); *Site 6* (262 acres)–Newburgh/New Windsor site, Port of Newburgh, off Exit 10, Interstate 84 at the Newburgh/Beacon Bridge, Newburgh (Orange County); *Site 7* (309 acres)–Middletown/Wallkill site, adjacent to Interstate 84 and Exit 121 of NY Rt. 17 (Quickway), Middletown/Wallkill (Orange County); *Site 8* (140 acres)–Port Jervis site, adjacent to Exit 1 off Interstate 84, juncture of the borders of New York, New Jersey and Pennsylvania, Port Jervis (Orange County); and, *Site 9* (173 acres)–Goshen/Westgate FTZ Industrial Park, off Exit 124 of NY Rt. 17 (the Quickway), Village of Goshen (Orange County). Proposed Site 3 includes existing and proposed airport cargo handling facilities and the airport fuel system. Proposed Site 4 is within a designated State of New York Enterprise

Zone, and most of Proposed Site 6 is within a recently created Federal Empowerment Zone, as well as a proposed State Enterprise Zone. The proposed expansion is designed to serve the entire 7–county Mid-Hudson Valley Region. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 13, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 27, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the County Executive, Orange County Government Center, Legislative Clerk's Office, Room 302, Goshen, New York 10924

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: February 5, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–3483 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 4–98]

Foreign-Trade Zone 68—El Paso, Texas Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of El Paso, Texas, grantee of FTZ 68, requesting authority to expand its zone in El Paso, Texas, within the El Paso Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 20, 1998.

FTZ 68 was approved on April 14, 1981 (Board Order 175, 46 FR 22918; 4/22/81). On September 30, 1982, the grant of authority was reissued to the City of El Paso, Texas (Board Order 193, 47 FR 45065; 10/13/82). The zone was expanded in 1984 (Board Order 255, 49 FR 22842; 6/1/84) and in 1991 (Board Order 504, 56 FR 1166; 1/11/91). The zone currently consists of five sites (2,000 acres) in the El Paso, Texas, area:

Site 1 (590 acres)—El Paso Airport's Butterfield Trail Industrial Park;

Site 2 (470 acres)—Lower Valley Site, which is composed of the Americas Avenue/Zaragosa Bridge Industrial Parks; and,

Site 3 (700 acres)—Eastern Region Industrial Park sites located at Americas Avenue and Interstate 10 in eastern El Paso, including a parcel (34 acres) located within the Vista Del Sol Industrial area (A(27f)–8–97, expires 12/31/99) and a parcel (7 acres) located within the 10/375 Industrial Park (A(27f)–48–97, expires 12/31/99).

Site 4 (130 acres)—Copperfield Industrial Park located on Hawkins Boulevard at Tony Lama Street in Central El Paso, and;

Site 5 (95 acres)—WWF Industries Park located on Highway 54 in northeastern El Paso.

The applicant is now requesting authority to update, expand and reorganize Sites 2 and 3 as described below. The proposal includes a request to restore zone status to parcels (located within the existing or proposed zone sites) that had been temporary deleted from the zone boundary in earlier changes.

Site 2: include the entire Americas Industrial Park (60 acres) within the zone boundary and add two adjacent parcels owned by Alderete Farms & Development in the Lower Valley Region, increasing the size of the zone site from 470 to 670 acres;

Site 3: include the entire 10/375 Industrial Park and two adjacent parcels (210 acres) within the zone boundary (including existing Pine Springs temporary site); also include a 240-acre tract within the 2,230-acre Vista del Sol Industrial Park (including the existing International City temporary site), increasing the size of the zone site from 700 to 1,150 acres.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 13, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 27, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 797 S. Zaragosa Road, El Paso, Texas 79907

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: February 2, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–3484 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–823]

Professional Electric Cutting Tools From Japan; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 8, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on professional electric cutting tools (PECTs) from Japan. This review covers the period of July 1, 1995 through June 30, 1996.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–1391.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as

amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations as codified at 19 CFR part 353, as they existed on April 1, 1996. Since the new regulations do not apply in these final results, we should note that whenever the new regulations are cited, they operate as a restatement of the Department's interpretation of the Act. See, 62 FR 27296, 27378 (May 19, 1997).

Background

On August 8, 1997, we published in the **Federal Register** (62 FR 42750) the preliminary results of administrative review of the antidumping duty order on PECTs from Japan (58 FR 37461); July 12, 1993. We received case briefs from the respondent, Makita Corporation and Makita U.S.A., Inc. (Makita) and the petitioner, Black and Decker (U.S.), Inc. (Black & Decker) on September 22, 1997. Petitioner and respondent submitted rebuttal briefs on September 29, 1997. We held a public hearing on October 29, 1996. The Department extended the final results of this review until February 4, 1998. We are conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of PECTs from Japan. PECTs may be assembled or unassembled, and corded or cordless.

The term ''electric'' encompasses electromechanical devices, including tools with electronic variable speed features. The term ''assembled'' includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool. The term ''unassembled'' means components which, when taken as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations (*e.g.*, kits).

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable bank saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.

The products subject to this order include all hand-held PECTs and certain bench-top, hand-operated PECTs. Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface. Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. They are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the PECT order includes only the following bench-top, hand-operated tools: cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the Harmonized Tariff Schedule of the United States (HTSUS); all types of miter saws, including slide compound miter saws and compound miter saws, currently classifiable under subheading 8465 of the HTSUS; and portable band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS.

This order does not include: professional sanding/grinding tools; professional electric drilling/fastening tools; lawn and garden tools; heat guns; paint and wallpaper strippers; and chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs when they are imported as kits, or as accessories imported together with covered tools, are included within the scope of this order.

''Corded'' and ''cordless'' PECTs are included within the scope of this order. ''Corded'' PECTs, which are driven by electric current passed through a power cord, are, for purposes of this order, defined as power tools which have at least five of the following seven characteristics:

1. The predominate use of ball, needle, or roller bearings (*i.e.*, a majority or greater number of the bearings in the tool are ball, needle, or roller bearings;
2. Helical, spiral bevel, or worm gearing;
3. Rubber (or some equivalent material which meets UL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;
4. Power supply cord with a separate cord protector;
5. Externally accessible motor brushes;
6. The predominate use of heat treated transmission parts (*i.e.*, a majority or greater number of the transmission parts in the tool are heat treated); and
7. The presence of more than one coil per slot armature.

If only six of the above seven characteristics are applicable to a particular ''corded'' tool, then that tool must have at least four of the six characteristics to be considered a ''corded'' PECT.

''Cordless'' PECTs, for the purposes of this order, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 85.80.00.55, 8508.80.00.65 and 8508.80.00.90. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

This review covers one company, Makita Corporation (''Makita''), and the period July 1, 1995 through June 30, 1996.

Analysis of the Comments Received

Comment 1

Makita argues that in the preliminary results of this review, the Department erroneously granted Makita a level of trade adjustment rather than a Constructed Export Price (''CEP'') offset. Makita disagrees with the Department's decision to find that the CEP level of trade is comparable to the home market indirect (''wholesale'') level of trade. Makita argues that the CEP level of trade is less advanced than the home market levels of trade and therefore there is no equivalent level of trade. Makita made the following arguments concerning the level of trade/CEP offset issue:

(A) Differences in Selling Functions.

First, Makita asserts that there are significant differences in selling functions and activities in the two home market levels of trade and the CEP (U.S.) level of trade. Makita notes that it submitted a chart detailing these differences in Appendix 20 of its questionnaire response. In addition, Makita argues that the evidence on the record requires the conclusion that the CEP and HM wholesale levels of trade are at different levels of trade and involve different functions and activities. Makita argues that the two home market levels of trade are much more similar to each other than either is to the CEP level of trade. While Makita agrees with the Department's decision to find two home market levels of trade, it notes that the Department found that, in comparing the two home market levels of trade to each other, there were six instances where the selling functions were identical in both function and intensity, and eight instances where the selling functions differed only in the level of intensity. However, Makita compares the Department's analysis of

the home market levels of trade with the Department's position in the preliminary results that the home market wholesale level of trade should be compared to the CEP level of trade. Makita notes that the latter comparison indicates that there are only six instances where the selling functions are identical in both function and intensity and only four instances where the selling functions differ only in their level of intensity. Most importantly, argues Makita, there are five instances where the selling functions are entirely different between the wholesale level of trade and the CEP level of trade (compared to Makita's assertion that there are no instances where the functions are entirely different between the two home market levels of trade). Consequently, Makita argues that the Department's finding that the CEP level of trade should be compared to the home market wholesale level of trade is internally inconsistent and at odds with evidence on the record.

In addition, Makita argues that the Department's own precedents acknowledge a difference in levels of trade similar to the difference in this review. *See, Preliminary Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France et al.,* 62 FR 31566 (June 10, 1997); *Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 62 FR 23760, 23762; *Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 61 FR 51891 (October 4, 1996); *Preliminary Results of Antidumping Duty Administrative Review: Dynamic Random Access Memory Semiconductors of One Megabyte or Above from the Republic of Korea,* 62 FR 12794, 12798 (March 18, 1997); *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Plate from Sweden,* 62 FR 36495, 36497 (July 8, 1997); and *Preliminary Results of Antidumping Duty Administrative Review: Granular Polytertrafluoroethylene Resin from Italy,* 62 FR 26283, 26285 (May 13, 1997).

(B) Comparison of Home Market and CEP Prices

Second, Makita argues that significant differences in selling functions and activities between the two home market and CEP levels can be established by comparing the home market starting price with the CEP price. Makita asserts that by comparing the elements that are included in the CEP transactions to the elements that are included in the home market transactions clearly indicates that the home market transactions are at a different level of trade, a level that Makita asserts is more developed than the CEP level of trade. Makita contends that the home market levels of trade have expense categories (*i.e.*, selling functions) such as discounts and rebates that have no meaningful equivalent at the CEP level of trade. Consequently, Makita argues that the home market levels of trade are thus significantly different from, and more advanced than, the CEP level.

(C) Comparison of Indirect Selling Expenses

Third, Makita asserts that the differences in selling functions can be observed in the substantial differences in the amount of indirect selling expenses between the two home market levels of trade and the CEP level of trade. Makita argues that the data regarding indirect selling expenses clearly supports Makita's claim that the CEP level of trade is (1) substantially different from the home market levels of trade and (2) not as far developed or advanced as either home market level of trade.

(D) Differences in Volumes

Fourth, Makita argues that differences in selling functions and activities can also be seen in differences of volumes of subject merchandise supplied at each level. Makita contends that the average volume of tools shipped per invoice indicates that the selling functions performed for the CEP sales are materially different from the selling functions performed for the home market sales.

(E) Differences in Intensity of Selling Functions

Fifth, Makita argues that differences in the level of intensity (*i.e.*, the quantity of the function) should be considered in determining whether there are different levels of trade. Respondent contends that since performing quantitatively different functions characterizes sales at different levels of trade, it would be erroneous for the Department to have suggested in the preliminary results that the differences in intensity indicated by Makita for certain selling functions are somehow not important in the level of trade analysis.

(F) Quantification of Price Differences in Selling Functions

Sixth, Makita contends that the differences in selling functions and activities can not be quantified (*i.e.*, that price differences due to differences in levels of trade cannot be determined). Makita argues that since neither home market level of trade is equivalent to the CEP level of trade, no benchmark for comparison of the home market and CEP levels exists, and, accordingly, the price differences between the CEP level and either home market level of trade cannot be quantified.

(G) Results of Previous Administrative Review

Seventh, Makita argues that the Department incorrectly relied on the results of the previous administrative review in determining that the wholesale level of trade in Japan is equivalent to the CEP level in the United States. Makita argues that it would be erroneous and highly prejudicial if the Department takes the position that its previous denial of the CEP offset in the second administrative review is dispositive of this review because: (1) the Department's current inquiry is materially different from that of the previous review, (2) most of the Department's current criteria for granting the CEP offset did not even exist during the information gathering period of the previous review, (3) the Department is not bound as a matter of law by what it did (or did not) find in the previous review, and (4) guidelines for administering the CEP offset are still in the process of being refined, making reliance on the results of the previous review inappropriate.

Petitioner argues that the Department's decision in the preliminary results concerning the level of trade was correct. Petitioner agrees with the Department finding in the preliminary results that the CEP level of trade is comparable to the home market wholesale level of trade and that a CEP offset is not appropriate as a matter of fact and law. Petitioner made the following rebuttal arguments on the level of trade/CEP offset issue:

(A) Differences in Selling Functions

Petitioner contends that Makita's request for a CEP offset should be denied because Makita has not established that sales to wholesalers in Japan are made at a different stage of marketing compared to its one wholesale level of trade in the United States. Petitioner notes that Makita merely discusses selling expense and sales activities, which are a necessary

but not sufficient condition for determining that there is a difference in the stage of marketing. Petitioner argues that Makita has failed to provide persuasive evidence that sales to the United States and home market sales are at different marketing stages (or their equivalent) as required by the regulations. *See* 19 CFR 351.412(c)(2) (1997). Petitioner argues that the law requires the Department to find different customer categories and different marketing stages, not differences in selling functions and expenses alone.

Petitioner also argues that granting Makita's request for a CEP offset would distort the margin calculations by reducing the normal value by an amount that is disparate from the amount needed to adjust the prices at the retail level to make then comparable to the wholesale level in Japan under the level of trade adjustment analysis.

Petitioner argues that the statute requires differences in the stages of marketing because the adjustments for levels of trade have to do with prices, not costs or selling expenses. Petitioner asserts that the Department examined Makita's response and concluded that Makita's sales to its one wholesaler in the United States could be compared to its sales at the wholesale level in Japan. Petitioner adds that the Department's determination is legally correct and is supported by substantial evidence on the record.

Petitioner argues that the Department has refused to grant CEP offsets in recent cases. Petitioner argues that the facts in this review are analogous to cases cited and distinguished by respondents as being inappropriate. The petitioner argues that the Department's determination in *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, from Japan (''Roller Chain'')*, 62 FR 25165, 26169 (May 8, 1997); *Canned Pineapple Fruit from Thailand; Preliminary Results of Partial Termination of Antidumping Duty Administrative Review (''Canned Pineapple'')*, 62 FR 42487 (August 7, 1997) and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Collated Roofing Nails from Korea (''Collated Roofing Nails'')* 62 FR 25895 (May 12, 1997) support their position that Makita is not entitled to a CEP offset.

(B) Comparison of Home Market and CEP Prices

Petitioner asserts that Makita's argument does nothing more than reiterate in a different form the fact that different selling functions exist. Petitioner asserts that Makita's questionnaire response clearly indicates that while there are two distinct and separate levels of trade in the home market, the selling expenses are quite similar. Consequently, petitioner argues that selling expenses are not a reliable indicator of level of trade differences.

(C) Comparison of Indirect Selling Expenses

Petitioner argues that differences in the amount of indirect selling expenses do not measure the differences in levels of trade. Petitioner contends that the fact that selling expenses in the home market are similar does not mean that the levels of trade are the same.

(D) Differences in Volumes

Petitioner asserts that Makita's comparison of units per invoice is of little evidentiary value as distributors normally purchase in larger quantities than retailers. Petitioner contends that this is insufficient to show a difference in marketing stages.

(E) Differences in Intensity of Selling Functions

Petitioner alleges that the Department considered differences in intensity but decided that such differences were not sufficient to constitute a difference in the level of trade. Petitioner claims that the Department considered all of the arguments advanced by Makita, including its arguments concerning the different intensities and the different selling functions performed. Petitioner contends that the Department did not ignore the intensity of the selling functions but found that it was insufficient. Furthermore, petitioner claims that the Department has previously rejected claims that mere differences in intensity of selling efforts create differences in levels of trade. *See, Certain Cut-to-Length Carbon Steel Plate from Finland*, 62 FR 37866, 37867 (July 15, 1997).

(F) Quantification of Price Differences in Selling Functions

Petitioner argues that the fact that differences in selling functions and activities between CEP sales and home market sales cannot be quantified is irrelevant in qualifying for a CEP offset. Petitioner claims that section 351.412(d) of the Department's new regulations describes the manner in which the Department must determine whether a difference in levels of trade has an effect on price comparability. Petitioner argues that Makita failed to provide any of the broad category of information under section 351.412(d) that could be useful for the Department in making the determination in granting the CEP offset. Rather, petitioner argues Makita has provided reams of insufficient information regarding selling expenses. Therefore, petitioner argues that the Department should reject the Makita's request for the CEP offset.

(G) Results of Previous Administrative Review

Petitioner argues that the results of the previous administrative review clearly have a bearing on the present administrative review with respect to granting the CEP offset. Petitioner contends that the Department has previously found in both the LTFV investigation and the 1994–5 administrative review, based on verified information, that the wholesale level of trade in Japan should be compared to the CEP level in the United States and that Makita has not alleged any change in circumstances. In addition, petitioner asserts that none of the information in this review has been verified, despite repeated requests by petitioner that verification is not only necessary but essential. Consequently, they contend that the Department should not reverse the decisions from these earlier determinations based on unverified information.

Department's Position

We agree with Makita in part. We have reexamined our position in the preliminary results and determined, based on the record evidence, that granting Makita a CEP offset is appropriate in this review. The Department determines for the final results that (1) significant differences exist in the selling functions associated with each of the two home market levels of trade and the CEP level of trade, (2) the CEP level of trade is at a less advanced stage of distribution than either home market level of trade; and (3) the data available do not provide an appropriate basis for a level-of-trade adjustment for any comparisons to CEP. Consequently, we have granted a CEP offset for the final results.

Makita listed selling functions associated with the CEP and two home market levels of trade in Exhibit B–20 of its November 26, 1996 questionnaire response. Our analysis and comparison of the selling functions indicates that the differences between the home market wholesale level of trade and the CEP level of trade are as significant as, if not more significant than, the differences between the home market wholesale level of trade and the home market retail level of trade. Moreover, the chain of distribution within the

United States (beyond the affiliated importer) is similar to that in the home market. Consequently, we determine that there are significant differences in selling functions between each of the two home market levels of trade and the CEP level of trade and that these differences are sufficient to determine that the CEP level of trade is not equivalent to either home market level of trade.

In comparing the two home market levels of trade to each other, we note the following selling functions are identical in both function and intensity: market research, after-sales service and warranties, technical advice, advertising, R & D/product development, procurement/sourcing, and pricing/discounts/rebates. The remaining functions (*e.g,* inventory maintenance, freight/delivery arrangements, arranging freight to customer, collection expenses, losses, credit risk, collection activities, payment processing/accounts receivable maintenance that differ only in intensity. There are no functions that are entirely different between the two home market levels of trade.

When we compare the home market wholesale level of trade and the CEP level, we note that there are only several selling functions that are identical in both function and intensity (*e.g.*, R&D/ product development, collection activities and payment processing/ accounts receivable maintenance). The following selling functions differ only in intensity: inventory maintenance, technical advice and procurement/ sourcing. However, there are certain selling functions performed at the wholesale level of trade but not at all at the CEP level of trade. These functions include market research, after-sales service and warranties, advertising, freight delivery arrangements and pricing/discounts/rebates.

Based on the analysis of the selling functions, we determine that the home market retail (direct) level of trade was at a more advanced stage of marketing, and hence a different level of trade, than the wholesale home market level of trade. Similarly, we find that both home market levels of trade are at a more advanced stage of distribution than the CEP.

With respect to Makita's arguments concerning the differences in the amount of indirect selling expenses, we note that the record evidence indicates that the amount of indirect expenses for CEP sales is significantly less than the amount of expenses for sales in either home market level of trade. While differences in selling expenses are not necessarily a sufficient basis for determining levels of trade, the differences in Makita's indirect selling expenses along with the differences in selling functions support Makita's contention that the CEP level of trade is substantially different from the home market levels of trade and not as far developed or advanced as either home market level of trade.

We agree with Makita's assertion that the differences in selling functions (*i.e.*, price differences between levels of trade) can not be quantified. We determine in these final results that the differences between the CEP level of trade and the home market wholesale and retail levels of trade are sufficient to constitute different levels of trade. We found that Makita cooperated to the best of its ability but the data on the record did not allow the Department to determine whether the differences in levels of trade affects price comparability. Since there is no home market level of trade equivalent to the CEP level of trade, price differences between the relevant levels of trade can not be quantified as there is no home market level of trade equivalent to the CEP level of trade.

We disagree with petitioners' assertion that three recent cases where the Department rejected respondents' request for a CEP offset are analogous to this review. Unlike this review, in *Roller Chain*, respondents' did not state that there were differences in selling functions. In *Canned Pineapple*, the selling functions in both market were essentially the same. In Collated *Roofing Nails*, respondents did not request a CEP offset.

With respect to Makita's assertion that we relied on the results of the previous administrative review in making our determination in this review, these comments are not applicable as we have changed our determination with respect to Makita's request for a CEP offset.

Comment 2

Makita argues that under the U.S. antidumping law pursuant to the World Trade Organization's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (''WTO Antidumping Agreement'') and the Department's own practice, the Department has used average-to-average price comparisons in investigations. Makita contends that although the new law does not specifically provide for the use of average-to-average price comparisons in calculating a margin in administrative reviews, the Department is also authorized to average-to-average price comparisons in reviews. *See* 19 U.S.C. 1677f–1(d)(2).

Although the new law does not specifically except administrative reviews from the requirement of using average-to-average price comparisons during administrative reviews, Makita argues that the Department is required to use this methodology in reviews for the following reasons: (1) administrative reviews and investigations are identical proceedings, different in name only; (2) there is no legal or other justification for the application of different standards to investigations and reviews and (3) logic, common sense and considerations of government convenience and efficiency mandate that a consistent and uniform methodology be applied across the board to all ''investigations'' and to all ''administrative reviews'' arising out these ''investigations.''

Makita notes that the Department requested the same type of price and cost data in this administrative review as it did in the LTFV investigation. Furthermore, Makita asserts that the Department to this day uses the same ''investigation'' number (*i.e.*, A–588–823) that it uses in the current administrative review. Makita argues that the use of the same ''investigation'' number suggests that (1) the Department considers this review to be exactly what the original investigation was (*i.e.*, an investigation) and (2) the Department ascribes no particular significance to the term ''review.''

Respondent argues that it would be highly prejudicial to Makita if the Department justified the existing antidumping order based solely on amount of positive margins calculated using an average-to-transaction methodology. When no margins would be found in an investigation using an average-to-average price comparison methodology.

Makita further states that it has a right to rely on the consistent and fair application of methodologies from one proceeding to the next. Makita notes that under the new law, the Department regularly uses average-to-average price comparison in investigations. Makita argues that it has every reason to expect that the Department should also use the same methodology in administrative reviews after the new law came into effect.

Lastly, Makita argues that the current weighted average margin in the preliminary results of 0.5 percent is so close to being de minimus that it is statistically as likely to be indicative of an absence of LTFV sales as it is likely to be indicative of the existence of LTFV sales. Makita argues that this is precisely the type of situation where the rigid application of the average-to-transaction methodology is

inappropriate, and application of the average-to-average price comparison methodology is proper because it would produce less biased and more representative and fair results.

Consequently, Makita argues that the Department should use the average-to-average price comparison methodology in the calculation of the margin for these final results.

Petitioner contend that Makita made the same argument in the second administrative review and that this issue was fully briefed and rejected by the Department. Petitioner contends the Department should summarily dismiss this argument for the same reasons it was rejected before.

First, petitioner contends that the URAA contains different provisions for investigations and reviews: section 771(A)(d)(1) deals with investigations, and requires the Department to compare weighted average normal values (NVs) to weighted-average export prices, with the alternative of comparing transaction-by-transaction prices on both sides of the equation, while section 771(A)(d)(2) deals with reviews, and requires the Department to compare weighted average NVs to individual export prices, as the Department did in this case.

Second, petitioner argues that the circumstances of this case do not warrant the application of the average-to-average price comparison methodology for the following reasons: (1) Congress clearly intended export prices of individual transactions to be compared to the weighted average prices in the home market; (2) administrative reviews and investigations are different and the Department has a long-standing practice of treating them differently and (3) that respondents should be held to higher, stricter standards in reviews, since by the time of the administrative review, they are on notice that further dumping will be penalized. Petitioner argues that Makita's case confirms this proposition, since Makita should have monitored its sales and taken steps to correct the past dumping practices.

Department's Position

We agree with petitioner. As we stated in the final results of the second administrative review of this antidumping order, the Act, as amended by the URAA, distinguishes between price comparison methodologies in investigations and reviews. Section 777A(d)(1) states that in investigations, generally the Department will make price comparisons on an average-to-average or transaction-to-transaction-specific basis. *See also* SAA at 842–43; *Proposed Regulations* at 7348–49 and Proposed Rule 351.414.

However, the language of 777A(d)(2) reflects Congress' understanding that the Department would continue to use a monthly average NV to a transaction-specific EP or CEP methodology during reviews, in keeping with the Department's past practice. Both the SAA and the Department's proposed regulations expressly state that the monthly average-to-individual transaction comparison is the preferred methodology in reviews. *See* SAA at 843; *Proposed Regulations* at 7348–49. Hence, the Department is under no legal obligation to apply an average-to-average approach in a review merely because 777A(d)(1) permits such a comparison in investigations. However, in appropriate circumstances, such as in the case of highly perishable products, for example, average-to-average price comparisons may be used. *See Floral Trade Council of Davis* v. *United States*, 606 F. Supp. 695, 703 (Ct. Int'l Trade 1991). Makita has not demonstrated that similar circumstances exist with respect to the sale of PECTs that would warrant a departure from our stated preference of making monthly average-to-transaction-specific price comparisons in reviews.

In addition, contrary to Makita's assertion, an LTFV investigation and an administrative review are not ''identical proceedings,'' but are two distinct segments of a single antidumping proceeding. The Act expressly distinguishes between investigations and reviews. *See* § 733; 735; 751 of the Act; 19 CFR 353.2(l). They differ in several respects, such as initiation requirements and outcome—an investigation may or may not end upon the issuance of an antidumping duty order, while only a review will result in the actual assessment of duties. Further, investigations and reviews are based on different sets of sales, and both are subject to separate judicial review.

The WTO Antidumping Agreement also distinguishes between investigations and reviews in antidumping matters. Article 2.4.2 of the WTO Antidumping Agreement explicitly requires that an average-to-average price comparison be used in the ''investigation phase'' of an antidumping proceeding. The SAA elucidates the intent of the WTO Antidumping Agreement that the Department continue to treat investigations and reviews differently with respect to price comparisons. As the SAA states:

> The Agreement reflects the express intent of the negotiators that the preference for the use of an average-to-average or transaction-to-transaction comparison be limited to the ''investigation phase'' of an antidumping proceeding. Therefore, as permitted by Article 2.4.2, the preferred methodology in reviews will be to compare average to individual export prices.

SAA at 843.

Finally, Makita claims that it has a right to rely on the consistent and fair application of methodologies from one segment of a proceeding to the next. Makita argues that by not applying an average-to-average comparison in this review, the Department is not consistent with what it is required to do under the new law for investigations—make average-to-average price comparisons. Hence, following Makita's logic, the Department must now apply an average-to-average methodology in this review to be consistent with the new methodology used in investigations. Makita is incorrect in two respects. The law now requires the Department to apply an average-to-average price comparison in investigations only. Secondly, by comparing monthly average NVs to individual U.S. prices in this review, we are being consistent with our longstanding practice, which was not changed by the passage of the URAA, as discussed above. Moreover, during the investigation of this order, which occurred under the old law, we did compare average foreign market values (FMVs) to transaction-specific U.S. prices. Thus, we are applying this consistent methodology from one segment of the proceeding to another.

Comment 3

Makita argues that, if the Department had used average-to-average price comparisons in the preliminary results, Makita's margin would have been *de minimis* pursuant to the two percent *de minimis* standard mandated by Article 5.8 of the WTO Antidumping Agreement (*see* 19 U.S.C. §§ 1673b(b)(3) and 1673(a)(4)). Since the WTO Antidumping Agreement makes no distinction between investigations and administrative reviews, Makita argues, the 2 percent *de minimis* standard should also apply to reviews, for the same reasons Makita discussed with respect to using average-to-average price comparisons in reviews.

Makita argues that no basis can be found in either the WTO Antidumping Agreement, or in U.S. law or policy, for using the Department's earlier adopted regulatory number of 0.5 percent as the *de minimis* standard for reviews, since there is no mention of this particular figure in any of the relevant documents. Makita asserts in a footnote that using a stricter standard for reviews than for

investigations is illogical if the underlying purpose is to punish exporters who are caught dumping, since it would make more sense to apply a stricter standard in the investigation phase. Moreover, not to appear contradictory to its prior comments, Makita asserts that the inconsistency of applying the two percent margin rule in this review with the application of the 0.5 percent margin standard in the investigation is irrelevant. Finally, Makita claims that this practice could by itself result in increased dumping liability for exporters, and is a possible violation of the WTO by the United States.

Petitioner argues that Makita misreads the law, which requires that the new *de minimis* level of two percent be applied in investigations only. Petitioner disagrees with Makita's assertion that the margin in the preliminary results is so close to *de minimis* that it would be unfair for the Department to use average-to-price methodology. Petitioner notes that the rationale behind this argument would require the Department to change its methodology every time a determination was close to the *de minimis* level.

Lastly, petitioner argues that the Department has no authority to apply the new two percent *de minimis* standard in a review. Petitioner asserts that the law is clear that the two percent *de minimis* standard applies to investigations only. *See,* 19 U.S.C. 1673b(b)(3) and 19 U.S.C. 1673(d)(a)(4). Petitioner contends that the Department must continue to apply the *de minimis* standard of 0.5 percent in review proceedings.

Department's Position

We disagree with respondent that the 0.5 percent *de minimis* standard set forth in 19 CFR 353.6 should not continue to apply to reviews. Article 5.8 of the WTO Antidumping Agreement explicitly only requires signatories to apply the two percent *de minimis* standard in antidumping investigations. *See* Article 5.8. There is no such requirement regarding reviews. Moreover, Makita is incorrect in claiming that the WTO Antidumping Agreement makes no distinction between investigations and administrative reviews. *See e.g.,* Article 5; Article 11 of the WTO Antidumping Agreement.

In conformity with Article 5.8 of the WTO Antidumping Agreement, sections 733(b) and 735(a) of the Act were amended by the URAA to require that, in investigations, the Department treat the weighted-average dumping margin of any producer or exporter which is below two percent *ad valorem* as *de minimis.* Hence, pursuant to this change, the Department is now required to apply a two percent *de minimis* standard during *investigations* initiated after January 1, 1995, the effective date of the URAA (*see* sections 733(b)(3) and 735(a)(4)). However, the Act does not mandate a change to the Department's regulatory practice of using a 0.5 percent *de minimis* standard during administrative reviews. As discussed above, the WTO Antidumping Agreement, the Act, the SAA and the Department's regulations recognize investigations and reviews to be two distinct segments of an antidumping proceeding.

The SAA also clarifies that ''[t]he requirements of Article 5.8 apply only to investigations, not to reviews of antidumping duty orders or suspended investigations.'' *See* SAA at 845. The SAA further states ''in antidumping investigations, Commerce [shall] treat the weighted-average dumping margin of any producer or exporter which is below two percent *ad valorem* as *de minimis.*'' SAA at 844. Likewise, ''[t]he Administration intends that Commerce will continue its present practice in reviews of waiving the collection of estimated cash deposits if the deposit rate is below 0.5 percent ad valorem, the existing regulatory standard for *de minimis.*'' SAA at 845 (emphasis added). *See Proposed Regulations* at 7355, Proposed Rule 351.106; *see also High-Tenacity Rayon Filament Yarn from Germany; Final Results of Antidumping Duty Administrative Review,* 61 FR 51421 (October 2, 1996).

Comment 4

Makita alleges that the Department's preliminary margin calculation program incorrectly assigns constructed value (CV) matches to certain U.S. sales that have contemporaneous home market matches. Respondent contends that the incorrect use of CV-based normal values is the result of a clerical error in the model match program that results in incorrect month indicators being assigned to both the home market and U.S. transactions. Makita alleges that the error in the model match program results in the program finding no sales matches for any 1996 U.S. sales transactions. Makita urges the Department to correct the error for the final results.

Petitioner had no comment on this issue.

Department's Position

We agree with Makita and have corrected the model match program for the final results. We also note that on January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cimex* v. *United States,* 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URA version of the Tariff Act of 1930 (the Act), the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However, the Uruguay Round Agreements Act (URA) amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this administrative review, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of this ''post-URA'' case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of normal value.

Comment 5

Makita notes that the Department stated in its preliminary results that it intended to first match the U.S. CEP sales with home market sales to wholesalers. Only if no sales to wholesalers are available will the CEP sales be matched with home market sales to retailers. However, Makita contends that due to an error in the Department's margin calculation computer program, U.S. CEP sales were not first matched to the wholesale level of trade. Makita urges that the error be corrected for the final results.

Petitioner had no comment on this issue.

Department's Position

For the final results, we have determined that the CEP level of trade is not equivalent to either home market level of trade (see Comment 1). Furthermore, both home market levels of trade are at a more advanced stage of distribution than the level of trade of the CEP. Consequently, we could not match to sales at the same level of trade in the home market. Nor do we have appropriate information to provide a basis for a level of trade adjustment. Therefore, to the extent possible, we determined normal value based on sales at the same level of trade as the U.S. sales to the unaffiliated customer and made a CEP offset adjustment in accordance 773(a)(7)(B) of the Act.

Comment 6

Makita contends that the Department incorrectly deducted indirect selling expenses incurred in Japan from U.S. price. Makita notes that it is the Department's practice not to deduct these expenses in the calculation of the CEP net price.

Petitioner had no comment on this issue.

Department's Position

We agree with respondents and have corrected the error for the final determination.

Comment 7

Makita argues that the Department incorrectly calculated the product liability expense in the preliminary results by applying the expense percentage to the gross unit price instead of the net price, which was the basis derived by Makita. As a result, Makita alleges that the amount calculated by the Department overstates the actual product liability expenses and overstates the margin.

Petitioner had no comment on this issue.

Department's Position

We agree with Makita and have corrected the calculation for product liability expenses for the final results.

Comment 8

Makita contends that the Department failed to add to the U.S. price certain charges billed to the customer by Makita. Specifically, Makita argues that it reported certain miscellaneous charges and drop ship fees for a small number customers. Makita asserts that failure to include these charges results in an understatement of the revenues generated by these sales, and an overstatement of the margin. Makita urges the Department to correct the error for the final results.

Petitioner argue that these charges are applicable to accessories, not tools. Furthermore, petitioner assert that these charges are for repairs and, as such, these charges have nothing to do with the selling prices of the tools, and Makita has not demonstrated that these charges can be directly related to specific tool sales. Consequently, petitioner argues that these charges should not be added to the U.S. price.

Department's Position

We agree with Makita. As these are revenues generated by sales (and subsequent repairs) of the subject merchandise and are separate from Makita's warranty expenses, we have added miscellaneous charges and drop ship charges to U.S. price for the final results. We note that the drop ship charge represents Makita's fee for billing a customer at one location but delivering the tools to a different location according to the customer's direction. We disagree with petitioner's contention that we should disallow these charges since Makita reported these charges on a customer-specific basis and the revenues for drop ship charges and repairs are applicable to the sales.

Comment 9

Petitioner asserts that the Department's computer program calculated the difference in merchandise adjustment (''DIFMER'') as the difference between the variable manufacturing cost of the home market tool (''VCOMH'') and the variable manufacturing cost of the U.S. tool (''VCOMU''). Petitioner further notes that the Department's computer program adjusts for the differences in merchandise by adding the DIFMER value to normal value.

Consequently, petitioner argues that the computer program requires the Department to reduce the normal value when the DIFMER value is negative (U.S. variable costs higher than home market cost), and increase the normal value when the DIFMER is positive (U.S. variable costs lower than home market costs). Petitioner asserts that this is backwards and inconsistent with the Department's antidumping manual. *See, Department of Commerce, International Trade Administration, Antidumping Manual, Import Administration,* Revised 07/93, Chapter 8, page 44. Petitioner requests that the Department correct the error by subtracting the DIFMER value from normal value for the final results.

Makita had no comment on this issue.

Department's Position

We agree with petitioner and have corrected the error for the final results.

Comment 10

Petitioner alleges that the Department should correct its cost test to determine sales below the cost of production by deducting selling expenses from the gross unit price and make no adjustment for selling expenses to the total cost of production. Petitioner contends that the computer program in the preliminary results indicated that selling expenses (variable SELLCOP) were added to COP instead of deducting these expenses from the gross unit prices. Petitioner argues that this correction will result in the gross unit prices and the COP will be net of selling expenses as required by Import Administration Policy Bulletin, No. 94.6.

Makita argues that the Department's cost test is correct and the methodology has been used by the Department in its most recent margin calculations, in spite of the 1994 policy memorandum cited by petitioner. Consequently, Makita contends that the cost test as applied by the Department in the preliminary results is consistent with the Department's current practice, and no change is necessary.

Department's Position

We agree with Makita. The cost test applied by the Department in the preliminary results is consistent with the Department's current practice. As part of the cost test, we calculate COP (variable TOTCOP) where we add selling expenses (variable SELLCOP) to derive the COP which is compared to adjusted price for selling expenses of the home market product.

Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manfacturer/exporter	Time period	Margin (percent)
Makita Corporation	7/1/95–6/30/96	0.03

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of PECTs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company

will be that established in these final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the ''all others'' rate of 54.52 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: February 4, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3482 Filed 2–10–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil

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

SUMMARY: On August 8, 1997, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil. This review covers exports of this merchandise to the United States by four manufacturers/exporters, Companhia Brasileria Carbureto de Calcio (''CBCC''), Eletrosilex Belo Horizonte (''Eletrosilex''), Companhia Ferroligas Minas Gerais-Minasligas (''Minasligas''), and RIMA Industrial S/A (RIMA) during the period July 1, 1995, through June 30, 1996.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed our results from those presented in our preliminary results, as described below in the comment section of this notice. The final results are listed below in the section ''Final Results of Review.''

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Alexander Braier or Cindy Sonmez, AD/CVD Enforcement Group III, Office Seven, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3818 and (202) 482–0961, respectively.

The Applicable Statue

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1996).

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1991, the Department published in the **Federal Register** (56 FR 36135) the antidumping duty order on silicon metal from Brazil. On August 8, 1997, the Department published in the **Federal Register** (62 FR 42760) the preliminary results of review of the antidumping duty order on silicon metal from Brazil for the period July 1, 1995, through June 30, 1996. On October 6, 1997, we received case briefs from the respondents, CBCC, Eletrosilex, Minasligas, and Rima; from two interested parties, General Electric Company (''GE'') and Dow Corning Corporation (''Dow''); and from petitioners, American Silicon Technologies, Globe Metallurgical, and SKW Metals & Alloys, Inc. On October 20, 1997, we received rebuttal briefs from the respondents and petitioners. At the request of both petitioners and respondents, we held a hearing on October 29, 1997. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of Review

The merchandise covered by this review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of product coverage.

Product Comparison

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, meeting the description in the ''Scope of the Review'' section, above, and sold in the home market during the period of review (POR), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product based on the grade of silicon metal.

On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex* v. *United States*, 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Tariff Act of 1930 (the Act), the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However, the Uruguay Round Agreements Act (URAA) amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. *See* Section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this administrative review, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of this ''post-URAA'' case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of normal value.

Verification

As provided in section 782(i) of the Act, on March 17 through March 22, 1997, we verified information provided by Rima and Minasligas by using standard verification procedures, the examination of relevant sales and financial records, and original documentation containing relevant information. The results of those verifications are outlined in the verification reports, the public versions of which are available on file in room B–099 of the main Commerce building.

I. Comments Related to Normal Value

Comment 1: Home Market Commissions

CBCC argues that the Department incorrectly assumed that the home market commissions CBCC reported in a particular month were reported on a per-ton basis when the commission figures were in fact total commission amounts. As a result, CBCC asserts, the Department should calculate a per-ton commission amount for that month by dividing the reported total commission amounts by the total reported quantity sold. The petitioners did not comment on this issue.

Department's Position: We agree with CBCC. Therefore, for these final results we have converted the total commission figures CBCC reported in a particular month to per-ton amounts by dividing the reported total commission amount for each transaction by the reported transaction-specific total quantity sold in that month.

Comment 2: Imputed Credit Calculation

Petitioners state that the Department failed to use adverse facts available for Rima's U.S. imputed credit revenue, as was the Department's intention. They state that the highest advanced exchange contracts (ACC) interest rate used by any respondent during the POR, which the Department used for the imputed credit facts available interest rate, is adverse to Rima for situations in which Rima incurred credit expenses, but is advantageous to Rima with respect to advance payment sales, in which the company realized imputed credit revenue. Petitioners state that for these sales, the Department should use as adverse facts available the lowest available U.S. dollar interest rate on the record of this review. Respondents disagree with petitioners. They state that in the preliminary results, the Department decided to penalize Rima for not reporting information regarding its credit expenses. Respondents conclude that the Department did not intend to also penalize Rima for not reporting information regarding its credit revenue.

Department's Position: We agree with petitioners. The Department intended to use adverse facts available for the interest rate used in Rima's U.S. imputed credit calculation because the company did not provide the interest rate for U.S. dollar-denominated borrowing it made during the POR, despite the fact it had such borrowing, and despite repeated requests for these rates. In the preliminary results analysis memorandum (*see Analysis of Data Submitted by RIMA Industrial S/A (Rima) in the Fifth Administrative Review (95–96) of the Antidumping Duty Order on Silicon Metal from Brazil* by Alexander Braier, July 31, 1997), the Department stated that ''Rima failed to provide the ACC interest rates it was charged during the POR, despite three Departmental requests for these rates. Therefore, pursuant to 776(b) of the Act, for Rima's imputed credit calculation, we used as adverse facts available for Rima's interest rate, the interest rate which was the highest of the ACC interest rates used during the POR by the other respondents in this review.'' The imputed credit calculation is used to calculate both imputed credit expense and credit revenue. Because Rima did not provide the information the Department needed to properly calculate imputed credit, the Department intended to use adverse facts available on interest rate used for both credit expense and credit revenue. However, as petitioners correctly point out, the interest rate used was not adverse in our calculation of imputed credit revenue, and thus we effectively only used adverse facts available for imputed credit expense. For these final results, we have corrected this mistake by using the lowest available U.S. dollar denominated interest rate submitted by respondents in this review for all of Rima's U.S. sales with imputed credit revenue.

Comment 3: Net Weight vs. Gross Weight

Petitioners argue that for Eletrosilex, the Department erred in the calculation of U.S. selling prices by calculating the unit price based on the net weight of contained silicon rather than the gross weight of the silicon metal. They argue that in a constructed value (CV) based margin calculation the Department should use the gross weight of the silicon metal to calculate the per-unit U.S. price because CV is reported on a gross-weight basis. Use of the contained-weight quantities would, they allege, distort the comparison of export price (EP) and CV. The respondents did not comment on this issue.

Department's Position: We disagree with petitioners. Our analysis has not changed since our final determination in the previous review, when petitioners raised the identical issue. *See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part Silicon Metal from Brazil;*, 62 FR 1970 (January 14, 1997) (*Final Results of 4th Review*). As in the previous review, there is no evidence on the record to support petitioners' contention that the weights Eletrosilex reported for their U.S. market sales differ from the weights used as the basis of the CV calculations and reflect only the weight of the silicon, rather than the weight of the silicon metal. Therefore, there is no reason to change the per-unit calculations from those in the preliminary results of review.

II. Comments Related to COP/CV

Comment 4: Understatement of Depreciation Expense

Petitioners argue that Rima reduced its asset values for the POR and understated its current depreciation expense through the use of a hypothetical prior-period accelerated depreciation. Petitioners note that Rima admits that its financial statement fixed asset values and the asset values that it used to calculate its reported depreciation in the worksheets prepared for this review are different. Petitioners

also note that Rima admits that depreciation was not recognized in fiscal years 1987 through 1995. Petitioners assert that Rima failed to record virtually any depreciation in its books or financial statements during the period from 1987 through 1995, and that as a result, Rima's books showed a large depreciable asset balance during the POR. Petitioners argue that the Department must not allow Rima to retroactively calculate hypothetical depreciation for the years during which it recorded no depreciation.

Petitioners further argue that by using an accelerated depreciation methodology (*i.e.,* a five-year useful life for machinery and equipment and a ten-year useful life for installations), Rima shifted all of the depreciation on the great majority of its assets to years prior to the POR. Petitioners argue that by shifting this expense to prior years, Rima rendered a large portion of its assets fully depreciated prior to the POR, thereby artificially reducing its depreciable asset base and corresponding POR depreciation expense.

Finally, petitioners argue that the method used by the Department to adjust Rima's depreciation expense in the preliminary determination of this segment of the proceeding is an acceptable facts available approach to correcting Rima's understated depreciation in view of Rima's failure to report the amount of depreciation it actually incurred. Petitioners, however, argue that the proper method of correcting this shift to prior years is to disregard the hypothetical depreciation calculation and calculate the proper annual amount of depreciation using the normal 20 year useful life for machinery and equipment and installations under Brazilian GAAP. Petitioners argue that the actual life of a silicon metal furnace is at least 20 years and often significantly longer. Petitioners argue that it is the Department's established practice to reject accelerated depreciation of assets where such depreciation fails to allocate costs of the asset over the life of the asset, citing *Final Determination of Sales at LTFV; Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea,* 56 FR 15467, 15479 (March 23, 1993) (''*DRAMs from Korea*'') and *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway,* 56 FR 7661 (Feb. 25, 1991) (''*Salmon from Norway*''). Petitioners argue that in other proceedings regarding this company, the Department also has rejected the reporting of lower depreciation during a review period based on prior period accelerated depreciation. Petitioners argue that in *Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil,* 59 FR 732, 738 (January 6, 1994) (''*LTFV Ferrosilicon from Brazil*''), the Department instructed CBCC to recalculate its depreciation and instructed it not to use accelerated depreciation.

Petitioners argue that in the preceding (1994–95) review in this proceeding, the Department rejected Rima's argument that the Department should take into account hypothetical, prior years depreciation, not recognized in Rima's accounting records and financial statements. Petitioners argue that in that review, the Department rejected Rima's argument that the estimated depreciation based on the financial statement fixed asset values were overstated because Rima's auditors did not consider whether Rima's assets had been fully depreciated. Petitioners argue that the Department is presented with essentially the same situation in this review.

Rima and GE argue the Department assumed wrongly that Rima did not account for certain assets in its depreciation calculation. Rima and GE argue that, in the Department's attempt to reconcile the asset values on the depreciation schedules to the financial statements, the Department was using data representing different asset values. Rima and GE argue that the total asset value that the Department thought it was calculating represents merely the unindexed value of assets that became fully depreciated during 1995, plus the value of the remaining assets to be depreciated during 1995. Rima and GE argue that the asset values on the worksheets reconcile to the financial statements if the value of the assets which have been fully depreciated since 1987 are indexed for inflation and then are added to the opening value of the remaining assets to be depreciated.

Rima and GE argue that its depreciation worksheets technically overstate depreciation expense, since it assumed that all assets purchased prior to 1986 were purchased in 1986, and that many of these assets would have become fully depreciated earlier than shown in the schedule. Rima and GE argue that the Department noted in its verification report that the depreciation schedules no longer directly tie to the financial statements when the assets began becoming fully depreciated.

Rima and GE argue that the Department was correct in agreeing that a five-year depreciation period employed by Rima is appropriate and in accordance with both Brazilian and U.S. GAAP. Rima points out petitioners' only support for their argument that a five-year useful life is not acceptable under Brazilian GAAP are assertions supplied by Eletrosilex and CBCC and do not constitute GAAP. Moreover, Rima argues that as the Department noted in its verification report, Rima's independent auditor indicated that Rima's new methodology for calculating depreciation is fully consistent with Brazilian GAAP, and accurately reflects actual depreciation costs. Rima argues that Brazilian laws and regulations establish ten years as the normal useful life for machinery and equipment used during a standard eight-hour shift, but also allow for shorter useful lives if the assets are used during three eight-hour shifts in 24-hours as they are at Rima.

Rima argues that in *DRAMs from Korea,* the Department rejected the depreciation methodology employed by the respondent, not because that methodology utilized too short a depreciation period, but rather because the respondent switched from a double declining to a straight line depreciation methodology without appropriately adjusting the net asset values being depreciated. Rima argues that petitioners' reliance on *Salmon from Norway* is also unfounded. Rima argues that in *Salmon from Norway,* the Department relied upon ordinary depreciation expense reported in the respondent's financial statements instead of the accelerated depreciation amounts used for tax purposes and reported as a separate non-operating expense on the company's financial statements. Finally, Rima argues that the Department has accepted accelerated depreciation expense. Rima argues that in the *Final Results of the Antidumping Duty Administrative Review of Ferrosilicon from Brazil* for 1995–1996, 62 FR 43504, 43510 (August 14, 1997) (*Ferrosilicon from Brazil*), the Department disagreed with petitioners that Minasligas' depreciation calculation was unacceptable because it is based on accelerated depreciation and found it consistent with Brazilian GAAP and that it did not distort actual costs.

Department's Position: We agree with Rima, in part. In the preliminary results, we incorrectly found that the total fixed assets on Rima's depreciation schedules did not reconcile to the financial statements. Rima demonstrated that the monetarily corrected costs of its assets contained in the depreciation worksheets reconciled to its financial statements. Rima also demonstrated the worksheets calculated depreciation on the monetarily corrected costs using a straight line method over Rima's useful life of the assets. Additionally, Rima

demonstrated that the depreciation expense shown on the worksheets reconciled to the depreciation expense reported in the audit opinion of its financial statements. *See Memorandum from Theresa L. Caherty to the File*, dated January 14, 1998.

We disagree with petitioners that simply because Rima chose not to record depreciation and amortization in its accounting records that its prior period depreciation and amortization were simply hypothetical amounts. In the audit opinion of Rima's financial statements for prior years, the auditors declared the amount of unbooked depreciation and amortization expenses. In fact, in prior segments of this proceeding (*i.e.*, the 1992–1993 and the 1994–1995 administrative reviews) when the Department did not resort to total facts available (or total best information available), we included in Rima's COP and CV the depreciation expense which the auditors stated in Rima's audit opinion. Because the amount of depreciation expense stated in the audit opinion is supported by Rima's depreciation worksheets, which in turn support the depreciation expense included in the submitted COP and CV, Rima's reported depreciation expense does not distort the reported COP and CV. Our use of Rima's financial statement depreciation expense is consistent with *Salmon from Norway*, where we relied on the depreciation expense reported in the financial statements.

We disagree with petitioners and Rima that useful lives of assets in a particular country are dictated by GAAP. GAAP does not simply provide tables which indicate what the useful life for a particular asset should be; rather, it specifies that the cost of an asset should be systematically depreciated over the estimated useful life of the asset. The estimated useful life of an asset should be determined by consideration of such factors as legal life, the effects of obsolescence, and other economic factors. In this case, Rima's audit opinion states that the financial statements were presented in accordance with GAAP except that Rima did not record depreciation and amortization expenses of R$3,264,000. This amount of depreciation and amortization was calculated using Rima's estimated useful life of five years for machinery and equipment. We agree with Rima that in *1995–1996 Ferrosilicon*, we accepted accelerated depreciation expense based on amounts recorded in the financial statements because they were calculated in accordance with Brazilian GAAP and they did not distort actual costs.

As explained above, in prior segments of this proceeding, we included in Rima's COP and CV depreciation expense that the auditors identified in their audit opinion and which was calculated using Rima's estimated useful life of five years for machinery and equipment. If we were to follow petitioners' request and recalculate Rima's depreciation expense using a 20-year useful life for machinery and equipment, we would double count depreciation and amortization costs which we captured in the prior segments of this proceeding.

Comment 5: Error in Department's Depreciation Adjustment

Petitioners argue that the Department properly recognized the need to make a significant adjustment to Rima's depreciation expense, but in making the adjustment it understated the amount. Petitioners argue that the Department based its adjustment on the difference between the asset value on Rima's financial statement and the December 1996 asset values in Rima's hypothetical calculation. Petitioners argue that the Department should have used the December 1995 asset values in Rima's hypothetical calculation.

Rima argues that petitioners fundamentally misstate the basis of the Department's adjustment. Rima argues that petitioners incorrectly suggest that the Department understated the gap between the 1995 asset values contained in Rima's depreciation worksheets and the 1995 asset values contained in the company's 1996 financial statements by basing its adjustment on the difference between Rima's financial statement fixed asset values and the beginning 1995 asset values in the worksheets. Rima argues that it is apparent from the record evidence that the Department in fact grossly overstated the gap between the 1995 asset values contained in Rima's depreciation worksheets and the 1995 assets values contained in the company's 1996 financial statement.

Rima argues that petitioners' claim that the Department employed a beginning-of-period amount instead of an end of period amount is off-base and misleading. Rima argues that the Department needed to employ neither a beginning nor ending period, but rather an amount which took account of the entire acquisition cost of each asset. Rima argues that petitioners' claim is falsely based upon a supposition that Rima had been depreciating its assets each year and reporting the un-depreciated amount at the end of each year in its financial statements.

Department's Position: We agree with Rima. As we explained in Comment 2 above, in the preliminary results we incorrectly found that the total fixed assets on Rima's depreciation schedules did not reconcile to the financial statements. Rima demonstrated that the monetarily corrected costs of its assets contained in the depreciation worksheets reconciled to its financial statements. Rima also demonstrated the worksheets calculated depreciation on the monetarily corrected costs using a straight line method over Rima's useful life of the assets. Additionally, Rima demonstrated that the depreciation expense shown on the worksheets reconciled to the depreciation expense reported in the audit opinion of its financial statements. *See Memorandum from Theresa L. Caherty to the File*, dated January 14, 1998. Therefore, there are no assets on the financial statements for which RIMA did not report depreciation expense.

Comment 6: Monetary Variation in Financial Expenses

Petitioners state that the Department erred in the calculation of Rima's financial expenses by not including the category of ''monetary variations of liabilities'', which is listed on Rima's income statement, in the calculation of interest expense. Petitioners assert that ''monetary variation'' should be included in ''net financial'' expenses because this category represents the portion of interest expense paid to the lender to compensate it for inflation, and as such constitutes part of Rima's financial expenses. Citing to *Notice of Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico:*, 58 FR 47,256 (September 8, 1993) (*Cement From Mexico*), petitioners assert that it is the Department's practice to include monetary variation of liabilities in the calculation of financial expenses in non-hyperinflationary economy cases such as this one. Petitioners also cite to *Notice of Final Redetermination of Remand in Ferrosilicon from Brazil*, (January 16, 1996) (*Remand in Ferrosilicon from Brazil*), stating that in the original investigation, monetary variation was included in the financial expense line item on Minasligas' financial statements. (*See* petitioners' Case Brief at 39).

Respondents state that petitioners are incorrect, and that the ''monetary variation'' category on Rima's income statement does not contain any financial expenses incurred by the company during the POR and so should be ignored by the Department for the purpose of calculating Rima's COP and CV amounts. Rima states that the ''monetary variation'' category relates

exclusively to changes in the face values of the company's outstanding monetary liabilities, and so does not include any portion of Rima's interest expense. Rather, it isolates what is used to calculate the total amount in the ''net financial'' account. As such, it represents the amount by which the face value of Rima's loans increase from year-to-year as a result of inflation and is not, in and of itself, an interest expense incurred by the company.

Rima responds to petitioners' claim regarding *Remand in Ferrosilicon from Brazil*, stating that, while it is true that ''monetary variation'' was included in the ''net financial'' expense line item, the Department did not find that the ''monetary variation'' included interest expense. Rather, the Department found that the interest expense account on the financial statement included two components of interest expense, including a component to compensate the lender for a loss of purchasing power. Rima asserts that similarly, the ''net financial'' expense on Rima's financial statement includes both a real interest component and an inflation component to compensate the lender for the continuing loss of purchasing power due to inflation.

Rima cited a Brazilian accounting manual which contained an explanation of provision 26.3.2(a) of Brazilian GAAP (Rima notes that petitioners cited to this manual in their submission of July 23, 1997, attesting to this manual's standing as an authoritative guide). This explanation states in part ''. . . only interests are included as financial expenses (or revenue), but not the monetary correction or exchange variation of the loans which are recorded separately under Monetary Correction.'' (*See* Respondent's Case Brief at 23 and Attachment C.) Rima concludes that this provides evidence that the ''monetary variation'' category on its income statements does not contain any interest expense, but rather represents the amount by which the principal was increased to adjust for inflation. Finally, Rima states that petitioners' cite to Mexican Cement is not appropriate, because that case did not involve the indexing of loan principal, and did not involve the use of current costs of production.

Department's Position: We agree with respondents, in part. Brazilian GAAP requires that the restatement of liabilities be shown in the category ''monetary variation'' on a company's income statement (*see* World Accounting, Vol. 1, Matthew Bender, 1997, pp. BRA–7). The restatement of the liability in the company's financial statement represents the increase in the principal amount of the loan due to the application of the inflation index. It does not represent the interest on the restatement, as claimed by petitioners. Furthermore, Rima's trial balance for December, 1995 (Exhibit C–3 of the Department's verification report), contains the selected account detail for Rima's income statement. From this detail, we were able to identify the trial balance accounts for ''monetary variation in liabilities'' for each Rima company, and tie the total to Rima's income statement. We also identified the historic value of liabilities and the interest on the monetary variation of liabilities accounts in the ''net financial'' account detail.

However, we noted that the ''monetary variation'' accounts on Rima's trial balance contain a sub-account called ''foreign exchange gains/losses'' (i.e., gains and losses realized due to currency exchange) for each company. These sub-accounts represent financial expenses. Therefore, because these sub-accounts represent interest expense, the Department has subtracted the total amounts of these sub-accounts from the ''monetary variation'' category on Rima's income statement and has added them to ''net financial'' expenses category. The Department's position is that, after making the correction noted in the preceding sentence, Rima's income statement line item ''monetary variation in liabilities'' contains no interest expense, and consequently should not be added to Rima's financial expenses.

Comment 7: Double Counting of Monetary Correction and Deferred Financial Expense Amortization

Petitioners argue that the Department properly rejected Rima's reported amortization of deferred financial expenses because Rima did not recognize amortization of deferred expenses from the 1987–95 period in its accounting records or financial statements. Petitioners argue that Rima's reported amortization of deferred expenses is infected with virtually all of the same defects as its reported depreciation. Petitioners note that Rima did not recognize amortization of deferred expenses from 1987–1995 in its accounting records or financial statements. Petitioners argue that Rima's attempts to shift amortization to prior years by calculating a hypothetical amortization during the years 1987–95.

Petitioners also argue that Rima's hypothetical amortization furthers distorts the current amortization by relying on a highly accelerated rate. Furthermore, petitioners argue that the highly accelerated rate is improper because the deferred assets relate to expenses that benefit Rima's production over a much longer period than five years.

Petitioners argue that Rima is wrong that the Department assigned the full value of the Rima group amortization to the subject merchandise. Petitioners argue that by including the amortization in Rima's company-wide financial and G&A expense ratios and applying those ratios to COM, the Department allocated a proportionate share of the amortization to the subject merchandise.

Rima and GE argue that the Department incorrectly assumed that the monetary correction of certain deferred financial expenses were not accounted for in 1995. Rima argues that these deferred financial expenses are indexed each year to account for inflation and are then amortized. Rima argues that it included in the reported costs both the monetary correction on the deferred financial expenses and the associated accumulated amortization.

Rima also argues that the correct current period amortization expense was included in the reported costs. Rima argues that the submissions and verification exhibits on the record in this proceeding document that it properly calculated and reported the monetary correction and amortization associated with deferred expense. Rima argues that accordingly, the Department's adjustments to interest expenses to apply these deferrals to the current year is incorrect.

Finally, Rima argues that even if the Department was correct that these costs were not accounted for properly, it erroneously applied to 1995 the total amount of deferred expenses, as if they all related to silicon metal. Rima argues that the assets of Varzea da Palma in which silicon metal is produced are much smaller than those of Bocaiuva, which produces non-subject merchandise.

Department's Position: We agree with Rima, in part. We agree with Rima that we erred by including in the COP and CV the full amount of the 1995 monetary correction to restated deferred financial expenses. While Rima did not record amortization expense in their books, Rima's qualified audit opinion stated the amount of depreciation and amortization which it did not include in the financial statements for the year. Even though Rima did not record the stated amortization in its books, Rima included it in its reported COP and CV.

As with Rima's depreciation expense, in prior segments of this proceeding, when the Department did not resort to total facts available (or total best information available), we included in

Rima's COP and CV the amortization expense which the auditors stated in Rima's audit opinion. (*See, 1992–1993 Silicon Metal* and *1994–1995 Silicon Metal).* Because the amount of amortization expense stated in the audit opinion is supported by Rima's worksheets, which in turn support the amortization expense included in the submitted COP and CV, Rima's reported amortization expense does not distort the reported COP and CV. If we were to follow petitioners request and recalculate Rima's amortization expense using a longer useful life for the deferred assets, we would double count amortization costs which we captured in the prior segments of this proceeding.

After further analysis, we agree that Rima included in its submitted COP and CV amortization expense of the monetarily corrected deferred financial expenses. However, we noted that Rima only included in the submitted costs amortization for the deferred financial expenses which it identified as related to silicon metal production. It is the Departments' practice to calculate financial expenses based on the results of the entire consolidated entity. Additionally, Rima included its amortization of deferred financial expenses in the reported cost of manufacturing. For these final results we recalculated Rima's financial expenses. We calculated Rima's average financial expense for 1995 and 1996. We included Rima's average net financial expenses from its 1995 and 1996 financial statements, amortization of the total deferred financial expenses, and the exchange losses recorded on the financial statements in the line item monetary variation on liabilities. We allocated Rima's total financial expense over its total cost of sales. Because we included Rima's amortization of deferred expenses in the calculation of financial expenses, we excluded that same amount from Rima's cost of manufacturing.

Comment 8: Use of Rima's 95–96 Financial Statements to Calculate Financial Expense

Petitioners argue that the Department correctly calculated Rima's financial expense on its 1995 financial statements because Rima offset its financial expense with financial income, and it was not clear that this financial income was attributable only to short-term interest income (the only offset allowed by the Department), and the Department found that the record contained the amount of financial income to ''undo'' the offset for 1995 only. Petitioners argue that Rima's assertion that it did not have long-term interest bearing assets is false. Petitioners assert that GE's argument also conveniently overlooks the fact that the Department specifically found that Rima had financial income in 1995, which presumably resulted from investments that Rima officials claimed did not exist.

Rima and GE argue that the Department should calculate Rima's financial expense rate utilizing the net financial expenses from both Rima's 1995 and 1996 financial statements because the Department found that Rima had financial income in 1995.

Department's Position: We agree with Rima. As discussed in Comment 7 above, we recalculated Rima's financial expense using its 1995 and 1996 data. We did this because, upon further examination of Rima's interest expense data in Exhibit C–3 and Rima's 1995 and 1996 balance sheets, we were able to determine that Rima earned only short-term interest income. Therefore, we included Rima's average net financial expenses from its 1995 and 1996 financial statements, amortization of the total deferred financial expenses, and the exchange losses recorded on the financial statements in the line item monetary variation on liabilities. We allocated Rima's total financial expense over its total cost of sales for 1995 and 1996. Because we included Rima's amortization of deferred expenses in the calculation of financial expenses, we excluded that same amount from Rima's cost of manufacturing.

Comment 9: Double Counting of Deferred Non-Financial Expense Amortization

Petitioners argue that the Department properly rejected Rima's reported amortization of deferred non-financial expenses because Rima did not recognize amortization of deferred expenses from the 1987–95 period in its accounting records or financial statements. Petitioners argue that Rima's reported amortization of deferred expenses is infected with virtually all of the same defects as its reported depreciation. Petitioners note that Rima did not recognize amortization of deferred expenses from 1987–1995 in its accounting records or financial statements.

Petitioners also argue that Rima's hypothetical amortization further distorts the current amortization by relying on a highly accelerated rate. Furthermore, petitioners argue that the highly accelerated rate is improper because the deferred assets relate to expenses that benefit Rima's production over a much longer period than five years.

Rima argues that the Department double counted the amortization expense on certain deferred non-financial expenses. Rima argues that it included in the reported costs both the monetary correction on the deferred non-financial expenses and the associated accumulated depreciation account. Rima also argues that the correct current period amortization expense was included in the reported costs. Rima argues that the submissions and verification exhibits on the record in this proceeding document that it properly calculated and reported the monetary correction and depreciation expense associated with deferred non-financial expenses.

Department's Position: We agree with Rima. As we explained in Comment 5 above, in the preliminary results we incorrectly found that Rima did not report amortization expenses for its deferred asset accounts. Rima demonstrated that the monetarily corrected deferred expenses were included in amortization worksheets and the reported COP and CV.

Comment 10: Slag Revenue

CBCC states that the quantity produced figure it used to calculate its reported COP on a per-ton basis excluded the quantity of slag generated during production. As a result, CBCC states, its reported COP was net of slag. However, CBCC argues, because this by-product is sold from time to time, and because it provided a figure for the revenue generated from its sales of slag in exhibit 14 of its December 30, 1996 submission, the revenue generated by such sales should be deducted from COP. CBCC asserts that not only is this in accordance with the Department's practice, but the Department made the identical adjustment for another Brazilian producer in its preliminary results. The petitioners did not comment on this issue.

Department's Position: We agree with CBCC and for these final results have made an adjustment to its reported COP to account for the revenue generated by its sales of slag. For a detailed description of this adjustment please see the Department's final results analysis memorandum for CBCC.

Comment 11: Depreciation on Dust Removal System

Petitioners argue that Minasligas underreported depreciation by not reporting depreciation for the dust removal system that is under the same sub-account as the new furnace in Minasligas's asset ledger, reported in Minasligas's cost-deficiency questionnaire response at exhibit 6

(March 15, 1997). Petitioners contend that the dust removal system should have been depreciated together with all other assets related to the new furnace and conclude that, for the final results, the Department should add the depreciation for this asset to Minasligas' reported depreciation and recalculate Minasligas' COP and CV accordingly.

Minasligas argues that depreciation was not understated for the dust removal system, since this asset was (a) non-related to the production of silicon metal, (b) designed to produce micro silica—a by-product of silicon metal with a separate cost center, and (c) non-operative during the POR. Minasligas concludes that even if the dust removal system had been in operation during the POR, the depreciation expense would be entirely allocated to micro silica and not to silicon metal in Minasligas' financial accounting system.

Department's Position: We agree with petitioners. With respect to Minasligas' claim on the operational status of the dust removal system, the Department finds no evidence on the record demonstrating that the dust removal system was not in simultaneous operation with the new furnace during the POR. It is Department's long-standing practice to depreciate all assets which have been placed into service and are related to the production of subject merchandise. Because the dust removal system is attached to the new furnace, which was in operation during the POR, and because Minasligas' own books treat the dust removal system as part of that new furnace, in these final results of the review, the Department has rejected Minasligas' claim and allocated the depreciation expense of the value of the dust removal system to silicon metal production.

Comment 12: Weight-Averaging COP Data

Petitioners contend that the Department should use a weighted average COM for the POR using Exhibit 5 of Minasligas' March 5, 1997 cost deficiency response as verified during the company verification. Minasligas stated that COP data submitted to the Department in its submission of March 5, 1997, was inadvertently calculated by means of simple averaging as opposed to weight-averaging, which is the Department's standard methodology.

Department's Position: We agree with petitioners that final margin calculations should be based on the weight averaged COP data and we corrected this in these final results of the review. For a detailed discussion on the performed calculation please see Department's final analysis calculation memorandum for Minasligas.

Comment 13: Slag Offset

Minasligas argues that the offset the Department intended to make to COP for Minasligas' sales of slag was not properly calculated. Minasligas asserts that, due to a programming error, the slag offset, which Minasligas reported as a negative number, was incorrectly added rather than subtracted from the Department's calculations. Petitioners did not comment on this issue.

Department's Position: We agree with Minasligas. In these final results of review, we have rectified the problem by subtracting the absolute value of the slag offset, reported as a negative number, from COP in the margin calculations.

Comment 14: Financial Expense Ratio

Petitioners state that in the preliminary results the Department calculated CBCC's financial expenses by multiplying cost of manufacturing by a financial expense ratio which the Department derived from the consolidated financial statements of Solvay & Cie, CBCC's Belgian parent. Petitioners assert that, because the use of this ratio significantly understates the financial expenses incurred by CBCC, produces distorted results, is contrary to law, and is inconsistent with past Departmental practice, for the final results the Department should calculate CBCC's financial expenses using a ratio derived from CBCC's own financial statements.

Petitioners contend that, while the Department normally bases the financial expense ratio on a parent company's consolidated financial expenses because the group's parent, due to its influential ownership, has the power to determine the capital structure of each member within the group, in accordance with section 773(f) of the Act, the Department must also ensure that the costs it calculates reasonably reflect the costs associated with the production and sale of the subject merchandise. In this case, petitioners argue, when comparing the 1995 financial statements of CBCC and Solvay & Cie, it is clear that the Department's use of Solvay & Cie's financial expense ratio results in a large understatement of the financial expenses actually incurred by CBCC in the production and sale of subject merchandise and could result in the shifting of debt from the parent to the subsidiary for the purpose of reducing the financial expense ratio.

Furthermore, petitioners assert that not only did CBCC account for less than 2 percent of Solvay & Cie's consolidated net worth in 1995, but because the group consists of numerous subsidiaries and affiliated parent companies in the automotive, chemical, pharmaceutical, plastic, shipping, and related industries, virtually all of Solvay & Cie's financial expenses and cost of goods sold (COGS), as reflected on its 1995 consolidated financial statements, were incurred by entities other than CBCC engaged in businesses completely unrelated to the production and sale of silicon metal.

Petitioners also contend that in *Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil,* 59 FR 42806 (August 19, 1994) (*Final Results of 1st Review*) and the *Notice of Final Determination of Sales at Less than Fair Value Ferrosilicon from Brazil,* 59 FR 732 (August 6, 1994), the Department did not rely on Solvay & Cie's financial expense ratio to calculate CBCC's financial expenses, but rather based the ratio on Solvay do Brazil's, CBCC's direct parent, consolidated financial statements.

Petitioners further argue that, if the Department agrees with their position and bases its calculation of CBCC's financial expense on CBCC's financial statements, the Department should use the total financial expense figure as shown on CBCC's financial statement and not allow CBCC's claimed offset for interest income because CBCC failed to demonstrate that this interest income was derived from short-term investments of working capital. Finally, petitioners assert that, if the Department were to reject their position and continue to calculate CBCC's financial expense using the ratio derived from Solvay & Cie's financial statements, the Department should still not allow an offset for interest income because there is no information on the record demonstrating that the interest income offsetting Solvay & Cie's total financial expenses was earned on short-term investments of working capital.

CBCC argues that, in accordance with the Department's established practice as applied in *Final Results of 4th Review, Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part Silicon Metal from Brazil,* 62 FR 1594 (January 14, 1997) and *Notice of Final Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil,* 62 FR 43504 (August 14, 1997) (*Ferrosilicon from Brazil*), the Department should not alter its preliminary results determination and should continue to rely on the consolidated Solvay & Cie financial statements to calculate CBCC's interest expenses. However, CBCC states, while

the Department has used an accurate methodology to calculate its financial expenses, it nevertheless relied on an incorrect ratio when it should have used the ratio CBCC provided in exhibit D–3 of its November 4, 1996, submission.

Department's Position: We agree with the respondent that our established policy is to calculate interest expenses incurred on behalf of the consolidated group of companies to which the respondent belongs, based on consolidated financial statements, regardless of whether the respondent's financial expense is higher than that of the controlling entity. This practice recognizes two facts: (1) The fungible nature of invested capital resources such as debt and equity of the controlling entity within a consolidated group of companies, and (2) the controlling entity within a consolidated group has the power to determine the capital structure of each member country within its group (*see, e.g., Notice of Final Results of Antidumping Duty Administrative Review Aramid Fiber Formed of Poly ParaPhneylene Terephthalamide from the Netherlands,* 62 FR 136 (July 16, 1997)). While the petitioners correctly contend that in a past review of this case and in the LTFV determination for ferrosilicon from Brazil we relied on Solvay do Brazil's financial statements, they overlook the fact that we did not have the Solvay & Cie consolidated financial statement on the record for these reviews. Because we clearly have Solvay & Cie's consolidated financial statement on the record for this review, in accordance with our established practice, we have used this consolidated financial statement to calculate CBCC's interest expenses.

With respect to petitioners' contention that we should not permit an offset to CBCC's interest expense for interest income, we agree. Not only did CBCC fail to make an offset claim, but CBCC provided no information on the record demonstrating that any of the financial income reflected on the Solvay & Cie consolidated income statement was earned on short-term investments of working capital. Therefore, for these final results we have not made an interest income offset to CBCC's financial expenses.

Comment 15: Production Quantity

Eletrosilex and Dow Corning state that the Department should make an adjustment in its calculation of COM to reflect an extraordinary event which caused Eletrosilex's furnaces to shut down for substantial periods of time during two months of the POR, resulting in what they claim to be a highly distorted COM. Eletrosilex requests that in the COM calculation, the Department replace the actual production during March and May 1996, which was unusually low, with the average production quantity during the other 10 months of the POR. The company contends that two unrelated events resulted in the lack of supply of electrodes, an essential ingredient in the production of silicon metal, which led to unusually low production during these two months. The first event was a dispute with Eletrosilex's long-term supplier of electrodes, and the ultimate termination of the supply relationship. The second event was a work stoppage by Brazil's customs workers, which hampered Eletrosilex's ability to import new shipments of electrodes. Eletrosilex contends that during the prolonged periods during which it could not produce silicon metal, most of the costs of production, such as direct labor, direct materials, purchase of most materials, equipment costs, maintenance costs, selling expenses, general and administrative expenses and financial expenses, remained constant. Therefore, according to Eletrosilex, the reported cost of manufacturing is distorted, warranting an adjustment by the Department. In addition, Dow Corning supports Eletrosilex's claim for an adjustment by stating that their supply of silicon metal from Eletrosilex was interrupted due to a low production during those months of the POR.

Petitioners assert that the Department should not make this adjustment because COM was calculated correctly, based on the actual costs incurred. Petitioners cite to the *Agreement on Implementation of Article VI of the GATT, Statement of Administrative Action, Antidumping Duty and Procedural Provisions* 807, 835, reprinted in 1994, U.S. C.C.A.N. 4151, 4172, (''SAA''), which states that costs shall be determined ''using a method that reasonably reflects and accurately captures all of the actual costs incurred in producing and selling the merchandise under . . . review.'', and contend that ''Curtailments in production due to a restricted flow of supplies caused by the termination of an unreliable supplier are simply a fact of doing business. Such occurrences do not render the actual costs incurred distortive and do not warrant any adjustment to those costs.'' See Petitioners' Rebuttal brief at 14.

Department's Position: We disagree with Eletrosilex and Dow Corning. The Department rejected a similar argument from Eletrosilex in the first review. *See Notice of Final Results of Antidumping Duty Administrative Review: Silicon metal from Brazil,* 61 FR 46763 (September 5, 1996) (*Final Results of 3rd Review*). As stated in those final results, the Department's policy is to use *actual* production volumes in the calculation of COM. The Department's policy is to use actual cost and production information because this information is the most accurate.

Comment 16: G&A Expenses

Eletrosilex asserts that the DOC should use the actual G&A incurred during the POR rather than the average based on Eletrosilex's 1995 financial statements. Eletrosilex states that the Department should do so because the company provided the Department with the actual G&A for each month of the POR, and because Eletrosilex incurred an extraordinary charge which is reflected in the 1995 financial statements, but actually occurred outside the POR. Eletrosilex claims that the Department rejected its normal policy of using fiscal year data to calculate G&A expenses in the first administrative review of this proceeding, where it concluded that to apply actual G&A expenses would produce a distorted and unrepresentative result.

Petitioners state that the Department was correct in employing its standard practice and calculating Eletrosilex's G&A expenses based on the company's 1995 financial statements. Petitioners state that respondents have provided no documentation to substantiate their claim that the amount in question was an extraordinary charge, and that calculating G&A in the manner suggested by respondents would be contrary to established Department practice.

Department's Position: We disagree with Eletrosilex. The Department correctly used Eletrosilex's most recently audited financial statements to calculate Eletrosilex's G&A expenses, because G&A expenses are period expenses. Period expense categories such as G&A and interest expense capture all expenses incurred during a company's standard reporting period, *i.e.* its fiscal year. The Department's accepted practice is to use the audited fiscal year financial statement that most closely corresponds to the POR to calculate period expense ratios such as the G&A and interest expense ratios. The Department does not adjust these period expenses to account for certain expenses which were incurred at a particular point in time during a company's fiscal year. Employing the methodology used in this instance is both consistent with Department policy, and accurately reflects expenses

realized during the most recent fiscal year for which financial statements were available.

III. Comment Related to U.S. Sales

Comment 17: Date of Sale

Petitioners contend that the Department erred by using the purchase order confirmation date rather than the invoice date for determining date of sale for Minasligas' U.S. sales. Petitioners argue that contrary to the Department's questionnaire instructions issued for this review period, Minasligas reported the purchase order confirmation date as the date of sale for its U.S. sales rather than the invoice date.

Minasligas responded that the Department was correct in using the purchase order date, as it has in prior reviews, in determining the date of sale. Minasligas asserts that purchase order date is the date upon which all sales terms are set. Minasligas deems the invoice date as an improper date of sale, because a sale may have more than one ''nota fiscal'' (invoice) issued at different dates depending on the date of shipment of each lot from the plant and a separate ''master nota fiscal'' at the port.

Department's Position: We agree with Minasligas. Consistent with our practice in the second, third, and fourth reviews, the Department used date of confirmation order as date of sale based upon our finding that all essential terms of sale are established by this date.

Comment 18: Tying Sales to Entries

Petitioners assert that section 751(a)(2)(A) of the Act requires the Department to determine the margin of dumping on each entry of subject merchandise during the POR. Petitioners assert that, in its preliminary results the Department incorrectly included within its margin calculation sales transactions which were not within the POR, and excluded from its margin calculation sales which were indeed entered in the POR. As a result, petitioners argue, the Department understated the margins of dumping for Minasligas, Eletrosilex and CBCC and, if not corrected for the final results, will understate the assessment and cash deposit rates for these firms as well. Petitioners contend that section 751(2)(B) of the Act requires that antidumping duties be imposed in the amount of the margin of dumping in order to ensure that the duty offsets the unfairly low pricing of the merchandise entering the United States. Therefore, petitioners assert, to impose duties on entries at rates based on sales unrelated to the POR, as the Department has done its preliminary results, is a violation of this core principle of the U.S. antidumping law.

With respect to Eletrosilex, petitioners argue that certain U.S. sales reported by Eletrosilex did not enter the U.S. Customs territory during the POR and, based on the arguments presented above, should be excluded from the Department's margin calculations for Eletrosilex for these final results.

With respect to CBCC, petitioners assert that the Department must determine which sales made by CBCC entered U.S. Customs territory for consumption during the POR, including merchandise withdrawn from a bonded warehouse, in order to establish a universe of sales to review during the POR. In response to petitioners, CBCC stated that it sells to unrelated U.S. customers and has no knowledge of the ultimate destination of the merchandise once it enters the bonded warehouse in the territory of the United States. Further, petitioners contend that based on a comparison of the U.S. sales by the U.S. Census Bureau for the POR, there was a very large volume of entries for consumption of silicon metal from Brazil during July 1995 and there are no corresponding sales reported to the Department by the respondents. In addition, petitioners assert, the volume of reported arrivals at U.S. ports during July 1995 falls far short of the volume of reported entries for consumption during that month. For these reasons, petitioners argue, as was done in the preceding two segments of this proceeding, the Department must request from the U.S. Customs Service information concerning which U.S. sales by CBCC entered U.S. Customs territory for consumption during the POR, including merchandise withdrawn from bonded warehouse for consumption during the POR.

In its case briefs, Minasligas refers to the questionnaire that the Department issued to the respondents in this review on the issue of which sales to consider for a review during the POR. It is Minasligas' understanding that in EP sale situations, Minasligas was required to report each sale transaction to the Department based on its date of shipment. Hence, Minasligas contends the Department should include those U.S. sales in question that have been shipped during the POR but whose dates of sales are indeed outside the POR.

Department's Position: We disagree with Minasligas. The Department's methodology has remained the same as that in prior reviews in determining which U.S. sales to review. Further, information on the record confirms that all respondents in this review had at least one consumption entry into U.S. Customs territory during the POR. Therefore, in the final results of this review, the Department has continued to employ the following approach in determining which U.S. sales to review for all companies:

(1) Where a respondent sold subject merchandise, and the importer of that merchandise had at least one entry during the POR, we reviewed all sales to that importer during the POR.

(2) Where a respondent sold subject merchandise to an importer who had no entries during the POR, we did not review the sales of subject merchandise to that importer in this administrative review. Instead, we will review those sales in our administrative review of the next period in which there is an entry by that importer.

We also disagree with petitioners. The Department most recently addressed and rejected petitioners' assertion that the Department of Commerce calculate dumping margins based on sales of subject merchandise that entered U.S. Customs territory during the POR in the final results of the last review of this order (*See Final Results of 4th Review* at 1955, 1956).

Our analysis of this issue and interpretation of the statute remain unchanged from those announced in the final results of the second, third and fourth reviews of this order. In applying a consistent methodology from review to review, we capture all sales transactions. Changing the methodology could result in the failure to review some sales.

Comment 19: Shipment Date

Citing to the Department's *Notice of Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia,* 59 FR 4023 (January 28, 1994), petitioners contend that it is the Department's practice to calculate U.S. imputed credit expenses for the period from the date of shipment from the factory to the date of payment from the U.S. customer. However, petitioners argue, based on their comparison of the date of shipment reported by CBCC in its U.S. sales listing and U.S. sales documentation on the record, it appears that CBCC reported as its date of shipment the date of the bill of lading (*i.e.,* the date upon which the merchandise was loaded onto the ship at the foreign port). Petitioners argue that, because CBCC failed to report the actual date of shipment for its U.S. sales, the Department should use the date of sale as the date of shipment when calculating CBCC's U.S. credit

expenses. CBCC did not comment on this issue.

Department's Position: We agree with the petitioners in part. It is the Department's long-standing practice to calculate credit for U.S. EP sales from the time that the merchandise is shipped to the customer from the foreign production site (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: 3.5″ Microdisks and Coated Media Thereof From Japan*, 54 FR 6433 (February 10, 1989)). Based on our review of the record, we have determined that the date of shipment reported by CBCC for its U.S. sales was the date of the bill of lading and not the date of shipment from the foreign production site. As a result, CBCC's reported credit expenses cover only a portion of the imputed credit expense period. However, as indicated in CBCC's November 4, 1996 section A response, the respondent issues its U.S. sales invoices upon shipment of the merchandise from the plant to the port. Therefore, for these final results we have relied on CBCC's reported invoice dates for our calculation of its U.S. credit expenses.

Comment 20: Deduction of Movement Expenses From EP

Petitioners assert that the Department did not deduct (1) warehousing expenses, and (2) the ICMS tax that Rima incurred for inland freight, from EP, as the statute requires. They state that the full amount of warehousing expenses, as well as inland freight (field ''FGNMOVE'') inclusive of ICMS taxes, should be deducted from Rima's EP.

Department's Position: We agree with petitioners. Section 772(c)(2)(A) of the Act requires that all movement expenses be deducted from EP. Warehousing expenses, and ICMS taxes paid on freight, are movement expenses. Therefore, we have modified these final results to deduct the full amount of inland freight, inclusive of warehousing expenses and ICMS taxes, from Rima's EP.

Furthermore, section 773(a)(6)(B)(ii) requires that all movement expenses be deducted from normal value. Therefore, for these final results, we also deducted ICMS taxes incurred on freight from normal value. We note that we did not deduct warehousing expense from normal value because Rima did not incur this expense for home market sales.

Comment 21: U.S. Credit Expenses

Minasligas argues that the Department double-counted its U.S. credit expenses in the preliminary results. Minasligas contends that in addition to the adjustment for imputed credit expenses, the Department also adjusted Minasligas' credit expenses for Advance Exchange Contract (ACCs) bank charges that it reported in its U.S. sales listing. Minasligas asserts that the bank charges it reported were not a one-time fee, but actually the credit expenses charged by the bank for the period during which credit was outstanding by the customer. In other words, Minasligas argues, these charges are identical to the Department's imputed credit expenses because they account for the opportunity cost associated with the period during which payment is outstanding. Minasligas further asserts that the Department can confirm that these bank charges are in fact credit expenses charged by the bank in connection with ACCs by analyzing the documentation provided for a certain U.S. sales observation in verification exhibit 10. Minasligas contends that the documents in this exhibit demonstrate that the expense was calculated based on the number of days that have lapsed from the date of payment of the ACC to Minasligas until the date on which the bank received payment from the customer. Finally, Minasligas argues that for the final results, if the Department determines ACCs to be related to U.S. sales, the Department, using the ACC bank charges, should calculate negative credit expenses for the period between the date of payment by the bank and the date of shipment of the merchandise from the plant. On the other hand, Minasligas argues, if the Department determines that the ACCs are not related to U.S. sales, the Department should disregard the ACC's bank charges and calculate imputed credit expenses pursuant to the same methodology it applied to Minasligas in the *Ferrosilicon from Brazil* at 43504. The petitioners did not comment on this issue.

Department's Position: We agree with Minasligas in part. The Department double-counted credit expenses for Minasligas' U.S. sales. Our further analysis of the evidence on the record reveals that bank charges, which are in essence interest incurred on export loan funds obtained as working capital in the form of advanced exchange contracts (ACCs), are not a flat bank fee connected with the issuance of ACCs. Consistent with *Ferrosilicon from Brazil*, the Department will not treat bank charges as part of direct selling expenses as these interest payments have been captured in Minasligas's interest expense account.

The Department disagrees with Minasligas regarding its imputed credit revenue claim. At verification, the Department determined that Minasligas obtained funds used for financing of future export sales from a bank without having to present relevant sales documentation at the time of payment by bank. Minasligas' claim that the Department should have used the date on which the bank forwards funds to Minasligas pursuant to an ACC is incorrect because, at verification, the Department did not find a direct one-to-one relationship between the acquisition of the ACCs and U.S. sales, as consistent with the final results of *Ferrosilicon from Brazil.* Thus, the Department finds that the date of payment by bank to Minasligas to be an inappropriate date of payment to use for Minasligas' credit expense calculation. For the above-discussed reason, in the final results of this review, the Department rejected Minasligas' imputed revenue claim and calculated its imputed credit expense on the basis of payment outstanding, (i.e., number of days between the date of payment by customer to Minasligas and the date of shipment from the factory) (*see Analysis of Data Submitted by Companhia Ferroligas Minas Gerais (Minasligas) in the Fifth Administrative Review (95–96) of the Antidumping Duty Order on Silicon Metal from Brazil*, July 31, 1997). Therefore, the Department did not perform any adjustment to the payment date from the preliminary results of this order.

Comment 22: Duty Drawback

Petitioners made two comments regarding duty and tax drawback. First, petitioners argue that the Department should not grant a duty and tax drawback adjustment to Eletrosilex's EP, as the company did not properly establish its entitlement to the adjustment. Second, petitioners contend that if the Department does grant the drawback, then, consistent with Department practice, the identical adjustment to CV must be made in order for there to be an 'apples to apples' comparison between EP and CV; for sales below cost analysis, the Department should add the amount of the duties and taxes on electrodes in COP. Eletrosilex provided no comments on this issue.

Department's Position: We agree with petitioners that no drawback adjustment is warranted. The Department must reject Eletrosilex's claim for a drawback adjustment for import duties, ICMS taxes, and IPI taxes because Eletrosilex failed to demonstrate on the record that it claimed and received a duty and tax drawback. Eletrosilex did not demonstrate that it paid duties, IPI taxes, and ICMS taxes for imported

electrodes used for home market sales in response to the Department's original questionnaire issued September 3, 1996. Payment of these taxes and duties on the importation of inputs used for domestic sales, but not for export sales, is necessary to establish a drawback claim. In the third supplemental questionnaire response, dated February 14, 1997, Eletrosilex responded that they did pay taxes and duties on the importation of electrodes used for domestic sales. However, as its evidence, Eletrosilex provided import declaration forms that were dated after the POR. Further, this evidence relates only to IPI taxes and import duties on its importation of electrodes. Thus, Eletrosilex failed to substantiate its drawback claim by not providing appropriate payment documentation on Customs duties and IPI taxes and no payment documentation on ICMS taxes imposed on importation of electrodes used for the production of home market sales or any support documentation for the POR.

Comment 23: Reporting Expenses In the Currency in Which They Were Incurred

Petitioners argue that Eletrosilex improperly converted inland freight, warehousing charges, port charges, and ocean freight into U.S. dollars and reported the converted U.S. dollar amounts on the sales listing. Petitioners argue that the Department should not use the provided U.S. dollar amounts, and instead should use the reais-denominated amounts which were also provided to the Department.

Department's Position: We disagree with petitioners. In its preliminary margin calculation, the Department used the revised U.S. sales listing, which stated reais-denominated amounts for inland freight plant/warehouse to port of exit, brokerage and handling and port charges. For the final results of this review, the Department has continued to use the fields of expenses in the currency in which they were incurred.

IV. Comment Related to Taxes

Comment 24: PIS/COFINS Reflected in the Cost of Production

Petitioners argue that a review of the record in this case indicates that CBCC reported its weighted-average direct material costs for the POR exclusive of PIS and COFINS taxes. Petitioners assert that, not only are these taxes imbedded in the prices CBCC paid for direct materials, but in *Final Results of 4th Review* the Department included PIS and COFINS taxes in its calculation of COP and CV. Therefore, petitioners claim the Department should do so again for these final results. CBCC did not comment on this issue.

Department's Position: We agree with the petitioners. In order for COP to reflect the complete cost of materials, the costs we use in our calculation of COP must include the full cost of materials, including any hypothetical tax amounts that are presumably imbedded within these costs (*See Final Results of 4*th Review). Thus, in order for the COP to reflect the full purchase price of the materials, we must add to the reported material costs an amount reflective of the PIS and COFINS taxes on material inputs. We have reviewed the information CBCC provided on the record and have determined that, while CBCC included PIS and COFINS taxes in its calculation of COP in exhibit D–4 of its November 4, 1996 questionnaire response, it nevertheless did not include the taxes in its reported COP computer files (submitted June 2, 1997). Therefore, for these final results we have added to the COP reported in CBCC's computer file the PIS/COFINS tax amount reported in exhibit D–4.

Comment 25: COS Adjustment for PIS/COFINS

CBCC and Minasligas argue that the Department failed to adjust their preliminary margin calculations to account for the PIS/COFINS taxes which the respondents pay for home market sales but not for U.S. sales. The respondents contend that, in order to avoid distortions in its margins calculations, for these final results the Department should make a circumstance-of-sale (COS) adjustment for these taxes, as directed by 19 USC 1677b(a)(6)(C)(iii), or an adjustment to NV in accordance with 19 USC 1677b(a)(6)(B)(iii). Respondents assert that, while they are well aware that this issue has been raised in previous reviews of this order and in reviews of other orders, the Department's recent determinations to not make a COS adjustment for the PIS/COFINS taxes are incorrect and the Department should change its position for these final results for the following reasons:

First, citing to *Notice of Frozen Concentrated Orange Juice from Brazil; Final results and Termination in Part of Antidumping Duty Administrative Review,* 55 FR 47502 (November 14, 1990), in which the Department made a COS adjustment for PIS/COFINS taxes, respondents assert that, until recently, it was the Department's long-standing policy to make a COS adjustment for these taxes and argue that there is no valid reason for the Department to depart from this established practice.

Second, respondents contend that in the most recent final results notice in which this issue was raised, *Ferrosilicon from Brazil,* the Department's determination not to make a COS adjustment was based on incorrect assumptions. Respondents assert that in *Ferrosilicon from Brazil* the Department concluded that the PIS and COFINS taxes were not imposed on the sale of subject merchandise. However, respondents contend, as the record in this review demonstrates, the Brazilian PIS and COFINS taxes are imposed on revenue from sales of products produced and sold in the domestic market, exclusive of export revenue. As a result, respondents claim, like value-added taxes, PIS and COFINS are only imposed if a sale is made and are therefore tied directly to silicon metal sales transactions. Respondents argue that the only difference between PIS/COFINS and the other Brazilian taxes is that PIS/COFINS taxes, unlike the IPI and ICMS taxes, are not usually reported on the commercial invoice. However, respondents assert, the fact that PIS and COFINS taxes are imposed on gross receipts of sales does not mean that they are not imposed on sales transactions. For example, respondents argue, as noted by the United States Court of Appeals for the Federal Circuit (CAFC) in *Torrington* v *United States,* 82 F. 3d 1039 Fed. Cir. 1996) and by the Department in its recently published Final Antidumping Rules (*Department of Commerce, Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296 (May 19, 1997), many allocated expenses are considered directly related to a sale even though they are not reported on the commercial invoice. Respondents state that the fact that these taxes are not on the commercial invoice does not mean they are unrelated to the sale and are not included in the home market price. Therefore, respondents conclude, if an allocated expense can be considered directly related to a sale, so too can the PIS/COFINS taxes.

Lastly, respondents assert that the Department cannot rely on its conclusions in the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From Argentina,* 56 FR 37891 (August 9, 1991) (*Argentine Silicon Metal*) to support its position with respect to the Brazilian PIS/COFINS taxes because there are important differences between the Brazilian and Argentine taxes. For example, respondents note, the Brazilian PIS and COFINS taxes are only imposed on revenue from domestic sales and not on a company's gross

revenue, as is the case with the Argentine taxes which are imposed on sales revenue, interest income, bond revenue, and other miscellaneous revenues. Therefore, CBCC and Minasligas claim, unlike the Argentine system, where taxes are based on all of a company's income sources and would be imposed even if there were no domestic sales, there must be domestic sales in order for the PIS and COFINS taxes to be imposed in Brazil.

Petitioners argue that under section 773 (a)(6)(B)(iii) of the Act, NV may only be reduced by taxes imposed on the ''foreign like product or components thereof.'' Petitioners contend that the language of this section is virtually identical to that of section 772(d)(1)(C), the parallel provision in effect prior to the enactment of the URAA, and that the CAFC, in *American Alloys, Inc.* v. *United States*, 30 F.3d 1469,1473 (Fed. Cir. 1994), ruled that the wording of section 772(d)(1)(C) as well as the legislative history evinces an intent by Congress to permit adjustment only upon demonstration of a direct relationship between the tax and the commodity or its components. Petitioners state that in *Ferrosilicon from Brazil, Argentine Silicon Metal, Final Results of 3rd and 4th Reviews*, the Department clearly determined that the PIS and COFINS taxes are not taxes directly imposed on the merchandise or components thereof. Thus, petitioners assert, the Department did not focus on whether revenue subject to the tax consisted of revenue other than sales revenue, but rather based its determination not to make the adjustment on the fact that taxes on revenue or income of any kind do not constitute taxes imposed directly on the merchandise or components thereof. Petitioners assert that the SAA makes clear that the type of taxes which warrant adjustment under section 773(a)(6)(B)(iii) are home market consumption taxes. Because consumption taxes are taxes paid by the consumer on specific sales transactions and the PIS and COFINS taxes at issue in this review are revenue taxes paid by the seller, petitioners contend, the PIS and COFINS taxes are clearly not consumption taxes. As a result, petitioner conclude, the Department correctly did not make an adjustment to NV for these taxes in its preliminary results of this review and should not do so in these final results.

With respect to the respondents' contention that the Department should have made a COS adjustment for these taxes, petitioners argue that section 773(a)(6)(B)(iii) of the Act is the sole provision in the antidumping law that provides for an adjustment for taxes in the context of a price-to-price margin calculation. Petitioners maintain that it is an established principle of statutory interpretation that when, in the same statute, there are specific terms governing a particular subject matter and general terms that could be read to address the same subject matter, the specific terms prevail over the general. Thus, petitioners assert, if the COS provision in section 773(a)(6)(C)(iii) of the Act could be invoked to make an adjustment for taxes other than those identified in section 773(a)(B)(iii) or in circumstances different from those delineated in that provision, section 773(a)(6)(B)(iii) would be superfluous. Even if he Department could make a COS adjustment for taxes, petitioners argue, the PIS and COFINS taxes would not qualify for such an adjustment for the same reason that they do not qualify for an adjustment pursuant to section 773(a)(6)(B)(iii). Petitioners contend that the Department's regulations limit allowances for COS adjustments to instances which bear a direct relationship to the sales compared. Petitioners assert that, because the PIS and COFINS taxes are not imposed directly on silicon metal sales transactions, they do not qualify for a COS adjustment.

Department's Position: We agree with petitioners. It is important to note that this identical issue has been raised before the Department not in only in previous reviews of the instant case (*Final Results of 3rd and 4th Reviews*), but in *Ferrosilicon from Brazil* as well. In each of those proceedings and in this instant review, the record indicated that the Brazilian PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue and, thus, are not imposed on the merchandise or components thereof. Therefore, in accordance with our consistent practice with respect to these taxes, we have again determined for these final results that, because these taxes cannot be tied directly to silicon metal sales, we have no statutory basis to deduct them from NV. Likewise, because the PIS and COFINS taxes are gross revenue taxes, we have again determined they do not bear a direct relationship to home market sales and, therefore, do not qualify for a COS adjustment.

Comment 26: ICMS Taxes Paid on Inputs

First, Eletrosilex contends that the Department improperly calculated the total cost of manufacturing (TOTCOM) inclusive of ICMS taxes paid on inputs as these taxes have been included in the variable overhead of Eletrosilex's cost data. Eletrosilex asserts that the reported variable overhead included all internal taxes (ICMS, IPI, PIS and COFINS) and accordingly, the Department should reduce its TOTCOM for the full amount of ICMS taxes included in the COP calculations of the preliminary results of this review.

Second, Eletrosilex argues that the Department should revert to its approach in *Final Results of 1st Review* at 42806, 42808 and therefore not include ICMS taxes paid on input material when those taxes are offset by a respondent's collection of ICMS taxes on the sales of the merchandise. Eletrosilex claims that the Department's justification of its current treatment of ICMS taxes stated in the *Final Results of 3rd Review* at 46769 as ''does not account for offsets of taxes paid due to home market sales'' and its basis of determination on ICMS tax treatment solely on the remittance of internal taxes upon exportation of merchandise results in a Department position inconsistent with the interpretation of the statute by the Court of International Trade and with the requirements of the GATT.

Further, Eletrosilex states that it is required by the statute to include in CV all ''costs of material'' incurred in the production of the merchandise. Eletrosilex contends that VAT taxes, like the Brazilian ICMS tax, are not a cost of materials and therefore should not be included in the CV build up. Eletrosilex states that if a producer demonstrates that VAT taxes imposed on inputs are fully recouped (i.e. ICMS taxes collected from domestic sales exceed ICMS taxes paid to the input suppliers), then ICMS taxes are not a cost of materials and should therefore not be in the calculation of CV.

Dow Corning asserts that ICMS taxes should not be included in the cost of production of Eletrosilex or any other Brazilian producer based on their ''direct knowledge'' of ICMS taxes and its impact on operation costs. Dow Corning states it is knowledgeable on ICMS Tax treatment in Brazil because the company has extensive production facilities and a sales network in Brazil. Dow Corning states that ICMS taxes are fully recouped by the producer on all sales, not just on export sales, and therefore ICMS taxes should not be included in the cost of production of Eletrosilex or any other Brazilian producer.

Rima concurs with Eletrosilex that without first determining whether VAT paid on material inputs are in fact a cost of such materials it is improper to compare CV, inclusive of VAT, with a U.S. price, exclusive of VAT. Rima

argues that in calculating CV, the Department included Brazil's ICMS and IPI taxes in the cost build-up. Rima argues that Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code require that dumping assessments be tax-neutral. Rima also argues that the Uruguay Round Agreements Act explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. Price, so that no consumption tax is included in the price in either market. Rima argues that in Brazil, VAT paid on the supply of input materials can be offset with VAT collected from sale of the merchandise produced with such materials. Accordingly, Rima argues that in a tax scheme such as Brazil's, a respondent may be able to show that a value added tax on inputs did not in fact constitute a cost of materials for the exported product within the meaning of 19 U.S.C. section 1677b(e)(1)(A), *Aimcor et al.* v. *United States*, Slip Op. 95–130 (July 20, 1995) (''*AIMCOR*''). Therefore, Rima argues that it was improper to compare a CV inclusive of VAT to a U.S. price which does not include any VAT.

Petitioners argue that the Department correctly included ICMS and IPI taxes in CV, because the statute requires a tax neutral comparison. Petitioners argue that in Brazil these taxes paid on inputs are not remitted or refunded upon exportation. Petitioners argue that Rima does not even claim that the company recovered the ICMS and IPI taxes paid on inputs.

Petitioners argue that the Department's inclusion in CV of ICMS and IPI taxes paid on inputs used in metal production is consistent with the statute. Petitioners argue that section 773(e) of the Act provides that CV shall include cost of materials and that the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials. Petitioners argue that according to the plain language of the statute, a domestic tax directly applicable to materials used in producing exported merchandise is a cost that must be included in CV unless, and only if, such tax is remitted or refunded upon exportation of the merchandise. Petitioners argue that there is no dispute that the ICMS taxes paid on inputs used to produce silicon metal exported to the U.S. were not remitted or refunded upon exportation.

Petitioners also argue that including the ICMS taxes paid on inputs in CV does not violate the principle of tax neutrality, as expressed in the General Agreement on Tariffs and Trade.

Finally, petitioners argue that Rima's reliance on AIMCOR is misplaced, in that petitioners point out that the general clause relied upon by the Court of International Trade does not address the specific question of how taxes are to be treated in determining the cost of materials. Petitioners argue that in *AIMCOR* the CIT interpreted the virtually identical provision of section 773(e)(1)(A) prior to the changes made by the Uruguay Round Act. Petitioners argue that the CIT's interpretation of the statute is wrong because it relies on the general clause at the end of the provision stating that the cost of materials to be included in CV is to be determined at a time preceding the date of exportation. Moreover, petitioners argue that clause is not part of the current statute.

Petitioners contend that the Department correctly included an amount for ICMS taxes in the calculation of CV. Petitioners cite to Section 773(e) of the Act, which states that ''the costs of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials.'' Petitioners point out that because the ICMS taxes paid on inputs used to produce silicon metal exported to the United States were not remitted or refunded upon exportation, the ICMS taxes were correctly included in CV.

Department's Position: We disagree with Eletrosilex that ICMS taxes are included in its reported total manufacturing costs (TOTCOM) as variable overhead. Evidence on the record (see Eletrosilex's November 12, 1996 and January 7, 1998 questionnaire responses) contradicts this assertion. Specifically, Eletrosilex provided a worksheet which breaks out all the components of variable overhead. ICMS taxes are not accounted for on this worksheet. Furthermore, Eletrosilex provided worksheets detailing, on a monthly basis, the amounts of ICMS taxes paid on secondary material and direct material inputs. The sum of these taxes in each month exceeds the amount Eletrosilex reported as variable overhead for that month. Therefore, we conclude that the reported TOTCOM does not include ICMS.

With respect to the broader issue of whether ICMS and IPI taxes should be included in CV, we have an established practice regarding the treatment of such taxes in calculating CV. *See, e.g., Ferrosilicon from Brazil, Final Redetermination on Remand of Sales at Less Than Fair Value,* at 10 (January 16, 1996); *Ferrosilicon from Brazil, Final Results of Antidumping Duty Administrative Review,* 61 FR 59407, 59414 (November 22, 1996); *Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part,* 63 FR 1954, 1965 (January 14, 1997); *Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 62 FR 1970, 1976* (January 14, 1997). Our practice is governed by section 773(e)(1)(A) of the Act, which requires that taxes paid on inputs be included in CV when such taxes are not remitted or refunded upon exportation of the final product. We have considered and rejected in other cases arguments similar to those respondents have made here that, because the amount of ICMS and IPI taxes paid on inputs used in producing exported merchandise is credited against the liability for taxes collected on home market sales, the taxes paid on inputs should not be included in CV.

Section 773(e) of the Act directs us to exclude from CV only those internal taxes remitted or refunded upon export. Therefore, if the taxes paid on production inputs are neither remitted nor refunded upon exportation of the subject merchandise, the ability of the manufacturer to recoup this tax expense through domestic market sales is not automatic and also not relevant. Thus, we calculated the ICMS and IPI taxes as a percentage of the total purchases of materials and energy, and we added this amount to the reported CV.

We note that on November 25, 1997, the U.S. Court of International Trade remanded to the Department the determination in the LFTV investigation of Silicon Metal from Brazil. *Camargo Correa Metais, S.A.,* v. *United States,* Slip Op. 97–159, November 25, 1997. The Court ordered the Department to change its treatment of ICMS taxes in the calculation of constructed value. In ordering the remand, the Court held that ICMS taxes are remitted or refunded upon exportation of the subject merchandise within the meaning of the pre-URAA antidumping statute (section 773(e)(1)(A)). The Department is in the process of reviewing the Court's decision, as well as other relevant CIT decisions, and their implications for the Department's treatment of Brazilian value-added taxes. The Department's determination on remand is due to the Court by February 24, 1998.

V. Other Comments

Comment 27: Control Numbers

Petitioners assert that CBCC's reported control numbers are unreliable. Petitioners contend that not only does CBCC's product brochure describe two different types of silicon metal produced and sold by CBCC (silicon metal for the aluminum industry and silicon metal designed for chemical and metallurgical industries) which have distinct chemical specifications, but an examination of CBCC's U.S. sales indicates that CBCC sold silicon metal for both applications during the review period. Petitioners state that, while the Department clearly instructed CBCC in the Department's second supplemental questionnaire to report the chemical composition of the merchandise it sold in the home market during the POR, CBCC failed to provide this information, stating that the information would be available at verification. However, petitioners assert, because the Department subsequently canceled its scheduled verification of CBCC's home market sales information and CBCC failed to subsequently report this information, there is no way to ensure that CBCC's reported home market control numbers are accurate and the Department is therefore unable to perform a proper product matching. As a result, petitioners assert, the Department should base its calculation of normal value for CBCC on CV. In the alternative, petitioners contend, the Department should require CBCC to report the chemical composition of its home market merchandise and to re-report control numbers which reflect the chemical composition and the grade of merchandise described in CBCC's product brochure.

CBCC argues that the petitioners' assertions are unfounded for the following reasons: First, CBCC states, the petitioners have misinterpreted the nature of CBCC's reported U.S. sales. CBCC asserts that the customer for one of the U.S. sales identified by the petitioners in its case brief clearly did not purchase silicon metal for chemical or metallurgical applications. In addition, CBCC argues that the difference in the per-ton price of this U.S. sale compared to that for its other U.S. sales is not due to differences in chemical composition as the petitioners assert, but rather is the result of (1) the fact that the sale included ocean freight costs, and (2) the fact that the sale was made at the end of the review period at a time when the price of silicon metal was lower in the U.S. market than it was at the time the other U.S. sales were made. Second, CBCC maintains that the record demonstrates that it sold only one type of product in the U.S. and home markets during the review period and, as a result, it correctly reported the same control number for all its home market and U.S. sales. Third, CBCC argues that its brochure is intended for general customer use and informs potential customers about the types of products that CBCC can produce and sell. Thus, CBCC contends, simply because the brochure identifies different product types does not automatically indicate that it sold both types during the review period. Finally, CBCC asserts that the petitioners provide no support whatsoever to demonstrate that the information it provided in its response was incorrect or hinders the Department's ability to make appropriate price comparisons.

Department's Position: We agree with CBCC. Not only does the record in this review lack information which calls into question the accuracy of CBCC's reported control numbers but the petitioners have not provided any evidence supporting their contentions. For example, while we asked respondents to submit a copy of their product brochures, we recognize that not every product in the brochure may be produced and sold by the company during our identified review periods. As a result, we agree with CBCC that such brochures serve the purpose of only identifying the range of products available and that there is no basis for the assertion that all products identified in a brochure will necessarily be produced and sold during a review period. Thus, we do not accept CBCC's product brochure as evidence that CBCC sold more than one type of subject merchandise in the U.S. and home markets during the review period. Furthermore, while the petitioners assert that a certain U.S. sale was of silicon metal for chemical or metallurgical applications, we are satisfied with CBCC's explanation rebutting this contention and note that while petitioners claim the chemical composition of this sale warrants its classification as sale for chemical or metallurgical applications, the petitioners provide no evidence supporting this contention. Finally, not only did CBCC report detailed chemical compositions for its U.S. sales which demonstrate the appropriateness of using a single control number, but it clearly indicated in its responses that there was no major variation in the chemical compositions between its U.S. and home market sales. In light of this and the absence of any record evidence which supports petitioners' contentions or otherwise calls into question the accuracy of CBCC's reported control numbers, for these final results we have again accepted CBCC's reported control numbers and have not altered the model-match portion of our analysis.

Comment 28: Discrepancy on Information Reported by Dow Corning

Petitioners argue that the Department should require Dow to (1) explain the discrepancy in the quantity of imports Dow indicated it purchased from Eletrosilex, and the quantity of exports Eletrosilex states that it sold to Dow during the POR, and (2) submit the audit documents used to derive the per-unit depreciation amount submitted in its case brief. In a letter dated December 26, 1997, Dow Corning stated that ''We have reviewed our records for the period of review, including the commercial invoices received from Eletrosilex and our records of merchandise, and find that we erred in the quantity we referenced in our Case Brief.'' In this letter, Dow also indicated that its record of imports from Eletrosilex match the quantity Eletrosilex claimed it exported to Dow during the POR. Petitioners submitted a letter on January 8, 1998 which reiterates their rebuttal brief positions, and asserts that the Department remove Dow's letter of December 26, 1997 from the record of this proceeding because, pursuant to 19 CFR 353.31(a)(3), the Department ''will not consider...in the final results, or retain in the record of the proceeding, any factual information submitted after the applicable time limit.''

Department's Position: In their rebuttal brief, petitioners requested that the Department require Dow to explain the discrepancy in the quantity of imports as reported separately by Dow and Eletrosilex. Dow provided an explanation in its December 26, 1997 letter. Petitioners have also commented on this submission. Accordingly, the Department, in its discretion, has accepted Dow Corning's December 26, 1997 letter.

In its letter, Dow explained that it erred in calculating the total quantity shipped during the period of review. Dow has recalculated the total quantity shipped by examining and applying data from the original invoices. Dow's recalculation is consistent with that reported by Eletrosilex in its response. Further, nothing in petitioners' January 8, 1998 letter disputes the accuracy of this information. Accordingly, the Department is satisfied with Dow's explanation of the discrepancy in quantity in this case. Therefore, the Department's calculation of quantity is

based upon information submitted by the respondent Eletrosilex.

With respect to petitioners' argument that the Department should request additional information from Dow due to discrepancies in the amounts reported by Dow and Eletrosilex for depreciation expenses, we disagree. The information submitted by Dow is not relevant to the Department's analysis. First, the data submitted by Dow were illustrative, in that the company was making the point that its independent auditors concluded that Eletrosilex was selling its products above the cost of production. Dow did not provide this information to the Department as a substitute for the information reported by Eletrosilex. Dow stipulated that its cost data were gathered for a completely different purpose, notably to determine whether the financial position of Eletrosilex was sufficiently sound for Dow to establish a long-term supply agreement. Second, this information would only serve to confuse the issue. Dow's auditors utilized a different period in their calculations than the Department, and calculated depreciation in U.S. dollars, while the Department calculated depreciation in Brazilian currency. Finally, this information is clearly unnecessary. The Department requested and received information on this issue in the original and supplemental questionnaire responses by Eletrosilex.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period March 1, 1995 through February 29, 1997:

Manufacturer/exporter	Percent margin
CBCC	0.00
Eletrosilex	39.00
Minasligas	1.67
Rima	3.08

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated importer-specific *ad valorem* duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. This method has been upheld by the courts. (*See e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 61 FR 2081, 2083 (January 15, 1997); FAG Kugelfischer Georg Schafer KgaAv. *United States, No. 92–07–00487,* 1995 Ct. Int'l Trade LEXIS 209, at CIT*10 (September 14, 1995), aff'd. No. 96–1074 1996 U.S. App. Lexis 11544 (Fed. Cir. May 1996).

The Department will issue appraisement instructions directly to the Customs Service. Individual differences between United States price and NV may vary from the percentages stated above. Furthermore, the following deposit requirements will be effective upon publication of these final results of review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act, and will remain in effect until publication of the final results of the next administrative review: (1) the cash deposit rates for the reviewed companies will be those rates listed above except for CBCC, which had a *de minimis* margin, and whose cash deposit rate is therefore zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or in the LTFV investigation conducted by the Department, the cash deposit rate will be 91.06 percent, the ''all others'' rate established in the LTFV investigation.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. Sec. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 4, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3488 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend Certificate.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked

privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 94–2A007.''

Florida Citrus Exports, L.C. (''FCE'') original Certificate was issued on February 23, 1995 (60 FR 12735, March 8, 1995) and previously amended on January 16, 1996 (61 FR 4255, February 5, 1996). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Florida Citrus Exports, L.C., 1991 74th Avenue, Vero Beach, Florida 32966.

Contact: Charles M. Sanders, Jr., Attorney, Telephone: (561) 770–4685.

Application No.: 94–2A007.

Date Deemed Submitted: February 4, 1998.

Proposed Amendment: FCE seeks to amend its Certificate to:

1. Add the following companies as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): Dole Citrus, Vero Beach, FL (controlling entity: Dole Food Company, Inc., Westlake Village, CA); Hogan & Sons, Inc., Vero Beach, FL; and The Packers of Indian River, Ltd., Ft. Pierce, FL.

2. Delete Ocean Spray Cranberries Inc., Vero Beach, FL as a ''Member'' of the Certificate.

Dated: February 6, 1998.

Morton Schnabel,

Acting Director Office of Export Trading Company Affairs.

[FR Doc. 98–3423 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020498A]

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Comprehensive Management Committee will hold a public meeting.

DATES: The meeting will be held on Friday, February 27, 1998, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Westin Suites Philadelphia Airport, 4101 Island Avenue, Philadelphia, PA; telephone: 215–365–6600.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: Agenda items are vessel replacement criteria and comprehensive management matrix development.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Committee action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

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

Dated: February 4, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–3463 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Preparation of a Draft Theater Missile Defense Extended Test Range Supplemental Environmental Impact Statement; Eglin Gulf Test Range

AGENCY: DOD, Ballistic Missile Defense Organization (BMDO).

ACTION: Notice of availability (NOA).

SUMMARY: This notifies the public that BMDO is issuing a Draft Supplemental Environmental Impact Statement (DSEIS) for the Eglin Gulf Test Range (EGTR). The DSEIS assesses the potential impacts associated with developmental and operational flight testing of Theater Missile Defense (TMD) systems. The proposed action and alternatives would allow for the development and testing of TMD systems to protect U.S. forces, friends, and allies around the world from attacks by ballistic missiles. As the Executing Agent, the Air Force Development Test Center (AFDTC), Eglin Air Force Base (AFB), Florida, is managing the DSEIS for BMDO. The U.S. Army Space and Missile Defense Command (USASMDC), Huntsville, Alabama, is preparing the DSEIS documentation for the AFDTC. The DSEIS analyzes additional missile launch and support locations, facility construction, launch preparation activities, missile flight tests, radar and optical tracking operations, and intercept tests in the Gulf of Mexico not analyzed in the *TMD Extended Test Range Final Environmental Impact Statement,* November 1994.

The Record of Decision on the *TMD Extended Test Range Final Environmental Impact Statement,* March 21, 1995, documented only the selection of U.S. Army Kwajalein Atoll, republic of the Marshall Islands, and the White Sands Missile Range, New Mexico, for TMD tests. However, additional interceptor and target missile launch options have been identified for the EGTR. These additional alternatives are within treaty and technology limitations. The EGTR alternatives would provide greater flexibility in test scenarios than is possible if testing remains limited to existing ranges, and would permit more realistic testing of TMD interceptor systems. Copies of the *TMD Extended test Range Final Environmental Impact Statement,* are available at various locations within the interested communities. The exact locations can be provided by contacting the point of contact listed below.

The purpose of expanding the EGTR's missile defense testing capability is to

realistically test TMD systems to validate their capability to intercept enemy missiles with the capability of ranges up to 1,100-kilometers (684 miles). Testing with both target and interceptor launch facilities within the continental United States and its adjacent waters would provide a cost-effective, flexible, long-term means of meeting current and future TMD requirements.

Environmental issues analyzed in the DSEIS for the EGTR include: air quality; airspace control; biological resources (such as threatened or endangered species and wetlands); cultural resources; geology and soils; hazardous materials and waste; safety and health; land use; noise; socio-economic; transportation; utilities; visual and aesthetics; and water resources.

Lead Agency: Ballistic Missile Defense Organization.

Cooperating Agencies:
Department of the Air Force
Department of the Army
Department of the Navy
Federal Aviation Administration
Department of Interior
U.S. Coast Guard

Proposed Action

The BMDO proposes to establish the capability to conduct missile defense testing against targets simulating threat systems having the capability of ranges up to 1,100-kilometers (684 miles) with defensive missile intercepts over the Gulf of Mexico.

Preferred Alternative

The preferred alternative includes three main types of TMD activities:

(a) Target launches from land at Eglin AFB and/or from aircraft above the Gulf of Mexico;

(b) Interceptor (defensive missile) launches from Eglin AFB and/or ships; and

(c) Intercept of the target missile by the interceptor over the Gulf of Mexico and within the EGTR.

The ground-launch locations evaluated at Eglin AFB are the Santa Rosa Island and Cape San Blas test locations. The air-launched locations evaluated include the airspace within the EGTR and other locations in the Gulf of Mexico within U.S. controlled airspace.

Other Alternatives

1. Florida Keys Target Launches

As an alternative to the air launch and Eglin AFB target launch sites, the ground-launch locations evaluated in the Florida Keys are Department of Defense controlled areas at Saddlebunch and Cudjoe Keys. These locations, along with Boca Chica, Dredger, Sugarloaf, and Fleming Keys, are also evaluated to support missile tracking and sensor activities.

2. Ship-based Target Launches

In addition to the air launch and Eglin AFB target launch sites, targets launched from ships located within the EGTR and other locations in the Gulf of Mexico are evaluated in the DSEIS.

3. Platform-based Interceptor Launches

In addition to the Eglin AFB interceptor launch sites, interceptors launched from platforms located offshore from the Santa Rosa Island and Cape San Blas test locations are evaluated in the DSEIS.

4. No Action

In addition to the above alternatives, the No Action Alternative is considered for evaluation in the DSEIS.

Information/Comments

Information on the proposed action is available at the following internet address; http://tw1.eglin.af.mil/46mtd/tmd.htm. Individuals or organizations may provide comments by: using E-Mail to submit questions and comments, tmd@eglin.af.mil; or sending written comments to: Ms. Linda Ninh, 46 OG/OGM–TMD, 205 West D Ave., Suite 241, Eglin AFB, Florida 32578–6866. In addition, individuals or organizations may offer verbal or written comments at public hearings to be held between 7:00 and 10:00 p.m. at the following Florida locations:

Fort Walton Beach, Holiday Inn, 1110 Santa Rosa Blvd., March 9, 1998

Port St. Joe, Port St. Joe High School, 100 Sharp Drive, March 10, 1998

Key West, Harvey Government Center, 1200 Truman Ave, March 12, 1998

Marathon, Marathon Government Center, 2798 Overseas Hwy, March 13, 1998

Public comments are invited through April 3, 1998.

Interested citizens and public officials will be able to receive pertinent information regarding the findings of the Draft SEIS at these meetings. The AFDTC intends to issue the Final SEIS in September 1998.

Dated: February 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3354 Filed 2–10–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF ENERGY

ENVIRONMENTAL PROTECTION AGENCY

NUCLEAR REGULATORY COMMISSION

[Docket No. A–96–44]

Multi-Agency Radiation Survey and Site Investigation Manual

AGENCY: U.S. Department of Defense, U.S. Department of Energy, U.S. Environmental Protection Agency, and the U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Department of Defense (DOD), Department of Energy (DOE), U.S. Environmental Protection Agency (EPA), and the U.S. Nuclear Regulatory Commission (NRC) are announcing the availability for use of the ''Multi-Agency Radiation Survey and Site Investigation Manual'' (MARSSIM). The MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys of surface soils and building surfaces for demonstrating compliance with regulations. The MARSSIM, now finalized, is a multi-agency consensus document. The agencies previously have sought public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing the document was received. The agencies reviewed public comments received on the draft MARSSIM as well as comments from a concurrent, independent, technical peer review. Suggested changes were incorporated, where appropriate, in response to those comments.

ADDRESSES: Copies of the draft and the final MARSSIM and all public and technical peer review comments received may be examined or copied for a fee at the EPA Docket Room M1500, Docket No. A–96–44, First Floor Waterside Mall, 401 M Street, S.W., Washington D.C. 20460; and the NRC Public Document Room, 2120 L Street, NW, Washington DC 20555–0001. The EPA docket may be inspected from 8:00 am to 4:00 pm, Monday through Friday, excluding Federal holidays in Room M1500 at the address above. NRC documents may be inspected from 7:45 am to 4:15 pm, Monday through Friday, excluding Federal holidays in the lower level of the building at the address above. Copies of the MARSSIM may be

purchased by requests in writing to: The Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. The NRC document number is NUREG–1575, and the EPA document number is EPA 402–R–97–016. The manual is also available through the Internet at: http://www.epa.gov/radiation/marssim or by linkage from the NRC home page at: http://www.nrc.gov; or the DOE home page at: http://www.doe.gov.

FOR FURTHER INFORMATION CONTACT: Any of the following points of contact for each agency for technical information (see ''Addresses'' section above for directions on obtaining a copy of the MARSSIM): DOE: Kenneth Duvall, Phone: (202) 586–0242, U.S. Department of Energy (EH–412), 1000 Independence Avenue, SW, Washington, DC 20585, e-mail kenneth.duvall@hq.doe.gov; EPA: Mark Doehnert; Phone: (202) 564–9386, U.S. Environmental Protection Agency, Mail Stop 6602J, 401 M. Street, SW, Washington DC 20460, e-mail doehnert.mark@epamail.epa.gov; NRC: Robert A. Meck, Phone: (301) 415–6205, U.S. Nuclear Regulatory Commission, MS T–9C24, Washington DC 20555, e-mail ram2@nrc.gov. Questions concerning the multi-agency document development project should be addressed to CDR Colleen Petullo, U.S. Public Health Service at U.S. Environmental Protection Agency, R&IE, PO Box 98517, Las Vegas, NV 89193–8517, (702) 798–2476, e-mail petullo.colleen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys of surface soil and building surfaces for demonstrating compliance with regulations. The MARSSIM, now finalized, is a multi-agency consensus document.

The MARSSIM was developed collaboratively over the past four years by the technical staffs of four Federal agencies having authority for control of radioactive materials: DOD, DOE, EPA, and NRC. Members of the public and contractors to the Federal agencies have been present during the open meetings of the MARSSIM work group and have been provided opportunities for input.

The MARSSIM's objective is to describe standardized and consistent approaches for surveys of soil surfaces and building surfaces, which provide a high degree of assurance that established release criteria, limits, guidelines, and conditions of the regulatory agencies are satisfied, while at the same time encouraging an effective use of resources. The techniques, methodologies, and philosophies that form the bases of this manual were developed to be consistent with current Federal limits, guidelines, and procedures.

The MARSSIM benefited from extensive internal, public, and technical peer reviews and public comments. Before the publication of the draft for public comment, the Federal agencies performed an internal review. Those internal review comments that reflected a technical error or flaw in logic or information flow were addressed before public comments were requested. The other comments, e.g., clarifications, editorial suggestions, etc., from the Federal agencies were addressed along with the public comments. The public review was a necessary step in the development of a final multi-agency consensus document. In addition to written comments, the work group provided the public with the opportunity to comment during the open meetings. The document also received formal technical peer review under the auspices of the EPA Science Advisory Board (SAB). The results of the peer review and the responses to comments by the EPA will be publicly available for examination and may be copied for a fee (see ''Addresses'' section above for directions).

Reviewers were requested to focus on technical accuracy and understandability. Reviewers were also requested to address five questions while reviewing the MARSSIM. In consideration of the responses to the questions, other comments, and the changes incorporated into the final version of the MARSSIM, the answers to the questions are listed as follows:

1. Does the MARSSIM provide a practical and implementable approach to performing radiation surveys and site investigations? Are there any major drawbacks to the proposed methods?

Answer: The MARSSIM has been shown to be practical and implementable in field tests. Identified difficulties in establishing a suitable background reference area for radionuclides in common with natural or ubiquitous radionuclides are intrinsic to the situations, and such difficulties exist regardless of the measurement method. The MARSSIM provides technically defensible and efficient methods to demonstrate compliance with radiological criteria.

2. Is the MARSSIM technically accurate?

Answer: Within the scope of the MARSSIM, the methods are technically accurate and applicable over a large range of situations.

3. Does the MARSSIM provide benefits that are not available using current methods? What is the value of the MARSSIM in comparison with other currently available alternatives?

Answer: The MARSSIM provides a technically defensible process over a broad range of situations. Results to date indicate that the MARSSIM process requires fewer measurements in comparison to other methods for demonstrating compliance for radiological sites. The MARSSIM also provides a performance based approach and has a strong focus on planning.

4. What are the costs associated with the MARSSIM in comparison with other currently available alternatives?

Answer: The MARSSIM process optimizes the number of samples needed to demonstrate compliance with radiological criteria within the accepted decision errors. Other methods may either overestimate or underestimate the number of samples needed to demonstrate compliance or may not take decision errors into account. The MARSSIM generally involves more planning and less re-work than other currently available methods.

5. Is the information in the MARSSIM understandable and presented in a logical sequence? How can the presentation of material be modified to improve the understandability of the manual?

Answer: Several Chapters in the MARSSIM were significantly revised for clarity, understandability, and elaboration in response to comments. The overall basic processes and methods did not change.

The author agencies solicit comments arising from review and use of the final MARSSIM. Comments will be reviewed periodically by the author agencies, resolved as appropriate, and incorporated into revisions of the MARSSIM. Members of the public are invited to submit written comments to EITHER the U.S. Environmental Protection Agency, ATTN: Air and Radiation Docket, Mail Stop 6102, Air Docket No. A–96–44, Room M1500, First Floor Waterside Mall, 401 M Street, S.W., Washington D.C. 20460 or the Chief, Rules and Directives Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001. Copies of all comments received by one agency will be periodically copied and sent to the others. Revised pages resulting from the resolution of comments will be available on the Internet at the world wide web site: http://www.epa.gov/radiation/marssim. This EPA world wide web site is also accessible by links from the NRC home page at: http://

www.nrc.gov; and the DOE home page at: http://www.doe.gov.

Title: Multi-Agency Radiation Survey and Site Investigation Manual.

For the Department of Defense, dated this 15th day of January 1998.

Gary D. Vest,

Principal Assistant Deputy Under Secretary of Defense for Environmental Security.

For the U. S. Department of Energy, dated this 22nd day of December 1997.

Raymond P. Berube,

Deputy Assistant Secretary for Environment.

For the U. S. Environmental Protection Agency, dated this 23rd day of December 1997.

Lawrence G. Weinstock,

Acting Director, Office of Radiation and Indoor Air.

For the U.S. Nuclear Regulatory Commission, dated this 18th day of December 1997.

Malcolm R. Knapp,

Acting Director, Office of Nuclear Regulatory Research.

[FR Doc. 98–3432 Filed 2–10–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Proposed Rule Changes

ACTION: Notice of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 9(c), 12(b), 21(b), 24, 31(d), and 37, and new Rule 35A of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment:

* * * * *

RULE 24. FORM, CONTENT *AND* PAGE LIMITATIONS

(a) Form and content. All briefs *shall conform to the printing, copying, and style requirements of Rule 37, shall* be legible, and *shall* be substantially as follows:

* * * * *

[Delete Rule 24 subsection *(c) Style* and move this subsection to new Rule 37 as set forth after the following proposed change to Rule 31(d) below.]

Rule 31. Petition for Reconsideration

(Revise subsection (d) as follows):

(d) *A petition for reconsideration shall be granted with the concurrence of a majority of the judges* who participated in the original decision.

* * * * *

RULE 37. PRINTING, COPYING AND STYLE REQUIREMENTS

(a) *Printing.* Except for records of trial and as otherwise provided by Rule 27(a)(6) all pleadings or other papers relative to a case shall be typewritten and double-spaced, printed on one side only on white *unglazed* paper, 8.5 by 11 inches in size, securely fastened *in* the top *left corner. With the exception of footnotes which may appear in 11 point type, all printed matter must appear in non-proportional typeface using 12 point type and with no more than ten characters per inch. Margins shall not exceed 6.5 by 9.5 inches, with double-spacing between each line of text. Headings, footnotes and block quotations may be single-spaced, but should not be used excessively to avoid page limit requirements.*

(b) *Copying.*

(1) Copies of typewritten pleadings and papers may include those produced by any process capable of producing a clearly legible black image on white paper, but shall not include ordinary carbon copies. If papers are filed in any other form, the Clerk shall require the substitution of new copies, but such substitution will not affect the filing date of the papers or pleadings involved. *See* Rule 36.

(2) An original and seven legible copies of all pleadings or other papers relative to a case shall be filed. *See* Rule 35A concerning documents which contain classified information.

(c) *Style.*

(1) All pleadings presented to the Court shall, unless they are less than 5 pages in length, be preceded by a subject index of the matter contained therein, with page references, and a table of cases (alphabetically arranged with citations), textbooks and statutes cited, with references to the pages where cited.

(2) Citations shall conform with the *Uniform System of Citation.*

(3) All references to the record of trail shall include page numbers or exhibition designations, as appropriate.

(4) No pleading or other paper filed with the Court shall incorporate by reference any material from any other source.

[Delete Rule 24 subsection *(d) Classified Information* and move to new Rule 35A as follows:]

RULE 35A. USE OF CLASSIFIED INFORMATION

Classified information shall be included in documents filed with the Court only when necessary to a proper consideration of the issues involved. The original or one complete copy of a document containing the classified information shall be filed with the Court. The party filing such document shall give written notice to the Clerk and to all other parties prior to the time of such filing that such document contains classified information. In addition, there shall be filed in accordance with Rule 37(b)(2) an original and seven copies of each such document from which the classified information has been deleted or omitted in such manner that the pages which contain the deleted or omitted classified information are clearly identified.

Note: The following amendments conforming references to new Rule 35A concerning classified information shall also be made:

—Amend *Rule 9(c) Custodian of records* reference to Rule 35A (instead of Rule 24(d)).

—Amend *Rule 12(b) Classified doucments* reference to Rule 35A (instead of Rule 24(d)).

—Amend *Rule 21(b) Supplement of Petition for Grant of Review* reference to ''the provisions of Rule 24(b), (c), and (d)'' to read as follows: ''*the provisions of Rules 24(b), 35A, and 37*''

DATES: Comments on the proposed changes must be received by April 12, 1998.

ADDRESSES: Forward written comments to Thomas F., Granahan, Clerk of the Court, United States Court of Appeals for the Armed Forces, 450 E Street, NW., Washington, DC 20442–0001.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, telephone (202) 761–1448(x600).

SUPPLEMENTARY INFORMATION: The Rules Advisory Committee Comments on the proposed changes to Rules 9(c), 12(b), 21(b), 24, 31(d), and 37, and new Rule 35A are included as an attachment to this notice.

Rules Advisory Committee Comments on Proposed Rule 35A and Proposed Revisions to Rules 9(c), 12(b), 21(b), 24 (a), (c) and (d), 31(d), and 37

1. Printing, Copying and Style Requirements

The purpose of the proposed change in title and restructured text of proposed Rule 37 is to consolidate in one rule the related requirements of printing, copying, and style which apply to all pleadings and other papers filed with the Court. The new requirements for print size parallel similar provisions used by other courts of appeals. These

provisions standardize the type and print options which must be used when filing pleadings and other papers with the Court. Minor conforming amendments will be required to change existing titles of Rules 24 and 37 and to change the existing reference to current Rule 24(c) in Rule 21(b). A new reference has been added to Rule 24(a) to alert a practitioner to the consolidated provisions of Rule 37.

2. Use of Classified Information

The purpose of the proposal to move subsection (d) (''Classified Information'') from Rule 24 to new Rule 35A (''Use of Classified Information'') is to place this unique rule provision in a separate rule and locate it in a section of the Court's Rules of Practice and Procedure to which it more logically relates, namely, ''PRACTICE BEFORE THE COURT.'' The substance of this rule remains unchanged. Minor conforming amendments will be required to change the existing title of Rule 24 and to change existing references to current Rule 24(d) in Rules 9(c), 12(b), and 21(b).

3. Petition for Reconsideration

The purpose of this amendment to Rule 31(d) is to make it clear that reconsideration may only be granted if a majority of those judges who participated in the original decision vote to grant reconsideration. For this purpose, all judges who voted, including those who dissented or concurred, shall be deemed to have participated in the original decision.

Dated: February 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3353 Filed 2–10–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

ARMS Initiative Implementation

AGENCY: Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC). The EAC is chartered to develop new and innovative methods to maintain the government-owned, contractor-operated ammunition industrial base and retain critical skills for a national emergency. This meeting will update attendees on the status of ongoing actions with decisions being made to close out or continue these actions. Topics for this meeting include ARMS Program Update, Funding Status, EAC Continuance, Ethics Training Requirement, Transition/Exit Development for Excess Facilities (including funding parameters), 10 U.S.C. 2692 Exception Request Processing/Pending delegation of authority decision, and Production Base Assessment. This meeting is open to the public.

Date of Meeting: March 19, 1998.

Place of Meeting: Delta Orlando Resort, 5715 Major Boulevard, Orlando Florida 32819.

Time of Meeting: 8:00 AM–5:00 PM.

FOR FURTHER INFORMATION CONTACT: Mr. Elwood H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria Virginia 22333; Phone (703) 617–9788.

SUPPLEMENTARY INFORMATION: Participants are encouraged to make reservations immediately by calling 407–351–3360 and mentioning the ARMS Conference to obtain the negotiated rate of $77.00 per night. Request you contact Mike Perez on the ARMS Team, telephone (309) 782–3360, if you will be attending the meeting, so that our roster of attendees is accurate. This number may also be used if other assistance regarding the ARMS meeting is required.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–3487 Filed 2–10–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Command and General Staff College (CGSC) Advisory Committee

AGENCY: U.S. Army Command and General Staff College, Ft. Leavenworth, KS

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463) announcement is made of the following committee meeting:

Name of Committee: U.S. Army Command and General Staff College (CGSC) Advisory Committee.

Dates of Meeting: 23–25 March 1998.

Place of Meeting: Bell hall, Room 113, Fort Leavenworth, Kansas 66027–1352.

Time of Meeting: 1700–2200 on 23 March 1998; 0730–2100 on 24 March 1998; and 0730–1400 on 25 March 1998.

Proposed Agenda:

1700–2200, 23 March: Review of CGSC educational program.
0730–2100, 24 March: Continuation of review.
0730–1030, 25 March: Continuation of review.
1030–1130, 25 March: Executive Session.
1300–1400, 25 March: Report to Commandant.

FOR FURTHER INFORMATION CONTACT: Mr. Philip J. Brookes, Committee's Executive Secretary, USACGSC Advisory Committee, 1 Reynolds Ave., Bell Hall, Room 123, Fort Leavenworth, Kansas 66027–1352; or phone (913) 684–2741.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary at the above address or phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–3489 Filed 2–10–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 18, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 13, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

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(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506(c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. 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. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 6, 1998.

Linda C. Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Infants and Toddlers with Disabilities Program (Part C) of the Individuals with Disabilities Education Act (IDEA).

Abstract: States are required to submit an application to receive funds. An approved application remains in effect until modifications are needed resulting from a change in policy, procedures, or assurances. The Secretary may require a change if: amendments to the Act or regulations; new interpretations to the Act by Federal court or State's highest court; or an official finding of noncompliance with Federal law or regulations is made.

Additional Information: The emergency clearance is necessary in order to comply with 34 CFR 76.703 which requires that the Department allow States as much time to complete the application as the Department takes to review and approve the document, prior to the date funds are available for obligation, which is July 1, 1998. If this Office obtains approval for this application package on February 18, 1998, we can forward the approved application to States by March 1, 1998. States must prepare the application, and make it available to the public for the *required* 60-day public comment period. This Office then has 60 days to review, seek any necessary revisions, and approve the applications. Following this general time line, we will be able to have approved applications by July 1, 1998. However, if this emergency request is not approved, we will not be able to make program funds available to States on July 1.

Frequency: Annually.

Affected Public: Federal Government; State, Local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 840.

[FR Doc. 98–3458 Filed 2–10–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, 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 March 13, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its

statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, 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: February 6, 1998.

Linda C. Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for New Grants for the Disseminating Proven Reforms Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 2,000.

Abstract: Grants will help small groups of postsecondary institutions disseminate proven educational innovations from their original site. Originators and prospective adopters will apply and receive support as consortia.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (OMB Control No. 1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–3459 Filed 2–10–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas.

DATE AND TIME: Tuesday, February 24, 1998: 10:00 a.m.–2:30 p.m.

ADDRESS: Boatmen's Bank, Fifth Floor, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry Johnson, Deputy Designated Federal Officer, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3125.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

10:00 a.m.—Welcome—Agenda Review—Approval of Minutes
10:15 a.m.—Co-Chair Comments
10:20 a.m.—Plutonium Environmental Impact Statement
11:30 a.m.—Task Force/Subcommittee Reports
12:00 p.m.—Lunch
12:30 p.m.—Ex-Officio Reports
1:00 p.m.—Updates—Occurrence Reports—DOE
1:30 p.m.—Risk Reduction
2:30 p.m.—Closing Remarks/Adjourn

Public Participation: The meeting is open to the public, and public comment will be invited throughout the meeting. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make a public comment will be provided a maximum of 5 minutes to present their comments at any time throughout the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry Johnson at the address or telephone number listed above.

Issued at Washington, DC on February 5, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–3434 Filed 2–10–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Draft Solicitation DE–RP01–97RW00320 for Waste Acceptance and Transportation Services

AGENCY: Office of Civilian Radioactive Waste Management, U.S. Department of Energy.

ACTION: Extension of comment period for draft solicitation for Waste Acceptance and Transportation Services.

SUMMARY: The Office of Civilian Radioactive Waste Management (OCRWM) announced the availability of a draft Request for Proposals (RFP) for Waste Acceptance and Transportation Services in the December 1, 1997 Commerce Business Daily (V—Transportation, Travel and Relocation Services—Procurements) and in the December 2, 1997 **Federal Register** (61 FR 63700). The draft RFP was mailed directly to businesses and other interested parties who had requested earlier versions of the draft RFP and was also made available via the Internet on the OCRWM Home Page at http://www.rw.doe.gov/. and to those parties requesting a copy directly from the Contracting Officer.

DATES: The announcement requested that comments regarding the RFP be submitted to the address listed below no later than February 13, 1998. This notice hereby extends that comment period until April 13, 1998.

ADDRESSES: All comments should be sent to U.S. Department of Energy, 1000 Independence Ave., SW, Attn: Contracting Officer, HR–542, Washington, D.C. 20585.

All comments received will be made available at the U.S. Department of Energy, Public Reading Room located at the above address, at the end of the comment period.

Issued in Washington, D.C. on February 6, 1998.

Scott E. Sheffield,

Acting Director, Office of Headquarters Procurement Services, Office of Procurement and Assistance Management.

[FR Doc. 98–3435 Filed 2–10–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–2–48–003]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 5, 1998.

Take notice that on February 2, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet proposed to become effective January 1, 1998:

Fifth Revised Sheet No. 92

ANR states that the above-referenced tariff sheet is being filed in compliance with the Commission's order dated December 31, 1997, in the referenced proceeding to revise § 1.68 of the General Terms & Conditions of its tariff to specify that, for a two-year trial period, the determination of ANR's Transporter's Use (%) as reflected in the fuel matrix in its tariff will be based upon transactional throughput determinants.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3396 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–1–000]

Bowers Drilling Company, Inc.; Notice of Petition for Adjustment

February 5, 1998.

Take notice that on February 4, 1998, Bowers Drilling Company, Inc. (Bowers) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting to be relieved of its obligation to pay Kansas ad valorem tax refunds, as required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000.[2] Bowers' petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

Bowers asserts that its financial status cannot absorb the $259,703 charge that it has been assessed, even if the refund were amortized over a 5-year period.

Bowers bases its claim, in part, on an estimate of its net profit over the next five years from the wells located on the leases that Bowers contends are subject to the Kansas ad valorem tax refunds. Using its average 1997 net profit of $14,699 from those 10 wells, Bowers projects its average income over the next five years, using a 15 percent per year decline, to be $46,336 (see below).

1998—first year	$14,699 − 2,205=	$12,494
1999—second year	12,494 − 1,874=	10,620
2000—third year	10,620 − 1,593=	9,027
2001—fourth year	9,027 − 1,354=	7,673
2002—fifth year	7,673 − 1,151=	6,522
5-year Average Income		$46,336

From this, Bowers derives an average monthly net income of $3,862 [$46,336 ÷ 12 = $3,862]. Bowers then multiplies its projected $3,862 in average monthly net income by 60 months to derive a 5-year estimated income of $231,720 [$3,862 × 60 = $231,720]. From this figure, Bowers subtracts $41,346 that it attributes to the anticipated plugging of seven (7) of the 10 wells during the 5-year refund period. According to Bowers, this leaves it with an estimated net profit from the subject leases (over the next five years) of just $190,374 [$231,720 − $41,346 = $190,374]. From this, Bowers concludes that $69,329 will remain as an unrecovered balance after the five years have elapsed [$259,703 − $190,374 = ($69,329)].

Bowers also bases its request for relief from its Kansas ad valorem tax refund obligation on a March 17, 1992 take-or-pay settlement with Williams Natural Gas Company (Williams), wherein (according to Bowers) it negotiated a mutual release with Williams, from all claims regarding its contracts with Williams, for all periods prior to 1992, including any Federal Energy Regulatory Commission claims arising out of, or in conjunction with, or relating to its contracts with Williams. In view of this, Bowers contends that granting the requested adjustment relief is warranted because the Kansas ad valorem tax refund is a Federal Energy Regulatory Commission claim.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC,* 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

Federal Register of this notice, 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 384.214, 385.211, 385.1105, and 385.1106). 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3394 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–1586–004]

Citizens Utilities Company; Notice of Filing

February 5, 1998.

Take notice that on January 23, 1998, Citizens Utilities Company (Citizens), tendered for filing copies of corrected tariff sheet No. 146A of the Open Access Transmission Tariff of the Vermont Electric Division of Citizens.

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 February 18, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3389 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–204–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

February 5, 1998.

Take notice that on January 27, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030, filed in Docket No. CP98–204–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon two points of delivery to Commonwealth Gas Services, Inc. (COS) in Isle of Wight and City of Chesapeake Counties, Virginia. Under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia states that the measurement and regulation facilities at this point of delivery has not been used for deliveries since 1989 and 1990, and services provided to customers through this delivery point have since been either discontinued or reconnected to other existing distribution systems.

Columbia states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed abandonment without detriment or disadvantage to Columbia's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3386 Filed 2–10–98; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–209–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

February 5, 1998.

Take notice that on January 28, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030, filed in Docket No. CP98–209–000, a request, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211), for authorization to construct and operate a new point of delivery to Commonwealth Gas Services, Inc. (COS) in Goochland County, Virginia, and to reassign and reduce the maximum daily delivery obligation (MDDOs) at another existing point to COS, under Columbia's blanket certificate authorization issued in Docket No. CP83–76–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a new point of delivery to COS which will consist of installing two 4-inch taps, filter separator, meter settings and electronic measurement facilities in Goochland County, Virginia, known as the proposed West Creek delivery point. Columbia says COS has requested the new delivery point for additional firm transportation service for residential, commercial, and industrial service. Columbia asserts that COS has not requested an increase in its total firm entitlement; therefore, there is no impact on Columbia's existing peak day obligations to its other customers as a result of this new point of delivery.

Columbia relates that the total cost of the project will be approximately $127,300. Columbia says the facilities on Line VM–108 will cost approximately $118,800, which COS will reimburse to Columbia. In addition, Columbia will install a backup tap on nearby adjacent Line VM–109 to provide Columbia and COS with increased flexibility and operational security at a cost of $8,500. Columbia will pay for the backup tap.

Columbia states it will provide service to COS pursuant to Columbia's blanket certificate in Docket No. CP86–240–000, under existing authorized rate schedules, and within certificated entitlements. COS has requested that its existing Storage Service Transportation (SST) agreement with Columbia be amended by reducing the MMDOs at the existing Monacan point of delivery by 500 Dth per day and reassigning 500 Dth per day to the proposed West Creek point of delivery. Columbia says it will provide firm service to COS at the West Creek delivery point under its Rate Schedule SST with a maximum daily quantity of 500 Dth and an estimated annual quantity of 50,000 Dth.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3388 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1193–000]

Fitchburg Gas & Electric Light Company; Notice of Filing

February 5, 1998.

Take notice that on January 12, 1998, Fitchburg Gas & Electric Light Company (Fitchburg), tendered for filing an amendment to its December 23, 1997, filing of the service agreements between Fitchburg and United Illuminating Company (United Illuminating), Enron Power Marketing, Inc. (Enron), and New Energy Ventures under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000. The amended filing requests an effective date of November 25, 1997 for United Illuminating service agreement, an effective date of November 26, 1997, for New Energy Ventures, and an effective date of December 5, 1997, for Enron.

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 February 18, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3390 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1361–000]

K N Services, Inc.; Notice of Filing

February 5, 1998.

Take notice that on January 8, 1998, K N Services, Inc., tendered for filing a Notice of Succession in the above-referenced docket. K N Marketing, Inc., a broker and marketer of electric power, has been merged into its existing affiliate, K N Services, Inc., as part of a corporate reorganization.

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 February 18, 1998. Protests will be considered by the Commission in determining the appropriate actions 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3391 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–206–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

February 5, 1998.

Take notice that on January 27, 1998, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–206–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon a one-inch tap, under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway states that the certificate authorization for the construction and operation of the tap and pipeline facilities for which Koch Gateway now seeks abandonment authorization was issued in Docket No. CP71–089. Koch Gateway states that these facilities were used for delivery of natural gas to Illinois Central Railroad (Illinois) in Jefferson Parish, Louisiana on behalf of Louisiana Gas Service (LGS) a local distribution company. Koch Gateway asserts that both Illinois and LGS concur with the proposed abandonment. Koch Gateway will provide Illinois with an alternative energy source of Illinois' own choosing, whether that be propane or electricity.

Koch Gateway states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed changes without detriment or disadvantage to Koch Gateway's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a

protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3387 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1437–000]

Rochester Gas and Electric Corporation; Notice of Filing

February 5, 1998.

Take notice that on January 14, 1998, Rochester Gas and Electric Corporation (RG&E), tendered for filing a summary of their quarterly report of transactions under their market-based rate tariff for the period of October 1, 1997, to December 31, 1997.

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 February 18, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3393 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–423–007]

Texas Gas Transmission Corporation; Notice of Filing of Refund Report

February 5, 1998.

Take notice that on February 2, 1998, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report detailing a January 8, 1998, Transportation Cost Adjustment (TCA) Tracker refund of $1,353,152.86.

Texas Gas states that the refund reflects the net credit balances in its TCA deferral accounts at October 31, 1997, when its TCA Tracker was terminated.

Texas Gas states that copies of this filing have been served upon Texas Gas's customers receiving refunds and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers

Acting Secretary.

[FR Doc. 98–3395 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1436–000]

Washington Water Power; Notice of Filing

February 5, 1998.

Take notice that on January 15, 1998, Washington Water Power, tendered for filing its summary of activity for the quarter ending December 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation 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 February 18, 1998. 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.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3392 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5965–6]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: ''Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures,'' OMB Control Number 2050–0068, expiring on March 31, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 13, 1998.

FOR FURTHER INFORMATION OR A COPY: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy @ epamail.epa.gov., or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1360.05.

SUPPLEMENTARY INFORMATION:

Title: Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures, OMB Control No. 2050–0068; EPA ICR No. 1360.05, expiring 03/31/98. This is a request for extension of a currently approved collection.

Abstract: Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the EPA develop standards for USTs as may be necessary to protect human health and the environment, and procedures for approving state programs to operate in lieu of the federal program. EPA promulgated technical and financial requirements for owners and operators of USTs at 40 CFR Part 280 and state program approval procedures at 40 CFR Part 281. This ICR is a comprehensive presentation of all information collection requirements contained at 40 CFR Parts 280 and 281. All 40 CFR Part 280 requirements are presented in this ICR under the heading ''Technical and Financial Requirements''; this section applies to owners and operators of USTs. 40 CFR Part 281 requirements are presented in this ICR under the heading ''State Program Approval Procedures''; this section applies to states operating a delegated UST program. 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. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 8/27/97 (62 FR 45410); no comments were received.

Burden Statement: The annual public reporting burden for UST facilities is estimated to be 1.8 hours per respondent and the recordkeeping burden is estimated to be 4.8 hours per respondent. For states applying for program approval, the annual reporting burden is estimated to be 329.2 hours per respondent and the recordkeeping burden is estimated to be 31 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facilities that own and operate Underground Storage Tanks (USTs) and states that implement the UST program.

Estimated Number of Respondents: 317,094.

Frequency of Response: Varies depending on the individual reporting and recordkeeping requirements.

Estimated Total Annual Hour Burden: 2,103,305 hours.

Estimated Total Annualized Cost Burden: $1.37 billion (includes Capital, O&M, and Labor costs).

EPA has revised its respondent universe and burden estimates based on updated data from the Office of Underground Storage Tanks, and State and industry sources. The burden estimates reflect a reduction in the universe of tanks and a revised analysis of burden that resulted from better identification of (1) capital and (2) operational and maintenance (O&M) costs. Most of the burden changes in this proposed ICR are due to a recognition that many financial costs should be attributed to capital and operating and maintenance cost categories rather than to labor hours. This accounting change reduced the ''hours'' burden and increased the ''financial'' burden. It should be noted that most of these costs were included in the Regulatory Impact Analyses for these requirements but had not been explicitly accounted for in previous ICRs.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1360.05 and OMB Control No. 2050–0068 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460. (or E-Mail Farmer.Sandy@epamail.epa.gov)

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: February 5, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–3448 Filed 2–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00522; FRL–5766–8]

Notice of Funds Availability for Pesticide Environmental Stewardship Program FY98

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funds availability for FY98.

SUMMARY: The goal of EPA's Pesticide Environmental Stewardship Program (PESP) is to reduce the risks from the use of pesticides in agricultural and non-agricultural settings in the U.S. As part of this program, the Office of Pesticide Programs is soliciting proposals for a cooperative agreement under section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, to assist the private sector partners and supporters of PESP in researching and implementing programs to reduce pesticide risk. Evaluation criteria and proposal format are outlined in the SUPPLEMENTARY INFORMATION unit below.

DATES: The original proposal and five copies must be received by EPA no later than 5 p.m., March 13, 1998.

ADDRESSES: The proposal and copies may be submitted by mail to: Laura Sallmen Smith, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. By courier, overnight express, or in person: 2800 Crystal Drive, 5th Floor, Arlington, VA 22202. No fax or electronic submissions will be accepted.

FOR FURTHER INFORMATION CONTACT: Laura Sallmen Smith, Project Officer, by phone: (703) 308-8716 or e-mail: sallmen-smith.laura@epamail.epa.gov. For hearing- and speech-impaired persons, the telephone number may be accessed via TTY (text telephone) by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Pesticide Environmental Stewardship Program (PESP) is a voluntary public/private initiative administered by the Office of Pesticide Programs (OPP), U.S. Environmental Protection Agency. The goal of PESP is to reduce the risks from the use of pesticides in agricultural and non-agricultural settings in the U.S. As part of this program, OPP is soliciting proposals for a cooperative agreement under section 20 of FIFRA, as amended,

to assist the members of PESP in researching and implementing programs to reduce pesticide risk. There are currently 102 members of PESP, ranging from pesticide users in utility rights-of-way to growers of tree fruits to pest control businesses serving homes and schools.

II. Authority

This cooperative agreement will be made under section 20 of FIFRA, as amended.

III. Cooperative Agreement

1. *Duration amount.* This cooperative agreement will be issued for a limit of $5 million in funding over a 5–year project period. Actual funding will depend on future appropriations.

2. *Evaluation criteria.* Proposals will be evaluated on the following criteria:

- The applicant has a demonstrated ability to effectively develop research and technology transfer projects that meet the goal of pesticide risk reduction.
- The applicant has a demonstrated ability to effectively communicate the outcomes of the projects to the appropriate audiences.
- The applicant has a demonstrated ability to develop an impact assessment to accurately reflect the project's outcomes.
- The applicant is national in scope.
- The applicant has demonstrated expertise in bringing together diverse interests and perspectives as represented by U.S. pesticide users, both agricultural and non-agricultural, to engage in constructive dialog.
- The applicant has a demonstrated ability to integrate varied competing interests toward reducing pesticide risk.
- The applicant has a working knowledge of PESP and pesticide regulation, including FIFRA, FQPA, FFDCA, and state laws.
- The applicant is able to translate broad-based national goals into specific, practical programs.
- The applicant's organization contains a diversity of pesticide interests and knowledge, including, but not limited to: research and emerging technologies, food processing, education, regulation, economics, and marketing.
- The applicant has appropriate financial controls and expertise in managing projects.

3. *Proposal format.* Proposals must be typewritten, double-spaced in 12 point or larger print using 8.5 x 11 inch paper with minimum 1 inch lateral and vertical margins. Pages must be numbered in order starting with the proposal narrative and continuing through appendices. An original and five copies are required.

- Cover page. Include the following information on the cover page: project title, project coordinator, organization, address, telephone number, fax number, and e-mail address.
- Abstract. The abstract will be a stand-alone document, not to exceed one page, containing the specifics of what is proposed and what you expect to accomplish regarding reducing pesticide risk.
- Table of contents. A one page table listing the different parts of your proposal and the page number on which each part begins.
- Proposal narrative. Containing the following sections, not to exceed 10 pages:

i. Project title. A brief description of the project.

ii. Approach and methods. Detail how your organization will undertake the following:

a. Development process for pesticide risk reduction research and technology transfer projects with PESP partners and supporters.

b. Management process for these projects.

c. Strategy for communication of project results to pesticide users and the public at large.

iii. Organizational qualifications. Detail your organization's expertise and capabilities to achieve the goals of the project.

iv. Impact assessment. Detail how you will evaluate the success of the projects in terms of measurable environmental results.

- Appendices. These appendices must be included in the grant proposal in addition to the 10-page narrative. Additional appendices are not permitted.

i. Major participants. This appendix should list all individuals having a major role in the proposal. Provide name, organizational affiliation or occupation, and a description of the role each will play in the project. A brief resume (up to two pages) should also be submitted for each individual listed.

ii. Budget. Please outline, in a one-page table format, a budget including the following categories: personnel, fringe benefits, travel, equipment, supplies, contractual, other (with details on content of other), indirect costs (include only if you have an audited indirect cost rate established with a Federal agency), and total funding requested. The total funding requested should be no more than the maximum of $5 million.

In the interest of fairness to all competing applicants, the Agency will treat as ineligible for consideration any application that is received after its deadline. Applicants should take this factor into account and make early submission of their materials to avoid loss of eligibility brought about by unanticipated delays or other delivery-related problems.

Dated: February 2, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–3440 Filed 2–10–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00523; FRL–5770–2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with Common Mechanism of Action of Organophosphate Insecticides, Special Sensitivity of Infants and Children to Pesticides, Monte Carlo Analyses for Dietary and Residential Exposure Scenarios, Monte Carlo Analysis for Organophosphate Insecticides and Post Application Exposure Guidelines. The Agency will present a session updating their progress on the common mechanism of action of organophosphate insecticides, as requested by the SAP at their March 20, 1997, meeting. A special sensitivity of infants and children to pesticides session will encompass three 10× safety factor case study presentations. Two sessions on Monte Carlo analyses are scheduled. The Agency will discuss its policy for review of Monte Carlo analyses for dietary and residential exposure scenarios. In addition, the Agency is soliciting SAP comments on a proposed Monte Carlo analysis for organophosphate insecticides. This analysis was prepared by the Environmental Working Group. The post application exposure guideline session will entail presentations on transferable residue monitoring techniques, human activity patterns and, exposure assessment methods for antimicrobial treated articles.

DATES: The meeting will be held on Tuesday and Wednesday, March 24 and March 25, 1998, from 8:30 a.m. to 5:30 p.m. Comments should be received by March 13, 1998, to ensure that the Panel Members will have the time necessary to consider and review the comments.

ADDRESSES: The meeting will be held at: Crystal City Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington VA 22202. The telephone number for the hotel is: (703) 920–3230.

By mail, submit written comments (one original and 20 copies) to: Paul I. Lewis, Designated Federal Official for the FIFRA/Scientific Advisory Panel, (7509C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Rm. 819–B, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under Supplementary Information of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Paul I. Lewis, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; Office location: Rm. 819B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone: (703) 305–5369; e-mail: Lewis.Paul@epamail.epa.gov.

A meeting agenda is currently available and copies of EPA primary background documents for the meeting will be available no later than February 20, 1998, and may be obtained by contacting: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.; telephone: (703) 305–5805.

SUPPLEMENTARY INFORMATION: Any member of the public wishing to submit written comments should contact Paul I. Lewis at the address or the phone number given above to confirm that the meeting is still scheduled and that the agenda has not been modified or changed. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to the Designated Federal Official, interested persons may be permitted by the Chair of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately five minutes. As oral statements only will be permitted as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit twenty copies of the summary information. Please note that comments should be received by March 13, 1998, to ensure that the Panel Members will have the time necessary to consider and review the comments.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

The official record for this notice, as well as the public version, has been established for this notice under docket control number ''OPP–00523'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''FOR FURTHER INFORMATION CONTACT''.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00523. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Copies of the Panel's report of their recommendations will be available approximately 30 working days after the meeting and may be obtained by contacting the Public Information and Records Integrity Branch, at the address or telephone number given above.

List of Subjects

Environmental protection.

Dated: February 3, 1998.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 98–3443 Filed 2–6–98; 1:56 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5965–8]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

1. Research Strategies Advisory Committee (RSAC)

The Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB), will meet on Thursday and Friday, February 26–27, 1998 in the Jupiter Room of the Holiday Inn Capitol, 550 C Street, SW, Washington, DC 20024, Phone (202) 479–4000. The meeting will begin at 9:00 am on February 26th and 8:30 am on February 27th, ending no later than 5:00 pm on either date.

Charge to the Committee—The Science Advisory Board (SAB) has been asked to review and comment on the FY1999 Presidential Budget proposed for EPA's Office of Research and Development (ORD). The RSAC will consider how well the budget request: a) reflects priorities identified in the EPA and ORD strategic plans; b) supports a reasonable balance in terms of attention to core research on multimedia capabilities and issues and to media-specific problem-driven topics; and c) balances attention to near-term and to

long-term research issues. In addition, the Committee will offer its advice on: d) whether the objectives of the research and development program can be achieved at the resource levels requested; and e) how can ORD improve use or improve upon the GPRA structure to communicate research plans, priorities, research requirements, and planned outcomes. A portion of the meeting will be devoted to development of the Committee's report.

For Further Information—Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Officer, Research Strategies Advisory Committee (RSAC), Science Advisory Board (1400), Room 2812, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–5133; fax at (202) 260–7118; or via Email at flaak.robert@epamail.epa.gov. For a copy of the draft meeting agenda, please contact Ms. Dorothy Clark, Staff Secretary at (202) 260–8414 or by FAX at (202) 260–7118 or via Email at clark.dorothy@epamail.epa.gov. Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–8414.

Materials that are the subject of this review are available from Ms. Lisa Matthews or Ms. Amy Battaglia of the Office of Research and Development. Ms. Matthews can be reached on (202) 564–6669 or via Email on matthews.lisa@epamail.epa.gov, and Ms. Battaglia can be reached on (202) 564–6701 or via Email on battaglia.amy@epamail.epa.gov.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Thursday, February 19, 1998 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself.

2. Radiation Advisory Committee (RAC)

The Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC) will conduct a public meeting on Tuesday, March 3, 1998. The meeting will convene at 9:00 am in the Administrator's Conference Room 1103 West Tower, U.S. EPA Headquarters, 401 M Street, S.W., Washington, DC 20460 and adjourn no later than 5:30 pm that day.

At this meeting, the RAC will briefly discuss projects that are planned for review in the balance of Fiscal Year (FY)1998, receive a briefing on Federal Guidance 13, Federal Radiation Protection Guidance for Exposure of the General Public, conduct a follow-up discussion on the Agency's response to the SAB review of the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM), dated December 4, 1997, receive a briefing (tentative) on High Radon Geographic Areas, and continue its Advisory on the Agency's Environmental Radiation Ambient Monitoring System (ERAMS) (''Reconfiguration Design of the Environmental Radiation Ambient Monitoring System,'' dated October 1997). See **Federal Register**, Vol. 62, No. 205, Thursday, October 23, 1997, pages 55249–55250 for further information. The issues concerning the Committees Advisory on ERAMS are as follows: a) Will the proposed reconfiguration of the current ERAMS system enable it to meet the system's two basic objectives more effectively and efficiently as described in the attached document?; b) Are the criteria used for matrix selection, determination of sampling locations and sampling frequency and other network features appropriate given the reconfigured ERAMS stated mission and objectives? Are there other criteria that should be considered?; and c) Will the proposed changes to the system's current data dissemination and data evaluation practices increase the data's usefulness to governmental agencies, the scientific community and the public? Are there any other interpretation issues and/or practices that should be addressed? Other topics may be discussed as time permits.

For Further Information—For information, please see below.

3. Uncertainty in Radiogenic Risk Subcommittee

The Uncertainty in Radiogenic Risk Subcommittee (URRS) of the Science Advisory Board's (SAB) Radiation Advisory Committee (RAC) will meet Wednesday, March 4, 1998, commencing at 9:00 am in the Administrator's Conference Room 1103 West Tower, U.S. EPA Headquarters, 401 M Street, S.W., Washington, DC 20460 and adjourn no later than 5:00 pm that day. At this meeting, the Subcommittee will continue its review of the Agency draft document entitled ''Uncertainty Analysis for Estimating Radiogenic Cancer Risks,'' October, 1997. The first meeting of the URRS was held on November 20, 1997, and this first public review was first announced in the **Federal Register**, Vol. 62, No. 205, Thursday, October 23, 1997, pages 55249–55250. The charge questions pertaining to the review on uncertainty analysis for estimating radiogenic cancer risks are as follows: a) Are the relevant major sources of uncertainties addressed?; b) Is the overall approach to quantifying and combining uncertainties appropriate?, and c) Are the mathematical functions used to characterize the various sources of uncertainty reasonable, in view of available scientific information?

For Further Information—Any member of the public wishing further information concerning the meeting of the Radiation Advisory Committee on March 3rd or the meeting of the Uncertainty in Radiogenic Risk Subcommittee on March 4th, such as copies of the proposed meeting agendas, should contact Mrs. Diana L. Pozun at Tel. (202) 260–8432; FAX (202) 260–7118, or via the Internet at: pozun.diana@epamail.epa.gov. Members of the public who wish to make a brief oral presentation to the Committee or Subcommittee during their meetings must contact Dr. K. Jack Kooyoomjian in writing (by letter or by fax—see below) no later than 12 noon Eastern Time, Thursday, February 26, 1998 in order to be included on the Agenda. Public comments will be normally limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, easel, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself. For further information pertaining to the meetings or to check if the SAB's RAC or URRS have public drafts available prior to the meetings, contact Dr. K. Jack Kooyoomjian, Designated Federal Official for the Radiation Advisory Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202) 260–2560; fax (202) 260–7118; or via E-mail at: kooyoomjian.jack@epamail.epa.gov.

For questions pertaining to the review of uncertainty analysis for estimating radiogenic cancer risks, and to obtain copies of the draft document being reviewed, as well as background documents provided to the SAB's RAC,

or to discuss any other aspects of this review or any supporting or background information please contact Mr. Brian Littleton, (6601J), ORIA, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, tel. (202) 564–9216; fax (202) 565–2043; or E-mail: littleton.brian@epamail.epa.gov.

For questions pertaining to the ERAMS advisory review, and to obtain copies of the draft document being reviewed, as well as background documents provided to the SAB's RAC, please contact LT Rhonda Cook, US Public Health Service (PHS)/EPA at (334) 270–3413. The SAB's RAC conducted an earlier advisory on ERAMS on July 13 and 14, 1995 and produced an SAB advisory (EPA–SAB–RAC–ADV–96–003, April 5, 1996). For copies of this earlier SAB report, please contact the SAB's Committee Evaluation Support Staff (CESS) at (202) 260–8414; FAX (202) 260–7118. For additional information or to discuss technical aspects of any of the other ORIA agenda topics, or any supporting or background information, please contact Mr. Brian Littleton (see previously stated information).

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, for meetings, opportunities for oral comment will usually be limited to no more than five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting. Public comments should focus on scientific or technical aspects of the matters before the Committee at its meeting.

Information concerning the Science Advisory Board, its structure, function, and composition, may be found in The current Annual Report of the Staff Director which is available from the SAB Committee Evaluation and Support Staff (CESS) by contacting US EPA, Science Advisory Board (1400), Attention: CESS, 401 M Street, SW, Washington, DC 20460 or via fax (202) 260–1889. Additional information concerning the SAB can be found on the SAB Home Page at: http://www.epa.gov/sab.

Dated: February 5, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–3450 Filed 2–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–42008C; FRL–5754–3]

Idaho Plan for Certification of Restricted Use Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve amended certification plan.

SUMMARY: On February 11, 1977, EPA issued final approval of the Idaho Plan for the certification of restricted use pesticide applicators. Idaho has submitted an amendment to this plan for EPA approval. The amendment would add a category for the certification of 1080 Livestock Protection Collar (1080 LPC) applicators. The amended plan also requires recertification every 2 years rather than the current 5 years, establishes a chemigation category, and combines its various classes of commercial applicators under a new classification of professional applicator.

DATES: Written comments should be submitted on or before March 30, 1998.

ADDRESSES: Send written comments, identified by docket control number ''OPP–42008C'' to Allan Welch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Eighth Floor, Seattle, WA 98101.

Comments and data may also be submitted electronically to: welch.allan@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice.

Copies of the amended Idaho Certification Plan are available for viewing at the following locations during normal business hours:

1. U.S. Environmental Protection Agency, Office of Pesticide Programs, Crystal Mall #2, 1921 Jefferson Davis Highway, Rm. 1121, Arlington, VA 22202. Contact: John R. MacDonald, (703) 305–7370, e-mail: macdonald.john@epamail.epa.gov.
2. U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Eighth Floor, Seattle, WA. Contact: Allan Welch, (206) 553–1980, e-mail: welch.allan@epamail.epa.gov.
3. Idaho Department of Agriculture, Division of Agricultural Resources, P.O. Box 7723, 2270 Old Penitentiary Road, Boise, ID. Contact: Beth Williams, (208) 332–8605, e-mail: bwilliams@agri.state.id.us.

FOR FURTHER INFORMATION CONTACT: By mail: Allan Welch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Eighth Floor, Seattle, WA, Telephone: (206) 553–1980, e-mail: welch.allan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 11, 1977 (42 FR 8692), notice was published announcing the final approval of the Idaho Plan for the certification of restricted use pesticide applicators. Idaho has submitted an amendment to this certification plan. The Idaho amendment establishes a new category for the certification of 1080 LPC applicators. Idaho proposes to certify approximately 25 employees of the United States Department of Agriculture, Animal Damage Control (ADC). The ADC is one of the registrants of the 1080 LPC and will supply the 1080 LPC to their employees certified under this plan. ADC employees certified under this plan will only be applying 1080 LPCs in performance of their official duties. There is no provision for supervision of non-certified applicators of 1080 LPCs. Only applicators certified in 1080 LPC use will be permitted to apply the product. The amended plan will combine the licenses of commercial applicator, commercial operator, limited applicator, and consultant into a single license of professional applicator. The Idaho certification plan will under this amendment have only private and professional applicators. Chemigation will become a category under both the private and professional applicator license. Chemigation under the current plan requires a separate license. The recertification period will be reduced to 2 years from the current 5-year period.

The training required for recertification eligibility also will be reduced. This will result in more frequent training with the average yearly training burden remaining relatively unchanged.

EPA finds that the amended Idaho Certification plan fully meets the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act and the regulations at 40 CFR part 171. In addition, the requirements for certification of 1080 LPC applicators complies with the special use requirements contained in the 1080 registration standards. Therefore, EPA announces its intention to approve the amended Idaho certification plan.

Interested persons are invited to submit written comments on EPA's intention to approve the amended Idaho certification plan.

II. Public Record and Electronic Submission

The official record for this action, as well as the public version, has been established for this action under docket control number ''OPP–42008C'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Eighth Floor, Seattle, WA.

Electronic comments can be sent directly to EPA at:
welch.allan@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–42008C.'' Electronic comments on this action may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: February 3, 1998.

Charles Clarke,

Regional Administrator, Region 10.

[FR Doc. 98–3441 Filed 2–10–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66248; FRL 5763–3]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by August 10, 1998, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 63 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100–00873	Boundary DF Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea 4-Chloro-5-(methylamino)-2-(α,α,α-trifluoro-m-tolyl)-3(2*H*) (Note: α = alpha)
000100 FL–85–0009	Evik 80W	2-(Ethylamino)-4-(isopropylamino)-6-(methylthio)-*s*-triazine
000241–00244	Prowl 3E Herbicide	*N*-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine
000264 WA–79–0093	Weedone LV6 Emulsifiable Broadleaf Herbicide	Butoxyethyl 2,4-dichlorophenoxyacetate
000264 WA–80–0032	Weedone LV4	Butoxyethyl 2,4-dichlorophenoxyacetate
000264 WA–94–0021	Sevin Brand XLR Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000400 WA–95–0006	Casoron 4G	2,6-Dichlorobenzonitrile
000769–00686	SMCP Diazinon Insect Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00688	SMCP Diazinon 4S	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00691	SMCP Diazinon RP 12.5 E Insecticide	Aromatic petroleum derivative solvent *O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00693	SMCP Diazinon RP 25E	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00695	SMPC Diazinon 6-S	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate Aliphatic petroleum hydrocarbons
000769–00708	SMPC Diazinon 12.5% Insect Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Xylene range aromatic solvent
000769–00749	Insecticide Liquid, Diazinon, 1%	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00820	Diazinon 4AG	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00864	Pratt Diazinon 18E Insect Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00959	Pratt Diazinon Ag4E Insect Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
001021–01437	Multicide Intermediate 2232	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
		(3-Phenoxyphenyl)methyl *d-cis and trans** 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
002935 ID–86–0008	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 ID–86–0012	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 WA–86–0002	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 WA–86–0004	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 WA–86–0009	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 WA–90–0003	Supreme Oil	Mineral Oil - includes Paraffin Oil from 063503
002935 WA–91–0037	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
003125 AZ–82–0013	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 AZ–90–0011	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–80–0186	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–83–0064	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–84–0218	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–87–0014	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–88–0021	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–81–0009	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–81–0012	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–81–0033	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–81–0034	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–92–0012	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–96–0013	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 GA–90–0004	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 GA–93–0006	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 LA–91–0007	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 LA–91–0009	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 NM–82–0008	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 TX–82–0019	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 TX–84–0020	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003862–00111	Chemscope Total Release Fogger	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d-trans*-2,2-dimethyl-
		(3-Phenoxyphenyl)methyl *d-cis and trans** 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
006175–00039	Dermaquel Pet Shampoo with Synthetic Pyrethroids	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d-trans*-2,2-dimethyl-
		N-Octyl bicycloheptene dicarboximide
		(3-Phenoxyphenyl)methyl *d-cis and trans** 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
007053–00031	Fremont 9117 Microbiocide	2-(Thiocyanomethylthio)benzothiazole
		Methylenebis(thiocyanate)
008660–00144	Verta Green Sprayable Herbicide for Pro Turf with Team	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
		N-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-p-toluidine (Note: α = alpha)
008660–00145	Verta Green Sprayable Herbicide for Pro Turf with Team	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
		N-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-p-toluidine (Note: α = alpha)

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
010807–00062	Misty Guard Insect Killer	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
		(3-Phenoxyphenyl)methyl *d-cis and trans** 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
010807–00064	Misty Bug Blaster	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
		(3-Phenoxyphenyl)methyl *d-cis and trans** 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
010807–00067	Misty Total Release Fogger	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
		(3-Phenoxyphenyl)methyl *d-cis and trans** 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
010807–00077	Misty Sling-Shot Wasp and Hornet Killer	*d-cis-trans*-Allethrin
		(3-Phenoxyphenyl)methyl *d-cis and trans** 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
034704–00226	Clean Crop Trifluralin EC	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
034704–00242	Clean Crop Trifluralin 4EC	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
034704–00602	Clean Crop Benomyl 50% DF Systemic Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
034704 NH–94–0001	Clean Crop Curbit EC Herbicide	Benzenamine, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)-
034704 OH–91–0004	Clean Crop Curbit EC Herbicide	Benzenamine, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)-
043854–00001	Crabgrass Control Plus Lawn Food	Trifluralin (α,αα-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha) *N*-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-p-toluidine (Note: α = alpha)
044446–00024	Doom Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil
		Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexyl ester
048498–00001	Cmr Special Supreme Oil	Aliphatic petroleum hydrocarbons
064864–00025	90–PAR	Aliphatic petroleum hydrocarbons

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Novartis Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000241	American Cyanamid Co., Agri Research Div - U.S. Regulatory Affairs, Box 400, Princeton, NJ 08543.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000400	Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06524.
000769	Sureco Inc., 10012 N. Dale Mabry, Suite 221, Tampa, FL 33618.
001021	Mclaughlin Gormley King Co., 8810 Tenth Ave North, Minneapolis, MN 55427.
002935	Wilbur Ellis Co., 191 W. Shaw Ave., Fresno, CA 93704.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
003862	ABC Compounding Co., Inc., Box 16247, Atlanta, GA 30321.
006175	Schering-Plough Veterinary Operations, Inc., 1095 Morris Ave., Union, NJ 07083.
007053	Fremont Industries, Box 67, Shakopee, MN 55379.
008660	H. R. Mclane Inc., Agent For: Pursell Industries Inc., 7210 Red Rd., Suite 206, Miami, FL 33143.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
010807	AMREP, Inc., 990 Industrial Dr., Marietta, GA 30062.
034704	Cherie Garner, Agent For: Platte Chemical Co., Inc., Box 667, Greeley, CO 80632.
043854	Lange-Stegmann Fertilizer Co., No.1 Angelica St., St. Louis, MO 63147.
044446	Quest Chemical Corp., 12255 F.M. 529 Northwoods Industrial Park, Houston, TX 77041.
048498	CMR Creative Marketing & Research Inc., Box 5317, Fresno, CA 93755.
064864	Pace International, L.P., Box 558, Kirkland, WA 98083.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before August 10, 1998. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 27, 1998

Linda A. Travers

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 98–3442 Filed 2–10–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5965–4]

Notice of Proposed Settlement; ICG Iselin Railroad Yard Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Prospection Agency (EPA) proposes to enter into a ''prospective purchaser agreement'' (PPA) concerning the ICG Iselin Railroad Yard Superfund Site (Site) in Jackson, Tennessee. EPA proposes to enter into the PPA with the Tennessee Wildlife Resources Agency (TWRA), an agency of the State of Tennessee. The PPA concerns TWRA's purchase of certain real property lying adjacent to the Site.

The real property in question consists of approximately 355 acres, approximately 290 of which are former wetlands and bottomland hardwood forests which have been converted to farmland. This property is located between the Site and the Forked Deer River and lies almost entirely in the floodplain of that river. Pursuant to State authorities, TWRA desires to purchase the property, to restore the property to its original condition as wetlands and bottonland hardwood forests, and to manage the property in perpetuity solely for purposes of preservation, including any complimentary educational and recreational uses which are passive and noncommercial.

Pursuant to the PPA, TWRA will be protected from CERCLA liability which may result from TWRA's purchase of the property described above. This protection is contingent on TWRA's management of the property as described above.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–8909, 404–562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of publication.

Dated: January 22, 1998.

James T. Miller,

Acting Chief, Program Service Branch, Waste Management Division.

[FR Doc. 98–3445 Filed 2–10–98; 8:45 am]
BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5965–7]

Proposed Settlement; Methyl Bromide Phase Out Rule Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act (''CAA''), notice is hereby given of a proposed settlement of *Natural Resources Defense Council* v. *United States Environmental Protection Agency*, No. 94–1079 (D.C. Cir.).

This case involves a challenge to the final rule, entitled ''Protection of Stratospheric Ozone; Final Rule,'' published at 58 FR 65043 *et seq.* (Dec. 10, 1993) and codified at 40 CFR part 82, subpart A (the ''Methyl Bromide Rule''). The action of the Environmental Protection Agency (the Agency) would take under this proposed settlement would be to publish a clarification of a portion of the preamble to the original Methyl Bromide Phase Out Rule. That portion of the preamble considered the applicability of the labeling requirements issued by EPA under section 611 of the CAA to agricultural products treated with methyl bromide.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Samantha Hooks, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Nancy Ketcham-Colwill, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 and must be submitted on or before March 13, 1998.

Dated: January 12, 1998.

Scott Fulton,

Acting General Counsel.

[FR Doc. 98–3447 Filed 2–10–98; 8:45 am]

BILLING CODE 6560–50–M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Drug Control Research, Data, and Evaluation Committee (DCRDEC); Notice of Forthcoming Meeting

SUMMARY: This notice announces a forthcoming meeting of the Drug Control Research, Data, and Evaluation Committee of the Office of National Drug Control Policy.

Date, time and place. February 26, 1998, 9:00 a.m., Office of National Drug Control Policy, Executive Office of the President, 750 17th Street, N.W., Washington, D.C.

Type of meeting and contact person. Open public meeting, 9:00 a.m. to 2:00 p.m., unless public participation does not last that long; open committee discussion, 9:00 a.m. to 1:30 p.m.; Janie Dargan, ONDCP, (202) 395–6714. Persons intending to attend the meeting should arrive in advance and come to 7th Floor Security with identification; the meeting will take place on a secure floor of the building.

General function of the committee. The Committee provides an avenue of communication by which a distinguished group of experts representing scientific, engineering, law enforcement, treatment, and associated international scientific communities advise the Director of the Office of National Drug Control Policy (ONDCP) on questions related to national drug control research. The Committee assists ONDCP in identifying gaps in current data collection to improve the generation of accurate and useful information on which to base national drug control policy.

Agenda—Open public meeting. Interested persons may present data, information, or views, orally or in writing, on issues of national drug control research and policy, pending before the Committee. Specifically, the Committee will discuss finalizing edits to a draft Report on recommendations to ONDCP regarding the agency's national data policy priorities, including how to better integrate drug information for more effective drug control policy. The Committee will also be briefed on new scientific technologies, research, and drug data policy initiatives conducted by ONDCP and the other Federal drug-control agencies. Those desiring to make formal presentations must notify the contact person before February 19, 1998, 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. The Committee will discuss and advise ONDCP regarding the following: (1) final edits to the Report from the Drug Control Research, Data, and Evaluation Committee; (2) the Counter Technology Assessment Center's Subcommittee on Science and Technology presentation of the TRI-Net PROJECT (formerly the DENS STUDY); (3) discussion of HHS's expansion of the National Household Survey on Drug Abuse (NHSDA), and a research study conducted by the Substance Abuse, and Mental Health Services Administration (SAMHSA), to identify treatment in correctional facilities; and (4) ONDCP's performance measurement system.

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 meeting may be requested in writing from the Executive Office of the President, Office of National Drug Control Policy, FOIA Requests, Office of Legal Counsel, 750 17th Street, N.W., Washington, D.C. 20503, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Office of National Drug Control Policy, Office of Legal Counsel at the above indicated address. Summary minutes of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10 (a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and 41 CFR 101–6, *et seq.*, the Federal regulations on advisory committees.

Judith Leonard,

Acting General Counsel.

[FR Doc. 98–3385 Filed 2–10–98; 8:45 am]

BILLING CODE 3180–02–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2255]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

February 5, 1998.

Petitions for reconsideration and clarification have been filed the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these

documents are available for viewing and copying in Room 239 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed February 26, 1998. See Sections 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Access Charge Reform (CC Docket No. 96–262). Transport Rate Structure and Pricing (CC Docket No. 91–213).

Number of Petitions Filed 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–3349 Filed 2–10–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Repurchase Agreements of Depository Institutions With Securities Dealers and Others; Notice of Modification of Policy Statement

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Modification of policy statement.

SUMMARY: FFIEC has modified its policy statement on Repurchase Agreements of Depository Institutions with Securities Dealers and Others (Policy Statement). The Policy Statement provides guidance to insured depository institutions about entering into repurchase agreements in a safe and sound manner. The FFIEC is making changes to the Policy Statement to eliminate outdated material, provide clarification, and to streamline the contents of the Policy Statement.

EFFECTIVE DATE: This Policy Statement is modified effective February 11, 1998.

FOR FURTHER INFORMATION CONTACT:

Federal Deposit Insurance Corporation (FDIC): William A. Stark, Assistant Director, Division of Supervision, (202) 898–6972; Kenton Fox, Senior Capital Markets Specialist, Division of Supervision, (202) 898–7119; Leslie Sallberg, Counsel, Legal Division (202)898–8876, FDIC, 550 17th Street N.W., Washington, D.C., 20429.

Office of Thrift Supervision (OTS): William J. Magrini, Senior Project Manager, Supervision Policy, (202) 906–5744; Vern McKinley, Attorney, Chief Counsel's Office, (202) 906–6241, OTS, 1700 G Street N.W., Washington, D.C., 20552.

Office of the Comptroller of the Currency (OCC): Joseph W. Malott, National Bank Examiner, Treasury and Market Risk, (202) 874–5670; Donald N. Lamson, Assistant Director, Securities and Corporate Practices, (202) 874–5210, OCC, 250 E Street, S.W., Washington, D.C., 20219.

Board of Governors of the Federal Reserve System (FRB): Michael Martinson, Deputy Associate Director, (202) 452–3640, Susan Meyers, Senior Securities Regulation Analyst, (202) 452–3626, Division of Banking Supervision and Regulation. FRB, 20th Street and Constitution Avenue, N.W., Washington, DC, 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202) 452–3544.

SUPPLEMENTARY INFORMATION: FFIEC consists of representatives from the FDIC, OCC, FRB, OTS, and National Credit Union Administration (NCUA). FFIEC developed the Policy Statement to establish guidelines for insured depository institution repurchase agreement activities, including guidelines for written repurchase agreements, policies and procedures, credit risk management, and collateral management. FFIEC adopted the Policy Statement on October 21, 1985 (50 FR 49764, December 4, 1985), and the OCC, FRB, and FDIC each adopted the FFIEC's Policy Statement shortly thereafter. The OTS has not separately adopted the Policy Statement, but refers federal savings associations to the FFIEC version.

On November 14, 1997, FFIEC voted to make certain changes to the Policy Statement. First, the Policy Statement has been updated and streamlined to reflect the enactment of the Government Securities Act of 1986 and the Government Securities Act Amendments of 1993, 15 U.S.C. 78o-5 (GSA). The Policy Statement section, Dealings with Unregulated Securities Dealers, has been removed. The GSA established a regulatory structure for government securities dealers, making this section obsolete. A new section, Legal Requirements, has been added to the Policy Statement. The first subsection, Government Securities Regulations, presents general information on the requirements of the GSA.

Second, the Policy Statement has been updated to generally cover the other laws and regulations applicable to repurchase agreements. These include the antifraud provisions of the securities laws, the requirements of the Uniform Commercial Code, and lending limitations.

Third, the list of written repurchase agreement provisions has been updated with an expanded list of provisions to reflect current market practice. These provisions include terms of transaction initiation, confirmation and termination, payments and transfers of securities, collateral segregation, collateral repricing, rights to principal and interest payments, required disclosures for hold-in-custody repurchase agreements, and disclosures required by regulatory agencies.

In addition to the revisions to the Policy Statement previously described, minor changes to the Policy Statement have also been made to improve clarity and readability.

For these reasons, the FFIEC has modified the Policy Statement to read as follows. Each of the federal banking agencies will take appropriate action in connection with the modification of the Policy Statement.

Federal Financial Institutions Examination Council Supervisory Policy; Repurchase Agreements of Depository Institutions With Securities Dealers and Others

Purpose

Depository institutions and others involved with repurchase agreements [1] have sometimes incurred significant losses as a result of a default or fraud by the counterparty to the transaction. Inadequate credit risk management and the failure to exercise effective control over securities collateralizing the transactions are the most important factors causing these heavy losses.

The following guidelines are examples of elements that address credit risk management and exposure to counterparties under securities repurchase agreements and for controlling the securities in those transactions. Depository institutions that enter into repurchase agreements with securities dealers and others should consider these guidelines. Each depository institution that actively engages in repurchase agreements must have adequate policies and controls to suit their particular circumstances. The examining staffs of the federal supervisory agencies will review written policies and procedures of depository institutions to determine their adequacy

[1] The term ''repurchase agreement'' in this policy statement refers to both repurchase and reverse repurchase agreements. A repurchase agreement is one in which a party that owns securities, acquires funds by selling the specified securities to another party under a simultaneous agreement to repurchase the same securities at a specified price and date. A reverse repurchase (resale) agreement is one in which a party provides funds by purchasing specified securities pursuant to a simultaneous agreement to resell the same securities at a specified price and date.

in light of the scope of each depository institution's operations.

I. Legal Requirements

A. Government Securities Regulations

Securities sold under an agreement to repurchase that is collateralized by U.S. government and agency obligations are subject to regulations of the Treasury Department issued under the Government Securities Act of 1986, 15 U.S.C. 78o–5 (GSA). These regulations appear at 17 CFR Parts 400 to 450. Particular attention should be given to the requirements and ''Required Disclosures'' in 17 CFR 403.5. Institutions engaging in hold-in-custody repurchase transactions should also give attention to 17 CFR 450.

B. Other Laws and Regulations

Federal and state laws such as the antifraud provisions of the securities laws and the requirements of the Uniform Commercial Code may apply to a repurchase agreement.

Resale transactions of national banks and thrift institutions are subject to the lending limitations of 12 U.S.C. 84. In addition, state-chartered institutions should consult with their counsel or state regulatory authorities as to the applicability of state lending limitations. Depository institutions should also consider other rules that may apply to the transactions depending on the type of bank charter.

II. Credit Policy Guidelines for Securities Purchased Under Agreement to Resell

All depository institutions that engage in securities repurchase agreement transactions should establish written credit policies and procedures governing these activities. These policies and procedures usually address:

A. Counterparties

Policies normally include ''know your counterparty'' principles. Engaging in repurchase agreement transactions in volume and in large dollar amounts frequently requires the services of a counterparty who is also a dealer in the underlying securities. Some firms that deal in the markets for U.S. Government and federal agency securities are subsidiaries of, or related to, financially stronger and better-known firms. However, these stronger firms may be independent of their U.S. Government securities subsidiaries and affiliates and may not be legally obligated to stand behind the transactions of related companies. Without an express written guarantee, the stronger firm's financial position cannot be relied upon to assess the creditworthiness of a counterparty.

Depository institutions should know the legal entity that is the actual counterparty to each repurchase agreement transaction. This includes knowing about the actual counterparty's character, integrity of management, activities, and the financial markets in which it deals. Depository institutions should be particularly careful in conducting repurchase agreements with any firm that offers terms that are significantly more favorable than those currently prevailing in the market.

In certain situations, depository institutions may use, or serve as, brokers or finders to locate repurchase agreement counterparties or particular securities. When using or acting as this type of agent, the name of each counterparty should be fully disclosed. Depository institutions should not enter into undisclosed agency or ''blind brokerage'' repurchase transactions in which the counterparty's name is not disclosed.

B. Credit Analysis

Periodic evaluations of counterparty creditworthiness should be conducted by individuals who routinely make credit decisions and who are not involved in the execution of repurchase agreement transactions.

Before engaging in initial transactions with a new counterparty, depository institutions should obtain audited financial statements and regulatory filings from the proposed counterparty, and should require the counterparty to provide similar information on a periodic and timely basis in the future.

The credit analysis should consider the counterparty's financial statements and those of any related companies that could have an impact on the financial condition of the counterparty. When transacting business with a subsidiary, consolidated financial statements of a parent are not adequate. Repurchase agreements should not be entered into with any counterparty that is unwilling to provide complete and timely disclosure of its financial condition. The depository institution also should inquire about the counterparty's general reputation and whether state or federal securities regulators or self-regulatory organizations have taken any enforcement actions against the counterparty or its affiliates.

C. Credit Limits

Depository institutions usually establish maximum position and temporary exposure limits for each approved counterparty based upon credit analysis performed. Periodic reviews and updates of those limits are necessary.

When assigning individual repurchase agreement counterparty limits, the depository institution should consider overall exposure to the same or related counterparty throughout the organization. Repurchase agreement counterparty limitations should consider the overall permissible dollar positions in repurchase agreements, maximum repurchase agreement maturities, limitations on the maturities of collateral securities, and limits on temporary exposure that may result from decreases in collateral values or delays in receiving collateral.

III. Guidelines for Controlling Collateral for Securities Purchased Under Agreement to Resell

Repurchase agreements can be a useful asset and liability management tool, but repurchase agreements can expose a depository institution to serious risks if they are not managed appropriately. It is possible to reduce repurchase agreement risk if the depository institution executes written agreements with all repurchase agreement counterparties and custodian banks. Compliance with the terms of these written agreements should be monitored on a daily basis.

The marketplace perceives repurchase agreement transactions as similar to lending transactions collateralized by highly liquid securities. However, experience has shown that the collateral securities probably will not serve as protection if the counterparty becomes insolvent or fails, and the purchasing institution does not have control over the securities. This policy statement provides general guidance on the steps depository institutions should take to protect their interest in the securities underlying repurchase agreement transactions (see ''C. Control of Securities''). However, ultimate responsibility for establishing adequate procedures rests with management of the institution. The depository institution's legal counsel should review repurchase agreements to determine the adequacy of the procedures used to establish and protect the depository institution's interest in the underlying collateral.

A. General Requirements

Before engaging in repurchase transactions, a depository institution should enter into a written agreement covering a specific repurchase agreement transaction or master agreement governing all repurchase agreement transactions with each counterparty. Valid written agreements

normally specify all the terms of the transaction and the duties of both the buyer and seller. The agreement should be signed by authorized representatives of the buyer and seller. Senior managers of depository institutions should consult legal counsel regarding the content of the repurchase and custodial agreements. Counsel should review the enforceability of the agreement with consideration as to the differing rules of liquidation for agreements with different counterparties, such as broker/dealers, banks, insurance companies, municipalities, pension plans, and foreign counterparties. Repurchase and custodial agreements normally specify, but are not limited to, the following:

Terms of transaction initiation, confirmation and termination;

Provisions for payments and transfers of securities;

Requirements for segregation of collateral securities;

Acceptable types and maturities of collateral securities;

Initial acceptable margin for collateral securities of various types and maturities;

Margin maintenance and collateral repricing provisions;

Provisions for collateral substitution;

Rights to interest and principal payments;

Events of default and the rights and obligations of the parties;

Required disclosures for transactions in which the seller retains custody of purchased securities;

Disclosures required by regulatory agencies; and

Persons authorized to transact business for the depository institution and its counterparty.

B. Confirmations

Some repurchase agreement confirmations may contain terms that attempt to change the depository institution's rights in the transaction. The depository institution should obtain and compare written confirmations for each repurchase agreement transaction to be certain that the information on the confirmation is consistent with the terms of the agreement. Confirmations normally identify the essential terms of the transaction, including the identity of specific collateral securities and their market values.

C. Control of Securities

As a general rule, a depository institution should obtain possession or control of the underlying securities and take necessary steps to protect its interest in the securities. The legal steps necessary to protect its interest may vary with applicable facts and law, and accordingly should be undertaken with the advice of counsel. Particular attention should also be given to the possession or control requirements under 17 CFR 450 for depository institutions when acting as a custodian for any type of repurchase agreement. Additional prudential management controls may include:

(1) Direct delivery of physical securities to the institution, or transfer of book-entry securities by appropriate entry in an account maintained in the name of the depository institution by a Federal Reserve bank which maintains a book-entry system for U.S. Treasury securities and certain agency obligations (for further information as to the procedures to be followed, contact the Federal Reserve bank for the district in which the depository institution is located);

(2) Delivery of either physical securities to, or in the case of book-entry securities, making appropriate entries in the books of a third-party custodian designated by the depository institution under a written custodial agreement which explicitly recognizes the depository institution's interest in the securities as superior to that of any other person; or

(3) Appropriate entries on the books of an independent third-party custodian exercising independent control over the exchange of securities and funds and acting pursuant to a tripartite agreement with the depository institution and the counterparty. The third-party custodian should ensure adequate segregation, free of any lien or claim, and specific identification and valuation of either physical or book-entry securities.

If control of the underlying securities is not established, the depository institution may be regarded only as an unsecured general creditor of an insolvent counterparty. Under these circumstances, substantial losses are possible. Accordingly, a depository institution should not enter into a repurchase agreement without obtaining control of the securities unless all of the following minimum procedures are observed:

It is completely satisfied as to the creditworthiness of the counterparty;

The transaction is within credit limitations that have been pre-approved by the board of directors, or a committee of the board, for unsecured transactions with the counterparty;

The depository institution has conducted periodic credit evaluations of the counterparty;

The depository institution has ascertained that collateral segregation procedures of the counterparty are adequate; and

It obtains a written and executed repurchase agreement and pays particular attention to the provisions of 17 CFR 403.5.

Unless prudential internal procedures of these types are instituted and observed, the financial supervisory agency may cite the depository institution for engaging in unsafe or unsound practices.

All receipts and deliveries of either physical or book-entry securities should be made according to written procedures, and third-party deliveries should be confirmed in writing directly by the custodian. The depository institution normally obtains a copy of the advice of the counterparty to the custodian requesting transfer of the securities to the depository institution. Where securities are to be delivered, the depository institution should not make payment for securities until the securities are actually delivered to the depository institution or its agent. In addition, custodial contracts normally provide that the custodian take delivery of the securities subject to the exclusive direction of the depository institution.

Substitution of securities should not be allowed without the prior written consent of a depository institution. The depository institution should give its consent before the delivery of the substitute securities to the depository institution or a third-party custodian and receive a written list of specific securities substituted and their respective market values. Any substitution of securities should take into consideration the following discussion of ''Margin Requirements.''

D. Margin Requirements

Under the repurchase agreement a depository institution should pay less than the market value of the securities, including the amount of any accrued interest, with the difference representing a predetermined margin. When establishing an appropriate margin, a depository institution should consider the size and maturity of the repurchase transaction, the type and maturity of the underlying securities, and the creditworthiness of the counterparty. Margin requirements on U.S. government and federal agency obligations underlying repurchase agreements should allow for the anticipated price volatility of the security until the maturity of the repurchase agreement. Less marketable securities may require additional margin to compensate for less liquid market conditions. Written repurchase agreement policies and procedures normally require daily mark-to-market of repurchase agreement securities to

the bid side of the market using a generally recognized source for securities prices. Repurchase agreements normally provide for additional securities or cash to be placed with the depository institution or its custodian bank to maintain the margin within the predetermined level.

Margin calculations should also consider accrued interest on underlying securities and the anticipated amount of accrued interest over the term of the repurchase agreement, the date of interest payment, and which party is entitled to receive the payment. In the case of pass-through securities, anticipated principal reductions should also be considered when determining margin adequacy.

E. Maturity and Renewal Procedures

Depository institutions should follow prudent management procedures when administering any repurchase agreement. For longer term repurchase agreements, management should monitor daily the effects of securities substitutions, margin maintenance requirements (including consideration of any coupon interest or principal payments) and possible changes in the financial condition of the counterparty. Engaging in open repurchase agreement transactions without maturity dates may be regarded as an unsafe and unsound practice unless the depository institution has, in its written agreement, retained rights to terminate the transaction quickly to protect itself against changed circumstances. Similarly, automatic renewal of short-term repurchase agreement transactions without reviewing collateral values, adjusting collateral margin, and receiving written confirmation of the new contract terms, may be regarded as an unsafe and unsound practice. If additional margin is not deposited when required, the depository institution's rights to sell securities or otherwise liquidate the repurchase agreement should be exercised without hesitation.

IV. Guidelines for Controlling Collateral for Securities Sold Under Agreement to Repurchase

Depository institutions normally use current market values (bid side), including the amount of any accrued interest, to determine the price of securities that are sold under repurchase agreements. Counterparties should not be provided with excessive margin. Thus, the written repurchase agreement contract normally provides that the counterparty must make additional payment or return securities if the margin exceeds agreed upon levels. When acquiring funds under repurchase agreements it is prudent business practice to keep at a reasonable margin the difference between the market value of the securities delivered to the counterparty and the amount borrowed. The excess market value of securities sold by a depository institution may be viewed as an unsecured loan to the counterparty subject to the unsecured prudential limitations for the depository institution and should be treated accordingly for credit policy and control purposes.

Dated: February 5, 1998.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 98–3373 Filed 2–10–98; 8:45 am]

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

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. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 25, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Martin L. and Sandra D. Sisneros, Abenicio E. and Rosie M. Sisneros, Joaquin A. and Dolores Sisneros, Philip and Attonette Sisneros, all of Belen, New Mexico, and Alex E. and Debbie Sisneros, Los Lunas, New Mexico; to acquire voting shares of The Bank of Belen, Belen, New Mexico.

Board of Governors of the Federal Reserve System, February 5, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3376 Filed 2–10–98; 8:45 am]

BILLING CODE 6210–01–F

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. The application also will 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 March 6, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Eagle Bancorp, Inc., Bethesda, Maryland; to become a bank holding company by acquiring 100 percent of EagleBank (in organization), Bethesda, Maryland.

Board of Governors of the Federal Reserve System, February 5, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3375 Filed 2–10–98; 8:45 am]

BILLING CODE 6210–01–F

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. The application also will 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 March 9, 1998.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Northwest Bancorp, MHC, and Northwest Bancorp, Inc., both of Warren, Pennsylvania; to acquire 100 percent of the voting shares of Corry Savings Bank, Corry, Pennsylvania.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Little Sioux Bancshares, Inc., Sioux Rapids, Iowa; to become a bank holding company by acquiring at least 87.67 percent of the voting shares of First State Bank, Sioux Rapids, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National City Bancshares, Inc., Evansville, Indiana; to merge with Illinois One Bancorp, Inc., Shawneetown, Illinois, and thereby indirectly acquire Illinois One Bank, National Association, Shawneetown, Illinois.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Community First Bankshares, Inc., Fargo, North Dakota; to merge with Community Bancorporation, Thornton, Colorado, and thereby indirectly acquire Community First National Bank, Thornton, Colorado.

2. Community First Bankshares, Inc., Fargo, North Dakota; to merge with FNB, Inc., Greeley, Colorado, and thereby indirectly acquire First National Bank of Greeley, Greeley, Colorado, and Poudre Valley Bank, Fort Collins, Colorado.

3. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of Pioneer Bank of Longmont, Longmont, Colorado.

Board of Governors of the Federal Reserve System, February 6, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3453 Filed 2–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. These activities will be conducted worldwide.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Union Bank of Switzerland, Zurich, Switzerland (''UBS''); to acquire Swiss Bank Corporation, Basel, Switzerland (''SBC''), and thereby acquire its subsidiaries and engage worldwide in certain nonbanking activities. Under the proposed transaction, SBC would merge into a subsidiary of UBS (''New UBS'') and, shortly thereafter, UBS would merge into New UBS. UBS, through various subsidiaries, currently conducts certain nonbanking activities in the United States, including underwriting and dealing in equity and debt securities that a state member bank may not underwrite and deal in (''bank-ineligible securities''), pursuant to grandfather rights established by section 8(c) of the International Banking Act of 1978 (IBA) (12 U.S.C. § 3106(c)). Following consummation of the proposed transaction with SBC, UBS and New UBS propose to transfer certain nonbanking activities currently conducted by subsidiaries of UBS operating pursuant to the grandfather rights established by section 8(c) of the IBA to subsidiaries that would operate pursuant to section 4(c)(8) of the Bank Holding Company (BHC) Act, and thereby engage in such activities pursuant to section 4(c)(8) of the BHC Act and the Board's Regulation Y.

In connection with the transactions described above, UBS and New UBS propose to engage in the following nonbanking activities: (a) making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.28(b)(1) of the Board's Regulation Y; (b) activities related to making, acquiring, brokering or servicing loans or other extensions of credit, including acquiring debt that is in default at the time of acquisition pursuant to § 225.28(b)(2) of the Board's Regulation Y; (c) leasing personal or real property or acting as agent, broker, or adviser in leasing such property pursuant to § 225.28(b)(3) of the Board's Regulation Y; (d) performing functions or activities that may be performed by a trust company pursuant to § 225.28(b)(5) of the Board's Regulation Y; (e) providing financial and investment advisory services pursuant to § 225.28(b)(6) of the Board's Regulation Y; (f) providing securities brokerage, riskless principal, private placement, futures commission merchant and other agency transactional services pursuant to § 225.28(b)(7) of the Board's Regulation Y; (g) underwriting and dealing in bank-eligible securities, engaging in investment and trading activities, and buying and selling bullion and related activities pursuant to § 225.28(b)(8) of the Board's Regulation Y; (h) serving as general partner of certain private investment limited partnerships in accordance with the BHC Act and the Board's decisions and interpretations thereunder, *see Meridian Bancorp, Inc.*, 80 Fed. Res. Bull. 736 (1994); and (i)

underwriting and dealing in, to a limited extent, all types of bank-ineligible securities, except ownership interests in open-end investment companies, *see Canadian Imperial Bank of Commerce*, 76 Fed. Res. Bull. 158 (1990) and *J.P. Morgan & Co., Inc.*, 75 Fed. Res. Bull. 192 (1989).

Board of Governors of the Federal Reserve System, February 5, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3377 Filed 2–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 26, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Norwest Corporation, Minneapolis, Minnesota; through Integrion Financial Network, LLC, Atlanta, Georgia, to acquire up to 15.38 percent of the outstanding shares of CheckFree Corporation, Norcross, Georgia, and thereby engage in providing data processing and data transmission services, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 6, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3452 Filed 2–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Tuesday, February 17, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 6, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3512 Filed 2–6–98; 4:24 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the Secretary's Council on Health Promotion and Disease Prevention Objectives for 2010

AGENCY: Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

ACTION: Notice of second meeting.

SUMMARY: The Department of Health and Human Services (HHS) is providing notice that the Secretary's Council on Health Promotion and Disease Prevention Objectives for 2010 will hold its second annual meeting, as mandated by its charter. Council members are charged with the duty of advising the Secretary on the development of objectives for the year 2010 and will have responsibility in this meeting for making recommendations on the arrangement and content of a draft document to be published for public comment later in the year.

DATES: The council will hold its next meeting on April 30, 1998 from 8:30 a.m. to approximately 4:30 p.m. E.D.T.

ADDRESSES: Department of Health and Human Services, Sixth floor conference room, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201. The meeting is open to the public; seating is limited.

FOR FURTHER INFORMATION CONTACT: Ellis Davis, Office of Disease Prevention and Health Promotion, Room 738G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 260–2873. The electronic mail address is: edavis@osophs.dhhs.gov.

SUPPLEMENTARY INFORMATION: The Council was established by charter on September 5, 1996 to provide assistance to the Secretary and the Department of Health and Human Services in the development of health promotion and disease prevention objectives to enhance the health of Americans by 2010. The Council meets approximately once a year and will terminate two years from its charter date, unless renewed prior to its expiration.

The Council is charged to advise the Secretary on the development of national health promotion and disease prevention goals and objectives and to provide links with States, communities, and the private sector to ensure their involvement in the process of developing these goals and objectives. The Secretary of Health and Human Services chairs the Council, with the Assistant Secretary for Health as Vice Chair. Other members include the Operating Division Heads of the Department and the former Assistant Secretaries for Health. Management and support services are provided by the Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Office of the Secretary.

During its tenure, the Council will oversee the development of Healthy People 2010, the third generation of a national initiative to prevent disease and promote the health of the American people. At its second meeting, the membership will consider options for

the proposed framework for the 2010 initiative based on an analysis of public comments received during a 3-month period, which ended on December 15, 1997. They will make recommendations on the format to be adopted for publication in the fall of 1998. The members will also discuss proposals for 2010 objectives as provided by the HHS agencies after consideration of public comments. The Council's recommendations will form the basis of a draft of the 2010 objectives to be published concurrently with the draft format.

If time permits at the conclusion of the formal agenda of the Council, the Chair may allow brief oral statements from interested parties and persons in attendance. The meeting is open to the public; however, seating is limited. Because of strict security in the Humphrey Building, members of the public who do not have a Federal government identification card should call Ms. Gloria Robledo (202–401–7736) when they arrive in the building lobby to arrange for an escort to the meeting. If you will require a sign language interpreter, please call Ms. Robledo by 4:30 p.m. E.D.T. on April 17, 1998 to inform her of this need.

Dated: January 29, 1998.

Susanne A. Stoiber,

Acting Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. 98–3380 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Nominations for Members of the U.S. Preventive Services Task Force: Clarification

The Agency for Health Care Policy and Research (AHCPR) in the January 7, 1998 **Federal Register** (FR) Notice (63 FR 879–880) invited nominations for members of the U.S. Preventive Services Task Force. Curricula vitae were requested with the nominations. The FR notice stated that response will be available for public inspection.

AHCPR is clarifying the January 7 notice regarding availability of responses. Under the heading ''Materials Submission and Deadline'' on page 880 the following statement should be included: ''Information regarded as private and personal, such as a nominee's social security number, home and Internet addresses, home telephone and fax numbers, or names of children, will not be disclosed to the public.'' This is in accord with agency confidentiality policies and Department regulations (45 CFR 5.67).

Dated: February 5, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–3429 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 98015]

National Institute for Occupational Safety and Health; Fatality Surveillance and Field Investigations at the State Level Using the NIOSH Fatality Assessment and Control Evaluation Model; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for cooperative agreements to build State capacity for conducting traumatic occupational fatality surveillance, investigation, and intervention activities through the National Institute for Occupational Safety and Health (NIOSH) Fatality Assessment and Control Evaluation (FACE) Model.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health, and Surveillance and Data Systems. (To order a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under the Public Health Service Act, as amended, Section 301(a) [42 U.S.C. 241(a)]; the Occupational Safety and Health Act of 1970, Section 20(a) [29 U.S.C. 669(a)]. The applicable program regulation is 42 CFR Part 52.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are State Departments of Health, Departments of Labor, and Departments of Industry located within any State or territory of the United States. Program activities, however, may not be carried out by departmental divisions that are responsible for enforcement of occupational safety and health standards. Awards will be limited to those organizations that can exercise public health authority for intervention into occupational safety and health problems.

Only one application per State will be accepted under this announcement.

Note: An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, a grant, contract, loan, or any other form.

Availability of Funds

Approximately $190,000 will be available in FY 1998 to fund two or three awards. It is expected that the awards will range from $60,000 to $100,000. Individual awards may vary by State, and will be based upon the scope and nature of traumatic occupational fatalities documented by the respondent, and upon proposed personnel, administrative, and associated costs. The awards will be made on or about July 1, 1998, with 12-month budget periods within project periods of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be determined on the basis of satisfactory progress and the availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which federal

funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the current HHS Appropriations Act expressly prohibits the use of appropriated funds for indirect or ''grass roots'' lobbying efforts that are designed to support or defeat legislation pending before state legislatures. Section 503 of the law provides as follows:

Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, or any State legislature, except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Public Law No. 104–208 (September 30, 1996).

Background

Traumatic occupational fatalities represent a public health problem of significant proportion. Based on data from the National Traumatic Occupational Fatalities (NTOF) surveillance system, nearly 6500 workers die each year in the U.S. from traumatic injuries sustained in the workplace. The four highest risk industries for fatal injury are: mining, construction, transportation/ communication/public utilities, and agriculture/ forestry/fishing. Each of these industrial sectors has a traumatic fatality rate that is at least twice the overall civilian workforce rate of 7.0 deaths per 100,000 workers. The leading causes of death for all industries are motor vehicles, machinery, homicide, falls, and electrocutions. These categories account for nearly 60 percent of the occupational fatalities each year. In order to adequately develop and implement intervention strategies aimed at reducing fatal injuries in the workplace, more specific data pertaining to the interaction of the worker, the work environment, and work processes are needed.

Purpose

The purpose of funding these cooperative agreements is to expand the State-based FACE project and significantly strengthen the occupational public health infrastructure. This will be accomplished by integrating resources for occupational safety and health research and public health prevention programs at the State and local levels. The ultimate goal of the project is to reduce traumatic occupational fatalities within the States.

Over the past eight years, State-level personnel have shown that the NIOSH FACE model for investigation of occupational fatalities can be successfully implemented in the States. The most immediate products of the State-level FACE programs have been accurate and timely surveillance systems for detecting traumatic occupational fatalities occurring within the State, fatality investigations identifying causal factors, and recommendations for prevention strategies. This program will permit awardees to efficiently integrate resources for prevention of occupational fatalities at the State and local level. Additionally, States will be encouraged to target occupational traumatic injury research and prevention programs based on specific State priority areas. FACE data will be shared with all award recipients. The specific objectives for this cooperative agreement are as follows:

A. Develop a timely, comprehensive, multiple-source State-level surveillance system for identifying and recording basic epidemiologic data on all traumatic occupational fatalities occurring within the State.

B. Conduct on-site investigations of specific traumatic occupational fatalities using the NIOSH FACE investigative model.

C. Through case investigations, identify factors common to selected types of traumatic occupational fatalities leading to development and prioritization of prevention strategies.

D. Develop and disseminate prevention recommendations to reduce the risk of fatal occupational injuries within the State.

E. Develop and implement prevention strategies and projects for reducing State incidence of traumatic occupational injuries and fatalities.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop a comprehensive multiple-source, State-level surveillance system for prompt identification and reporting of epidemiologic data on all traumatic occupational fatalities occurring in the State.

2. Conduct in-depth site investigations of targeted occupational fatalities as determined by NIOSH. Currently, falls from elevations and machinery-related incidents are targeted fatality types. These are among the leading causes of work-place fatalities, as identified by national surveillance systems; however, they may change over the term of the agreement. Greatest emphasis must be placed on the determined targets; however, States may choose, in cooperation with NIOSH, to conduct in-depth investigations of other fatality types identified.

3. In specified format, develop and submit to NIOSH a narrative report of each in-depth fatality investigation which describes the fatal incident and includes recommendations for preventing future similar occurrences.

4. Submit first reports of fatalities, investigative narrative reports, and supplementary investigative data electronically to NIOSH through CDC's WONDER/PC system.

5. Evaluate surveillance data and investigative findings to identify specific worker populations to which prevention programs should be addressed.[1]

6. Identify entities such as employers, unions, and trade associations that can effect change in the workplace.

7. Communicate recommended preventions to those who can effect change in the workplace and to those at risk through targeted dissemination.

8. Prepare and submit periodic status reports of activities in designated format and an annual report that summarizes the activities and progress made by the State toward meeting the objectives for the State FACE program.

9. Participate in annual NIOSH-conducted FACE project workshop/

[1] A Framework for Assessing the Effectiveness of Disease and Injury Prevention. Morbidity and Mortality Weekly Report (MMWR), March 27, 1992/ Vol.41/Jn. The MMWR can be accessed through World-Wide Web (http://www.cdc.gov/epo/mmwr/mmwr.html).

conference in Morgantown, West Virginia, or other selected site.

B. CDC/NIOSH Activities

1. Provide formats for data reporting forms, coding formats, computer software, and State personnel training for electronic transmission of FACE surveillance and investigative data to the NIOSH data base.

2. Provide assistance to awardee staff in establishing traumatic occupational fatality notification networks.

3. Provide initial training in procedures and subsequent technical assistance for conducting on-site fatality investigations using the FACE investigative methodology (including the use of FACE investigative data collection instruments).

4. Provide assistance in identifying sentinel events resulting from industrial applications of new and emerging technologies.

5. Provide technical assistance in the dissemination of summary reports and other published findings to State and local health and labor officials, voluntary health groups, workers, unions, employers and professional organizations.

6. Provide technical assistance in identifying and evaluating effective intervention strategies.

7. CDC will provide funds to purchase one IBM-compatible, Pentium-based personal computer, printer, telecommunications equipment, and needed software for use on appropriate activities related to this cooperative agreement, if necessary.

Technical Reporting Requirements

An original and two copies of an ANNUAL progress report are due no later that 30 days after the end of each budget period. A Financial Status Report (FSR) is required no later than 90 days after the end of each budget period. FINAL progress report and FSR are due no later than 90 days after the end of the project period (October 31, 2003). Monthly electronically transmitted CDC WONDER/PC FACE status reports are due to NIOSH no later than the 10th of the following month. All other reports are submitted to the Grants Management Branch, CDC.

Annual progress report should include:

A. A brief program description.

B. A listing of program goals and objectives accompanied by a comparison of the actual accomplishments related to the goals and objectives established for the period.

C. If established goals and objectives to be accomplished were delayed, describe both the reason for the deviation and anticipated corrective action or deletion of the activity from the project.

Application

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter-of-intent to apply is requested from potential applicants. The letter should be submitted to the Grants Management Branch, CDC. (See ''Application Submission and Deadline'' section for the address.) It should be postmarked no later than February 25, 1998. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter-of-intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Application Content

The entire application, including appendices, should not exceed 40 pages and the Proposal Narrative section contained therein should not exceed 25 double-spaced pages. Pages should be clearly numbered and a complete index to the application and any appendices included. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8½'' by 11'' paper, with at least 1'' margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets. All graphics, maps, overlaps, etc. should be in black and white and meet the above criteria.

C. Title Page

The heading should include the title of grant program, project title, organization, name and address, project director's name address and telephone number.

D. Abstract

A one-page, singled-spaced, typed abstract must be submitted with the application. The heading should include the title of grant program, project title, organization, name and address, project director and telephone number. This abstract should be included in the **APPLICATION CONTENT** section of the application, under **INTRODUCTION.** This abstract is not in lieu of (but in addition to) the **INTRODUCTION** section.

E. Narrative

The narrative of the application should:

1. Document the applicant's understanding of the objectives of the project and the proposed agreement and the goals over the 5-year period of the agreement.

2. Describe the scope and nature of occupational fatalities in the applicant's State.

3. Describe the applicant's ability to provide qualified and appropriate staff and other resources necessary to implement the project. This may be supported by documentation of the applicant's experience in conducting similar research efforts, including surveillance activities.

4. Describe an implementation plan and provide a proposed schedule for accomplishing each of the activities to be carried out in this project including the implementation of the surveillance, field investigations, dissemination and prevention components, and a method for evaluating the accomplishments.

5. Provide the names, qualifications, and time allocations of: the principal investigator; professional staff to be assigned to this project; the support staff available for performance of this project; and the facilities, space, and equipment available for performance of this project.

6. Provide a detailed description of the proposed first-year activities, as well as a brief description of future year activities.

7. Provide letters of support or other documentation demonstrating collaboration of the applicant's ability to work with diverse groups, establish linkages, and facilitate awareness information.

F. Budget

Completed budget forms should be placed at the beginning of the application. The applicant should provide a detailed budget, with accompanying justification of all operating expenses, that is consistent with the stated objectives and planned activities of the project. CDC may not approve or fund all proposed activities. Applicants should be precise about the program purpose of each budget item, providing anticipated costs for personnel, travel (including travel expenses for annual NIOSH-conducted FACE project workshop/conference in Morgantown, West Virginia, or other selected site), communications, postage, equipment (see Item 7 under CDC/NIOSH Activities), supplies, etc., and all sources of funds to meet those needs.

For contracts described within the application budget, if known, applicants

should name the contractor; describe the service(s) to be performed; provide an itemized breakdown and justification for the estimated costs of the contract; the kinds of organizations or parties to be selected; the period of performance; and the method of selection. Budget narrative pages showing, in detail, how funds in each object class will be spent should be placed directly behind form 424A. Do not put these pages in the body of the application.

Evaluation Criteria

Evaluation of the applications will be based on the following criteria:

A. Goals and Objectives

Ability to communicate the scope and nature of traumatic occupational fatalities in the State as evidenced by the quality of the narrative and documented research and experience. (15%)

B. The qualifications and time commitment of proposed project staff (principal investigator, field investigator (if already identified), administrative and technical support staff). (25%-Total)

1. The existence of or potential for acquiring expertise in investigation of occupational fatalities. There should be a full-time field investigator dedicated to the project. (15%)

2. The existence of or potential for acquiring safety expertise relevant to formulation of injury prevention strategies. (10%)

C. Applicant's collaborative relationships with various relevant State or territorial agencies or organizations in addressing the problem of traumatic occupational fatality surveillance, investigation, and intervention. (30%-Total)

1. The existence of or potential for establishment of a multiple-source network for identification and reporting of traumatic occupational fatalities. (15%)

2. The existence of or potential for establishment of relationships with public safety departments, safety compliance agencies, and other entities that can provide background and supplementary data relating to specific fatality cases. (15%)

D. Demonstrated ability to communicate recommended preventions to those at risk through targeted dissemination. (25%)

E. Additional personnel/facilities/equipment already in place that can contribute to successful implementation of the project. (5%)

F. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit.

If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, ATTN: Victoria Sepe no later than 60 days after the application deadline date. The program announcement number 98015 and program title FACE should be referenced on the document. The granting agency does not guarantee to ''accommodate or explain'' State recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance for this program is 93.283.

Other Requirements

Paperwork Reduction Act

Projects funded through a cooperative agreement that involve collection of information from ten or more individuals will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before March 31, 1998.

Deadline: Applications will be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

Late Applications: Applications that do not meet the criteria in A. or B. above are considered late applications. Late applications will not be considered and will be returned to the applicants.

Where to Obtain Additional Information

Application Packet

To receive additional written information call 1–888–GRANTS4. You will be asked to leave your name, address, and phone number and will need to refer to NIOSH Announcement 98015. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail. PLEASE REFER TO NIOSH ANNOUNCEMENT NUMBER 98015 WHEN REQUESTING INFORMATION AND SUBMITTING AN APPLICATION.

Internet

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is: http://www.cdc.gov. For your convenience, you may be able to retrieve a copy of the PHS Form 5161–1 (OMB Number 0937–0189) from http://mercury.psc.dhhs.gov.

Business Management Technical Assistance

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, Room 321, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, telephone (404) 842–6804, Internet: vxw1@cdc.gov.

Programmatic Technical Assistance

If you have programmatic technical assistance questions you may obtain

information from Paul H. Moore, State FACE Project Officer, telephone (304) 285–6016, Internet: phm0@cdc.gov; Stephanie G. Pratt, State FACE Technical Officer, telephone (304) 285–5992, Internet: sgp2@cdc.gov, Trauma Investigations Section, Surveillance and Field Investigations Branch, Division of Safety Research, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1095 Willowdale Road, Mailstop 180P, Morgantown, WV 26505–2888, or Nancy A. Stout, Ed.D., Director, telephone (304) 285–5894, Division of Safety Research, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1095 Willowdale Road, Mailstop 1172, Morgantown, WV 26505–2888.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock Number 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock Number 017–001–00473–1) referenced in the **INTRODUCTION** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: January 5, 1998.

Diane Porter,

Acting Director, National Institute For Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–3406 Filed 2–10–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0522]

Anitox Corp.; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Anitox Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of formaldehyde in maintaining animal feeds and feed ingredients free of *Salmonella*.

DATES: Written comments on the petitioner's environmental assessment by March 13, 1998.

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

FOR FURTHER INFORMATION CONTACT: Henry E. Ekperigin, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0174.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2237) has been filed by Anitox Corp., P.O. Box 1929, Buford, GA 30519. The petition proposes to amend the food additive regulations in § 573.460 *Formaldehyde* (21 CFR 573.460) to provide for the safe use of formaldehyde (37 percent aqueous solution) at a maximum of 5.4 pounds per ton of animal feed and feed ingredients to maintain the animal feeds and feed ingredients free of *Salmonella*.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 13, 1998, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 26, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–3379 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0063]

Protein Technologies International; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Protein Technologies International has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a dry form of natamycin for use as an antimycotic in food.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3116.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8A4581) has been filed by Protein Technologies International, Checkerboard Sq., St. Louis, MO 63164. The petition proposes to amend the food additive regulations in § 172.155 *Natamycin (pimaricin)* (21 CFR 172.155) to provide for the safe use of a dry form of the food additive for use on the surfaces of cuts and slices of cheese to inhibit mold spoilage, in accordance with various standards of identity for cheeses that allow the use of antimycotics and anticaking agents.

The agency has determined under 21 CFR 25.32(k) that this action is of the 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.

Dated: January 26, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–3378 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Licensing Opportunity and/or Cooperative Research and Development Agreement (CRADA) Opportunity for Novel Treatment of Tumors With Anticancer Drugs Activated by Thymidylate Synthase

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health and the Laboratory of Clinical Pharmacology, Center for Drug Evaluation and Research, of the Food and Drug Administration are seeking licensees and/or CRADA partners for the further development, evaluation, and commercialization of materials and methods for a novel class of chemotherapeutic agents and a novel treatment strategy. The invention claimed in DHHS Reference No. E–058–97/0, ''Novel Treatment of Tumors With Anticancer Drugs Activated by Thymidylate Synthase'' (J Collins, R Klecker, A Katki), filed 29 Oct 97, is available for licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404) and/or further development under one or more CRADAs in the clinically important applications described below in the Supplementary Information section.

DATES: There is no deadline by which license applications must be received. CRADA proposals should be received on or before May 12, 1998 for priority consideration. However, CRADA proposals submitted thereafter will be considered until a suitable CRADA Collaborator is selected.

ADDRESSES: Questions about the licensing opportunity should be addressed to Joseph Contrera, M.S., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: 301/496–7056 ext. 244; Fax: 301/402–0220; E-mail: ContrerJ@od.nih.gov.

CRADA proposals and questions should be addressed to Ms. Beatrice A. Droke, Food and Drug Administration, 5600 Fishers Lane, Park 3–30 HFA 500, Rockville, MD 20853; Telephone: 301/443–6890; Fax: 301/443–3690; E-mail: bdroke@bangate.fda.gov.

SUPPLEMENTARY INFORMATION: Thymidylate Synthase (TS) is an enzyme of metabolism which is part of the DNA synthesis pathway in both normal and tumor cells. It has been known for decades that TS is expressed in tumor cells in quantities that are significantly higher than most non cancerous tissues. There has been much research into developing chemotherapeutic drugs which attempt to block or inhibit TS in tumor cells in an effort to shrink or slow their growth in vivo. Drugs such as fluorouracil and floxuridine are examples of this class of TS inhibitors.

The problem with enzyme inhibiting drugs is that over a short period of time, if the tumor cells are not killed, they become tremendously resistant to the inhibitors by various mechanisms. Usually the tumors boost expression of TS to overcome the inhibitor, but many other avenues are available to the tumor, such as pumping the drug out of the cell and mutating the enzyme to minimize the drug effect. At present, once the treated tumors start producing high levels of TS there is no effective therapy available.

Instead of inhibiting TS, this new strategy involves using TS to turn a uracil analog with low toxicity into highly toxic thymidine analog. The treatment would benefit patients with resistant tumors who were previously treated with TS inhibitors. The benefits of this type of prodrug are obvious. Patients could be treated with relatively high doses of the low toxicity prodrug thus ensuring high enough concentrations to penetrate the patients tissues and only the tumor cells will be actively converting the prodrug to its toxic metabolite thus dramatically lowering the severity of chemotherapeutic side effects. Moreover, there is less chance of the cells becoming resistant because they cannot down-regulate TS synthesis without slowing their own growth while making more and more toxic metabolites which in turn will kill the cancer cells.

Information about the patent application and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an Application for License to Public Health Service Inventions. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above patent rights in order to commercialize products arising from a CRADA.

Dated: February 3, 1998.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 98–3471 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications

Committee Name: Subcommittee A—Cancer Centers.

Date: April 6–7, 1998.

Time: April 6–8:00 a.m. to Recess; April 7–8:00 a.m. to Adjournment.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: David E. Maslow, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., EPN, Room 643A, Bethesda, Md 20892, Telephone: 301–496–2330.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research, 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated February 6, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3465 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate individual grant applications.

Committee Name: Subcommittee H—Clinical Trials.

Date: March 24–25, 1998.

Time: March 24—8:00 a.m. to Recess; March 25—8:00 a.m. to Adjournment.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Contact Person: John L. Meyer, Ph.D., Scientific Review Administrator, 6130 Executive Blvd., EPN, Room 611C, Bethesda, Md 20892–7403, Telephone: 301–496–7721.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 6, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3466 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Long-term Cancer Survivors: Research Initiatives.

Date: March 17–20, 1998.

Time: March 17—7:00 p.m. to Recess; March 18 & 19—8:00 a.m. to Recess; March 20—8:00 a.m. to Adjournment.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Wilna Woods, Ph.D, Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 622B, 6130 Executive Boulevard, Bethesda, MD 20892–7405, Telephone: 301/496–7903.

Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAM NUMBERS: 93.393, Cancer Cause and Prevention Research ; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 6, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3468 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.

Committee Name: Subcommittee F—Manpower & Training.

Date: March 8–11, 1998.

Time: March 8–6:30 p.m. to Recess; March 9 and 10–8:00 a.m. to Recess; March 11–8:00 a.m. to Adjournment.

Place: St. James Hotel, 950 24th Street, NW, Washington, DC 20037.

Contact Person: Mary Bell, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Boulevard, EPN, Room 611A, Bethesda, Md 20892, Telephone: 301/496–7978.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAM NUMBERS: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 6, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3469 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Cooley's Anemia Review Meeting.

Date: March 16–17, 1998;

Time: 8:00 p.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Eric H. Brown, Ph.D., Two Rockledge Center, Room 7204, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0299.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Psychosocial Factors and Cardiovascular Disease.

Date: March 31, 1998.

Time: 8:00 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, Bethesda, MD 20892–7924, (301) 435–0266.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3477 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Receptor Binding Determines Erythropoietin Disposition (Telephone Conference Cell)
Date: February 27, 1998
Time: 11:30 a.m. EST
Place: Rockledge Building II, 6701 Rockledge Drive, Room 7214, Bethesda, Maryland 20892
Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0266
Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3478 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.
Date: March 10, 1998.
Time: 2:00 p.m. to adjournment.
Place: 6120 Executive Blvd., Rockville, MD 20892 (telephone conference call).
Contact Person: Richard S. Fisher, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, Bethesda, MD 20892–7180, 301–496–8683.
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3472 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: Unsolicited T32 Immunology Training.
Date: March 3, 1998.
Time: 1:30 p.m. to Adjournment.
Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 4C06, Bethesda, MD 20892, (301) 496–7042.
Contact Person: Dr. Stanley Oaks, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C06, Bethesda, MD 20892, (301) 496–7042.
Purpose/Agenda: To evaluate grant applications.

Name of SEP: Genetic Variation of HIV and Related Lentiviruses.
Date: March 9, 1998.
Time: 10:30 a.m. to Adjournment.
Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 4C06, Bethesda, MD 20892, (301) 496–7042.
Contact Person: Dr. Stanley Oaks, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C06, Bethesda, MD 20892, (301) 496–7042.
Purpose/Agenda: To evaluate contract proposal.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: February 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3473 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).
Date: February 23, 1998.
Time: 2:00 p.m.
Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.
Contact person: Dr. Katherine Woodbury-Harris, Mr. Phillip Wiethorn, Scientific Review Administrators, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.
Purpose/Agenda: To review and evaluate Phase I SBIR Contract Proposal(s). This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences).

Dated: February 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3475 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB–7(C2B).
Date: February 18, 1998.
Time: 7:30 PM.
Place: Room 6as–25F, Natcher Building, NIH (Telephone Conference Call).
Contact: Lakshmanan Sankaran, Ph.D., Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7799.
Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: ZDK1 GRB–7 (C1B).
Date: February 19, 1998.
Time: 3:00 PM.
Place: Room 6as–25F, Natcher Building, NIH (Telephone Conference Call).
Contact: Lakshmanan Sankaran, Ph.D., Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7799.
Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: February 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3476 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Meetings:

Name of SEP: ZDK1 GRB5 M1 P.
Date: March 8, 1998
Time: 7:30PM
Place: Holiday Inn, 5 Blossom Street, Boston, MA 02114.
Contact: Francisco O. Calvo, Ph.D., Chief, Special Emphasis Panel, Review Branch, DEA, NIDDK, Natcher Building, Room 6as-37E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8897.
Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: ZDK1 GRB D M2.
Date: April 5–8, 1998.
Time: 7:30PM
Place: Sheraton Premiere Hotel at Tysons Corner, 8661 Leesburg Pike, Vienna, VA 22181.
Contact: Ann Hagan, Ph.D., Chief, Review Branch, DEA, NIDDK, Natcher Building, Room 6as-37E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8886.
Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: February 5, 1998.

Laverne Y. Stringfield,

Committee Management Officer, HIH.

[FR Doc. 98–3479 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine, on April 6–7, 1998.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5 U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 6 from 7 p.m. to approximately 10 p.m., at the Bethesda Hyatt Hotel, and on April 7, from 8:30 a.m. to approximately 2 p.m., in the Eighth-Floor Conference Room of the Lister Hill Center Building, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David J. Lipman, Director, National Center for Biotechnology Information, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–2475, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: February 6, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3467 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: February 25, 1998.
Time: 7:00 p.m.

Place: The Georgetown Inn, Washington, DC.

Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, Maryland 20892, (301) 435–1198.

Name of SEP: Clinical Sciences.

Date: February 26–27, 1998.

Time: 8:00 a.m.

Place: The Georgetown Inn, Washington, DC.

Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 11, 1998.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Garrett Keefer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4190, Bethesda, Maryland 20892, (301) 435–1152.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 27, 1998.

Time: 9:00 a.m.

Place: Hyatt Regency, Bethesda, MD.

Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

Name of SEP: Biological and Physiological Sciences.

Date: April 9, 1998.

Time: 10:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Multidisciplinary Sciences.

Date: March 10, 1998.

Time: 8:00 a.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93,893, National Institutes of Health, HHS)

Dated: February 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3474 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program

National Toxicology Program (NTP) Board of Scientific Counselors Meeting; Review of Draft Technical Reports on Alternating Magnetic Field Studies in Rodents.

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee on March 11, 1998, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 9:00 a.m., and is open to the public. The agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies and shorter-term mechanistic studies in rodents on 50 Hz and 60 Hz magnetic fields (EMF) from the National Toxicology Program.

Background

The Department of Energy (DOE) and the Electric Power Research Institute (EPRI) in 1988 nominated 60 Hertz (Hz) (power line frequency) electric and magnetic fields (EMF) to the NIEHS/NTP for evaluation in NTP toxicology and carcinogenesis studies. This nomination was prompted by reports suggesting an association between EMF exposure and increased risk for childhood leukemia as well as reports on mammary tumors in rodent models for experimental carcinogenesis. In response, the NTP has conducted a series of conventional rodent toxicity and cancer studies. After the NTP studies started, the Congress passed an Energy Policy Act (Section 2118 of the Energy Policy Act of 1992; 42 USC 13478) which provided for an accelerated research program. Under this act, additional studies were conducted to explore the possibility that magnetic fields could promote breast cancer in rats.

Agenda

There will be an orientation to the NTP study process followed by peer review of the draft Technical Report of the two-year toxicology and carcinogenesis studies of 60 Hz EMF with four exposure intensities and sham controls in both sexes of B6C3F, mice and F344/N rats. The meeting will conclude with peer review of the draft Technical Report of two 13-week and one 26-week DMBA initiation/magnetic field promotion studies. Copies of the draft Reports may be obtained, as available, from: Central Data Management, MD E1–02, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–3419), FAX (919/541–3687), email: CDM@niehs.nih.gov. The Internet EMF RAPID Program web site is *http://www.niehs.nih.gov/emfrapid/home.hym*.

Public Comment

Persons wanting to make a formal presentation must notify the Executive Secretary by telephone, FAX, mail, or email no later than March 6, 1998, and, if possible, provide a written copy in advance of the meeting so copies can be made and distributed to all Subcommittee members, ad hoc expert consultants, and staff, and made available for attendees at the meeting. Written statements should supplement and may expand on the oral presentation. *Oral presentations should be limited to no more than five minutes.* The Program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies by others on electric and magnetic fields. Please contact Central Data Management at the address given above, and they will relay the information to the appropriate staff scientist.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709 (telephone 919/541–3971; FAX 919/541–0295; email hart@niehs.nih.gov) will furnish an agenda, a roster of Subcommittee members and expert consultants, and a brief background/overview on the EMF studies program prior to the meeting. Summary minutes subsequent to the meeting will be available upon request to Central Data Management.

Dated: February 3, 1998.

Samuel H. Wilson,

Deputy Director, National Toxicology Program.

[FR Doc. 98–3470 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4263–N–83]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below

has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* March 13, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. *Comments should refer to the proposal by name and/or OMB approval number and should be sent to:* Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Office for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 4, 1998

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Title of Proposal: Owner/Tenant Certification for Multifamily Housing Programs

Office: Housing

OMB Approval Number: 2502–0204

Description of the Need for the Information and its Proposed Use: The information is needed to determine tenant eligibility, to compute tenant annual rents for those tenants occupying HUD subsidized housing units, and to collect information on citizenship/alien status to effectively monitor program utilization and need.

Form Number: HUD–50059 and HUD 50059d/f/g

Respondents: Individuals or Households, Business or Other For-Profit, Not-For-Profit Institutions, and the Federal Government

Frequency of Submission: Annually

REPORTING BURDEN

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	2,171,256		1		.92		1,997,556

Total Estimated Burden Hours: 1,997,556

Status: Reinstatement, without changes

Contact: Paul Maxwell, HUD, (202) 708–3944 Joseph F. Lackey, Jr., OMB, (202) 395–7316

Date: February 4, 1998.

[FR Doc. 98–3360 Filed 2–10–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Meeting of the Klamath Fishery Management Council

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objective of this meeting is to develop management options for the 1998 Klamath fall chinook salmon season, to be presented to the Pacific Fisheries Management Council. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 1:00 p.m. to 5:00 p.m. on Sunday, March 8.

PLACE: The meeting will be held at the Clarion Hotel, 401 E. Millbrae Ave., Millbrae, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: February 5, 1998.

William F. Shake,

Regional Director.

[FR Doc. 98–3408 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–08–7122–00–56–36, SRP–98–02]

Temporary Closure of Selected Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary Closure of Selected Public Lands in Paz County, Arizona, during the Operation of the 1998 Whiplash Parker 200 Desert Race.

SUMMARY: The Lake Havasu Field Office announces the temporary closure of selected public lands under its administration La Paz County, Arizona. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official permitted running of the 1988 Whiplash Parker 200 Desert Race.

DATES: February 20, 1998, through February 22, 1998.

SUPPLEMENTARY REGULATIONS: Specific restrictions and closure periods are as follows:

Designated Course

1. The portion of the course comprised of BLM lands, roads and ways located 2 miles either side of Shea Road from the eastern boundary of the Colorado River Indian Tribes Reservation to the junction with Swansea Road and 2 miles either side of Swansea Road from its junction with Shea Road to the eastern bank of the Central Arizona Project Canal is closed to public use from 9:00 a.m. Friday, February 20, 1998, to 8:00 p.m. Sunday, February 22, 1998 (Mountain Standard Time).

2. Vehicles are prohibited from the Gibraltar Mountain (AZ–070–12) Wilderness Area and the Cactus Plain (AZ–070–12A/B) Wilderness Study Area (WSA).

3. The entire area encompassed by the designated course and all area within 1 mile outside the designated course are closed to all vehicles except authorized and emergency vehicles.

4. Vehicle parking or stopping along Shea Road, and Swansea Road is prohibited except for designated spectator areas. Emergency parking for brief periods of time is permitted.

5. Spectator viewing (public land) is limited to the designated spectator areas located South and North of Shea Road as signed app. 7 miles east of Parker, Arizona.

6. The following regulations will be in effect for the duration of the closure.

Unless otherwise authorized, no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course, including all portions of Osborne Wash.

c. Spectate or otherwise be located outside of the designated spectator areas.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Be in possession of any alcoholic beverage unless that person has reached the age of 21 years.

f. Firearms must be unloaded and cased, and are not be used during the closure.

g. Fireworks are prohibited.

h. Park, stop, or stand any vehicle outside of the designated spectator areas.

i. Operate any vehicle, including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in Spector viewing areas, along the race course, and in designated pit areas.

j. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at the owner's expense.

k. Take any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier.

l. Fail to keep their site free or trash and litter during the period of occupancy or fail to remove all personal equipment, trash, and litter upon departure.

m. Violate quite hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10 p.m. and 6 a.m. Mountain Standard Time.

n. Allow any per or other animal in their care to be unrestrained at any time. Sings and maps directing the public to the designated spectator areas will be provided by the Bureau of Land Management and/or the event sponsor. The above restrictions do not apply to emergency vehicles owned by the United States, the State of Arizona or to LA Paz County. Vehicles under permit for operation by event participants must follow the race permit stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all Paz County and BLM roads and ways. Authority for closure of public lands is found in 43 CFR 8340, Subpart 8341; 43 CFR 8360, Subpart 8364.1, and 43 CFR 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $100,000 and/or imprisoned for not more than 12 months.

FOR FURTHER INFORMATION CONTACT: Bryan Pittman, District Law Enforcement Ranger, or Myron McCoy, Outdoor Recreation Planner, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (520) 505–1200.

Dated: February 5, 1998.

Jaime T. Provencio,

Field Manager.

[FR Doc. 98–3407 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF INTERIOR

Bureau of Land Management

[UT–020–1020–00]

Notice of Availability; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability; Correction.

SUMMARY: The Bureau of Land Management, Cedar City District, Utah published in the January 27, 1998 issue of the **Federal Register** a Notice of Availability for an Environmental Analysis/Finding of No Significant Impact (FONSI) of the Proposed Amendments to the Cedar/Beaver/Garfield/Antimony and the Paria, Vermillion, and Zion Management Framework Plans. The notice contained an incorrect date for when protests must be received.

FOR FURTHER INFORMATION CONTACT: Verlin Smith, Area Manager, Kanab Resource Area, at 318 North First East, Kanab, Utah 84741, (801) 644–2672. Copies of the proposed Plan Amendments are available for review at the Kanab Resource Area.

Correction

In the **Federal Register** issue of January 27, 1998 (Volume 63, Number 17), FR Doc. 98–1635, on page 3911, in the third column, under the ''Dates'' caption, correct the second sentence to read:

DATES: Protests must be received on or before February 27, 1998.

Dated: February 5, 1998.

G. William Lamb,

State Director, Utah.

[FR Doc. 98–3414 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–065–1610–00]

Areas of Critical Environmental Concern (ACEC) Plan Amendment to the Tonopah Resource Management Plan and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Tonopah Field Station announces its intent to prepare an amendment to the Tonopah Resource Management Plan (RMP) to address Areas of Critical Environmental Concern

(ACECs). Preparation of this amendment was made necessary by a protest resolution to the Proposed Tonopah RMP of October 1994. The Tonopah RMP, as approved and signed on October 2, 1997, contains no provision for the designation of ACECs. Development of the ACEC Plan Amendment is expected to extend into mid-year 1999.

The Tonopah Field Station also solicits additional nominations for areas to be considered as potential ACECs. Forty-three sites are on the current nomination list. Site names and guidelines for nominating additional sites are given in the section on Supplementary Information below.

DATES: All written comments on the ACEC process and new nominations for ACEC consideration must be postmarked on or before April 13, 1998, or hand-delivered to the Tonopah Field Station within the same time period.

ADDRESSES: Written comments and ACEC nominations should be addressed to: Earl R. Verbeek, Bureau of Land Management, P.O. Box 911, Tonopah, NV 89049.

FOR FURTHER INFORMATION CONTACT: Earl R. Verbeek (Planning and Environmental Coordinator) or Ron Huntsinger (Field Station Manager) at the above address, or telephone (702) 482–7800.

SUPPLEMENTARY INFORMATION: Those areas already nominated as ACECs, their approximate acreages, and a brief statement of the reason(s) for nomination are listed below in alphabetical order.

(1) Amargosa-Oasis: Thirteen separate areas totaling approximately 490 acres near Beatty, Nevada. Rare animals and plants.

(2) Big Moly: 9,600 acres. Scenic overlook.

(3) Big Springs Valley Lava Field: 14,700 acres. Included in Lunar Crater area.

(4) Brickyard Canyon: 320 acres. Cultural and geological features.

(5) Cane Man Hill Petroglyph District: 680 acres. Petroglyph sites.

(6) Crescent Sand Dunes: 3,000 acres. Uncommon invertebrates.

(7) Crystal Spring: 10 acres. Included in Amargosa-Oasis area.

(8) Emigrant Canyon: 9,300 acres. Scenic and geological values.

(9) Fish Lake: 20 acres. Uncommon fish species.

(10) Gilbert Historical Site: 100 acres. Historical values.

(11) Goldfield Joshua Tree Forest: 9,900 acres. Northernmost extremity of joshua trees in Nevada.

(12) Gold Point Historical Site: 150 acres. Historical values.

(13) Hot Creek Valley: 5,000 acres. Threatened fish species; uncommon plant.

(14) Jumbled Rock Petroglyphs: 10 acres. Great Basin petroglyphs.

(15) Kawich Range: 40,000 acres. Uncommon plant species.

(16) Little Fish Lake Valley: 40 acres. Uncommon fish species.

(17) Lockes Pond: 400 acres. Included in Railroad Valley Wildlife Management Area.

(18) Lone Mountain: 14,400 acres. Rare and endemic plant species.

(19) Lunar Crater: 39,680 acres northeast of Warm Springs. Includes Black Rock lava flow. Recent volcanic flows and cinder cones.

(20) Monocline Crater: 4,800 acres. Tilted cinder cone on monocline.

(21) Moores Station Petroglyphs: 40 acres. Great Basin petroglyphs.

(22) Mount Jackson: 900 acres. Great Basin plant communities in excellent condition.

(23) Oasis Valley: 40 acres. Included in Amargosa-Oasis area.

(24) Oatmeal Spring: 20 acres. Eroded badlands.

(25) Pinyon-Joshua Transition Natural Area: 550 acres. Area showing transition from joshua tree forest to pinyon forest.

(26) Railroad Valley Wildlife Management Area: 15,470 acres. Threatened and endangered species.

(27) Rhyolite: 425 acres. Historical ghost town.

(28) Rhyolite Ridge: 160 acres. Uncommon plant.

(29) Sarcobatus Flats: 30,000 acres. Large playa.

(30) Sheep Mountain Wash: 600 acres. Scenic values.

(31) Silver Bow Historical Site: 40 acres. Historical values.

(32) Soberup Gulch Petroglyphs: 20 acres. Great Basin petroglyphs.

(33) Stone Cabin Valley: 400,000 acres. Wild horses.

(34) Stonewall Mountain: 960 acres. Uncommon plants; riparian plant communities.

(35) Stormy-Abel Prehistoric District: 12,320 acres. Prehistoric sites.

(36) The Sump: 1,600 acres. Badlands area with scenic, paleontological, and geological values.

(37) Timber Mountain Caldera: 7,040 acres. Large volcanic feature.

(38) Tonopah Gem Fields: 80 acres. Geological values.

(39) Trap Springs-Gravel Bar Prehistoric District: 8,480 acres. Prehistoric sites.

(40) Tybo-McIntyre Charcoal Kilns: Four sites totaling 80 acres. Historic charcoal kilns.

(41) Weepah Historical Site: 100 acres. Historical values.

(42) White Rock Canyon: 40 acres. Scenic values.

(43) Yellow Hills: 4,000 acres. Scenic values.

ACEC designations highlight areas where special management attention is needed to protect, and prevent irreparable damage to, important historic, cultural, or scenic values; fish or wildlife resources; or other natural systems or processes. ACECs may also be designated to protect human life and safety from natural hazards. The ACEC designation indicates to the public that the BLM recognizes that an area has significant values and has established special management measures to protect those values.

To be considered a potential ACEC an area must meet criteria of both relevance and importance. These criteria are described in BLM Manual 1613, Areas of Critical Environmental Concern, section 1613.1.11, and are summarized below.

Relevance. An area meets the relevance criteria if it contains one or more of the following:

1. A significant historic, cultural, or scenic value.

2. A fish or wildlife resource.

3. A natural process or system (including but not limited to areas supporting rare, endemic, relic, or endangered plant species, or rare geological features)

4. Natural hazards (areas of avalanche, unstable soils, rockfall, etc.)

Importance. An area meets the importance criteria if it is characterized by one or more of the following:

1. Has more than locally significant qualities.

2. Has qualities or circumstances that make it fragile, sensitive, irreplaceable, rare, unique, etc.

3. Has been recognized as warranting protection to satisfy national priority concerns or to carry out the mandates of the Federal Land Policy and Management Act.

4. Has qualities which warrant concern about safety and public welfare.

5. Poses a significant threat to human life and safety, or to property.

Nominations for additional ACECs submitted by the public should be accompanied by descriptive materials, maps showing the location and outline of the nominated area, and a discussion of evidence supporting the relevance and importance of the resources or hazards in the area. For those areas already nominated as ACECs, the public is encouraged to comment on the relevance and importance of those areas and to recommend appropriate management strategies for protecting their values. Additional information on

areas previously nominated is available from the Tonopah Field Station through the contacts listed above.

All ACEC nominations and comments on the ACEC Plan Amendment process, including names and street addresses of respondents, will be available for public review at the above address during regular business hours (7:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the environmental assessment document that will address the impacts of designating selected ACECs. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: January 30, 1998.

Ron Huntsinger,

Tonopah Field Station Manager.

[FR Doc. 98–3361 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–0777–74]

Notice of Alaska Resource Advisory Council Meeting

SUMMARY: The Alaska Resource Advisory Council will conduct an open meeting Tuesday, March 3, 1998, from 9 a.m. until 4:30 p.m. and Wednesday, March 4, 1998, from 8:30 a.m. until 4 p.m. The council will review BLM land management issues and take public comment on those issues. The meeting will be held at the BLM Northern District Office, 1150 University Avenue, Fairbanks, AK.

Public comments will be taken from 2–3 p.m. Tuesday, March 3. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESS: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Ανψηοραγε, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: February 4, 1998.

Sally Wisely,

Associate State Director.

[FR Doc. 98–3412 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–08–1430–00; UTU–75154]

Notice of Realty Action; Recreation and Public Purpose Conveyance

SUMMARY: The following described public land in Garfield County, Utah has been examined and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act (43 U.S.C. 869 *et seq.*). The land to be leased or conveyed and the proposed patentee is:

Patentee: Boulder Town, Utah

Location: Salt Lake Meridian, Utah T. 33S., R.4E., sec. 25 & 26, Tract 37, containing 7.5 acres.

This land is hereby segregated from all forms of appropriation under the public land laws, including the mining laws.

The town of Boulder, Utah proposes to use this land to construct a community recreation and visitor center. The land is not needed for Federal purposes. Conveyance or lease is consistent with current BLM land use planning and would be in the public interest. The patent when issued will be subject to the following terms, conditions and reservations:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the same.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The conveyance will be subject to all valid rights and reservations of record.

4. The town of Boulder assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or the release of hazardous substances from the above listed land, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

5. Title may revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance.

DATES: Interested persons may submit comments regarding the proposed lease or conveyance of the land to the Area Manager, Escalante Resource Area Office, P. O. Box 225, Escalante, Utah 84726. Comments will be accepted until March 30, 1998. Any Adverse comments will be reviewed by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this notice will become the final determination of the Department of the Interior on April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Escalante Resource Area office by contacting Darrell ''Butch'' Olsen, P. O. Box 225, Escalante, Utah 84726, or telephone (801) 826–4291.

Dated: January 16, 1998.

Gregg Christensen,

Area Manager.

[FR Doc. 98–3383 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that 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

Office of Management and Budget (OMB) control number.

DATE: Submit written comments by April 13, 1998.

ADDRESS: Direct all written comments to the Rules Processing Team, Minerals Management Service, Mail Stop 4024, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of this collection of information.

SUPPLEMENTARY INFORMATION:

Title: Form MMS–127, Request for Maximum Efficient Rate (MER).

OMB Control Number: 1010–0018.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*), as amended, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. To carry out these responsibilities, MMS has issued regulations at 30 CFR Part 250. Subpart K, Oil and Gas Production Rates, requires respondents to complete Form MMS–127 to submit reservoir data on production.

The MMS uses the information collected by Form MMS–127 to analyze and evaluate reservoir characteristics and parameters and to classify the reservoir as sensitive. The MMS also uses the information for reservoir development studies, well production reviews, production allocation checks, and reserves calculations for bonding and leasing activities. The MMS will protect proprietary information submitted on Form MMS–127 under 30 CFR 250.18, data and information to be made available to the public. No items of a sensitive nature are collected. The requirement to respond is mandatory.

Estimated Number and Description of Respondents: There are approximately 130 Federal OCS oil and gas or sulphur lessees.

Frequency: Annual or on occasion.

Estimated Annual Reporting and Recordkeeping Hour Burden: There are 910 burden hours currently approved for this collection. The reporting burden is estimated to average 1 hour per response, including the time for reviewing the instructions, gathering and maintaining the data, and completing and reviewing the form.

Comments: The MMS will summarize written responses to this notice and address them in its submission for OMB approval. All comments will become a matter of public record. We will address any comments we receive in our submission to OMB. In calculating the burden, MMS may have assumed that respondents perform some of the requirements and maintain records in the normal course of their activities. The MMS considers these to be usual and customary. Commenters are invited to provide information if they disagree with this assumption, and they should tell us what the burden hours and costs imposed by this collection of information are.

(1) The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping cost burden for the collection of this information. The MMS needs your comments on this item. Your response should split the cost estimate into two components: (a) Total capital and startup cost component; and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated January 29, 1998.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98–2769 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meeting Changes

Notice is hereby given in accordance with the Federal Advisory Committee Act that the following meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be changed from the previously announced date and place to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. A meeting change of the Advisory Commission is noticed as follows:

The meeting previously scheduled for Wednesday, February 11, 1998 at San Mateo, California is canceled, and instead a meeting is scheduled for Thursday, February 12 at 7:30 p.m. at the Pacifica City Council Chambers, Pacifica City Hall, 170 Santa Maria Avenue, Pacifica, California.

Specific final agendas for Advisory Commission meetings are made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4633.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: January 30, 1998.

Brian O'Neill,

General Superintendent.

[FR Doc. 98–3352 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–390]

Advice Concerning the Proposed Expansion of the Information Technology Agreement

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: February 3, 1998.

SUMMARY: Following receipt of a request on January 16, 1998, from the Office of the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332–390, Advice Concerning the Proposed Expansion of the Information Technology Agreement, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Sylvia McDonough (202–205–3393) or Danielle Kriz (202–205–3442), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background

The USTR's letter requesting the investigation was received on January 16, 1998. The study, to be delivered in two phases, concerns the proposed modification of duties on certain information technology (IT) products which were listed in an attachment (see Annex below) to the USTR's letter. In the first phase of its report, the Commission will, as requested by the USTR, provide detailed descriptions of the products on the list, the uses of these products relative to IT industries and consumers as well as to non-IT industries and consumers, and the major producing countries, U.S. export markets, and sources of U.S. imports. In reviewing the products, the Commission will identify those products that are viewed as import sensitive by U.S. industry or other sources as well as any similar products that could reasonably be expected to be included in the product groupings but are not. The Commission expects to provide this information and advice to USTR by March 27, 1998. In the second phase of its report, the Commission will, as requested by the USTR, to the extent possible, analyze briefly current tariff and nontariff trade barriers, if any; patterns of U.S. imports and U.S. exports; and increased opportunities resulting from proposed tariff modifications. The Commission expects to provide this information and advice not later than May 1, 1998.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW, Washington, DC, beginning at 9:30 a.m. on March 19, 1998. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., March 9, 1998. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., March 13, 1998; the deadline for filing post-hearing briefs or statements is 5:15 p.m., March 24, 1998. In the event that, as of the close of business on March 9, 1998, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1816) after March 10, 1998 to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (an original and 14 copies) concerning the matters to be addressed by the Commission in its report. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's *Rules of Practice and Procedure* (19 C.F.R. 201.6). Persons submitting confidential business information should be aware that the Commission may make such information available to USTR. All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on March 24, 1998. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC 20436. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

By order of the Commission.

Issued: February 4, 1998.

Donna R. Koehnke,

Secretary.

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS

Product	Indicative HS heading
Minerals used by the capacitor and resistor industries, including but not limited to:	
Powders—Tantalum	261590x
Chemicals used by the medical imaging technology industry, including but not limited to:	
X-ray photographic flat plates and film in the flat, sensitized, unexposed or of any material other than paper, paperboard or textiles.	370110
X-ray photographic film in rolls, sensitized, unexposed or of any material other than paper, paperboard or textiles.	370210
Photographic paper, paperboard and textiles; sensitized unexposed	3703

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Chem preparations for photographic uses (other than varnishes, glues, adhesives and similar preparations.	3707x
Chemicals used by the capacitor and resistor industries, including not limited to:	
Silcone oil	2710x
Other iron oxides and hydroxides	2821100050
Powers—Tantalum	282590x
Ceramic powder	28419050x
Dielectric Conductors-Silver Compounds	2843x
Powders-Tantalum	28499050x
Ammonium adipate	291712x
Color paste (TOSCA required)	320649x
Hardener	3211x
Black marking ink, including printing ink (TOSCA required) and other marking ink	3215x
Softener detergent (TOSCA required)	340290x
Casein glue	35019020
Solder plaste (TOSCA required)	381010x
Flux	381010x
Thinner (TOSCA required)	3814x
BYK chemic A501 Degresor (TOSCA required)	3823x
Chemicals used by the semiconductor and/or printed circuit board industries:	
Arsenic	280480
Phosporous oxychloride	2827x
Hexamethyldislazane/Tetraethylorthosilicate	2931009010x
Hold Plugging and Legend Inks	32159050x
Photomasks (Blank) and photomasks	37019930x
Solder Mask	370295x
Conformal Coatings	370295x
Dry film photoresist	370295x
Photomasks	370590x
Liquid photoresist; developer	370790x
Solder Paste	381010x
Solder Paste Flux	3810x
Other chemical products used in the production of information technology products:	
Motion picture film, exposed and developed, whether or not incorporating sound track or consisting only of sound track of a width of 35 mm or more.	370610
Plastics and rubber articles used by the capacitor and resistor industries, including but not limited to:	
Epoxide resin (TOSCA required)	390730
PCV rolls	39211250x
PCV tubes	391732x
Tape	391910x
Adhesive tape	3919x
Non-Metallized Polypropylene Film	392020x
Non-Metallized Polycarbonate Flim	392061x
Non-Metallized Polyethylene Naphthalate/Terephthalate	392062
Of other polyesters (including metallized Teflon of other polyester)	392069
Non-Metallized Film	392099x
Non-metallized teflon	392099x
Tubing (pet)	3920x
Polyester or polycaronate foil	3921904090x
PVC bottles	3923300090x
Plastic balls (red or yellow)	3923x
Plastic cans	392390x
Packing material	392390x
Plastic production rolls	39269098x
Gaskets, including rubber O-rings/pads	401693x
Vent plugs, rubber rollers	401699x
Plastics and rubber articles used by the semiconductor and/or printed circuit board industries:	
Mold Compounds for Semiconductors Encapsulation/Epoxide Resins	39073x
Polyimide	3908x
Epoxy Coverlay	39199050x
B-Stage or Bonding Plys	392190x
Unreinforced Laminates	39219050x
Semiconductor Shipping Tubes, Packing Foam, and Tape and Reel Strip Packs	392390
Plastic and rubber articles used by information firms:	
Metallized Films	39209920x
Carrying Trays for IC+s	392310x
Paper products used by the capacitor and resistor industries, including but not limited to:	
Condenser paper; unbleached, weighing over 15gm/m2 but not over 30gm/m2	48043110
Other condenser paper; unbleached, weighing under 15gm/m2 but not over 30gm/m2	48043120
Other condenser paper	48043920
Wrapping paper	4804490x

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Condenser paper weighing 150 gm/m2 or less	48056020
Folding cartons, boxes and cases, of noncorrugated paper or paperboard, other	4819200040
Carrier tape-paper/pressure sensitive	482311x
Carrier tape, other (not pressure sensitive)	482319x
Aluminum Foil/Plain Silver <0.01 mm	482390x
Non-metallized paper/other	482390x
Metallized paper	482390x
Glass materials used by the semiconductor and/or printed circuit board industry including but not limited to:	
Rod of Fused Quartz or Other Silica	70022010
Tube of Fused Quartz or Other Silica	70023100
Synthetic Quartz Substrate/Glass substrates used in the production of photomasks	70060040x
LensBlank, Silicon Dioxide	70140010x
Other optical Elements, silcon dioxide	70140020x
Mass Lamination Panels	70169050x
Glassware of Fused Quartz	701710x
Raw Glass Substrates	7020x
Glass materials used by the capacitor and resistor industries, including but not limited to:	
Parts for Cones, glass envelope	701120x
Metals or articles of metals used by the capacitor and resistor industries, including but not limited to:	
Gold Bonding Wire	71081370x
Solver	711590x
Silver wire	71159040x
Sputtering targets	730620x
Pins	73170065x
Other bolt and screws	73181560x
Other articles of iron or steel—other	732690
Copper wire	7408
Copper plates	7409x
Round brass	7419995050x
Aluminum wire (tab)	76061160x
Etched capacitor foil	76071910
Aluminum rivets, inserts, washers, screws	761610x
Other aluminum articles, nspf	7616995090
Lead Wire	7806x
Tin wire	80030x
Powders tantalum	810310x
Tantalum wire	810390x
Steel cutters	8203x
Screw wrenches	8204x
Drill bits	820719x
Centering arm set	82074060x
Knives	8208x
Clamps, brackets	8302496085x
Solder	8311x
Metals or articles of metals used by information technology firms, including but not limited to:	
Wire of iron or non-alloy steel: plated or coated with zinc: round wire: with a diameter <1.0 mm, containing by weight <0.25% of carbon.	7217204510
Copper Clad Laminates ''Unreinforced Laminates''	74102130x
Aluminum Foil rolled but not further worked, of thickness not exceeding 0.01mm	76071130
Aluminum foil, rolled but not further worked, of thickness exceeding 0.01mm	76071160
Unfinished harddisks for ADP mach.	7616x
Zinc Wire	7904x
Tin foil <0.2mm	80050010
Bill acceptors, safety deposit box applications	8303x
Printed Circuit/Wiring Board Manufacturing, Assembly and Testing Equipment including but not limited to:	
Carbide and twist drill bits for PCB/PWB fabrication	8207.50x
Carbide router bits for PCB/PWB fabrication	8207 70x
Apparatus for the regeneration of etchant solutions	8421 29x, 8479 82x, 8479 79x
Parts of apparatus for the regeneration of etchant solutions	8421 99x
Apparatus for cleaning PCB/PWBs during the assembly process	8422.20x, 8424 89x
Apparatus to enclose or hermetically seal PCB/PWB assemblies	8422.40x
Apparatus for application of non-defined coasting via flooding during PCB/PWB processing	8424 89x, 8479 89x
Applicances for coating solder, photosensitive layers or other chemical solutions on substrates or components used for the manufacture of PCB/PWBs (e.g. horizontal/vertical wet processing equipment, hot air solder leveling equipment, wave soldering equipment).	8424 89x
Horizontal Cleaning Machines for PCB's (pumice spray)	8424 89x
Spraying appliances for etching, stripping or cleaning PCB/PWBs	8424 89x
Parts of appliances for coating solder, photosensitive layers or other chemical solutions on substrates or components used for the manufacture of PCB/PWBs.	8424 90x
Parts off spraying appliances for etching, stripping or cleaning PCB/PWBs	8424 90x

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Automated material handling machines for transport, handling and storage of bare PCB/PWBs, PCB/PWB assemblies and their electronic components.	8428 39x
Parts of automated material handling machines of heading 8424 for transport, handling and storage of bare PCB/PWBs, PCB/PWB assemblies and their electronic components.	8431 39x
Printing machinery of a kind used in the manufacture of PCB/PWBs (screen printing equipment)	8443 59x
Apparatus for application of defined/non-defined liquids to PCB/PWBs during processing	8443 59x
Equipment operated by laser or other light or photon beam processes: of a kind used in the manufacture of PCB/PWBs (including laser hole formation equipment).	8456 10x
Batch processing equipment used to generate plasma from gases under vacuum during PCB/PWB processing.	8456 90x
Apparatus for stripping or cleaning PCB/PWBs including plasma equipment	8456 99x
Drilling Machines/Driller Routers/Routers/Solide Carbide Circuit Board Drills for PCB Substrates	845929x
Drill sharpening equipment including high precision apparatus used to re-point carbide drills used in processing of PCB/PWBs.	8460 39x
Cutting or scoring apparatus used during PCB/PWB processing	8461 90x
Drilling equipment for PCB/PWB processing	8465 96x
Tools for scribing or scoring PCB/PWBs or substrates containing PCB/PWBs, including routing and scoring equipment.	8465 99x, 8465.92x, 8465.96x
Temperature or pressure-controlled lamination press used to bond layers into multilayer PCB/PWBs	8465 99x
Parts and accessories for machines of a kind used in the manufacture of PCB/PWBs	8466 93x
Parts and accessories for machines for scribing or scoring PCB/PWBs or substrates containing PCB/PWBs.	8466 93x
Encapsulation equipment for assembly of PCB/PWBs	8477 59x
Registration equipment (to align and/or punch PCB/PWBs during ptographic/mechanical processing	8477 80x, 8465 99x
Vacuum assisted presses for the lamination of individual PCB/PWBs into multilayer PCB/PWBs	8477 80x
Parts for encapsulation equipment for assembly of PCB/PWBs	8477 90x
Parts for vacuum assisted presses for the lamination of individual PCB/PWBs into multilayer PCB/PWBs.	8477 90x
Mixing, kneading, crushing, grinding, screening, sifting, homogenizing, emulsifying or stirring machines:	8479 82x
Apparatus for the regeneration and mixing of etchant solutions	8479 82x, 8479 89x
Metering or mixing equipment used to extend the life of solutions used during the process of PCB/PWBs.	8479 82x
Apparatus for coating dry film photo resist, photosensitive layers, soldering paste or other adhesive materials on substrates or components used for the manufacture of PCB/PWBs, e.g. horizontal/vertical wet processing equipment, dry film laminators, roller coating and curtain equipment, apparatus for provision spot application.	8479 89x, 8424 89x, 8420 10x
Appartatus and equipment for heating by infrared radiation, ultraviolet and thermal energy during PCB/PWB processing; ovens for curing solder or adhesives during PCB/PWB processing.	8479 89x, 8419.39x, 8419.89x
Automated machines for the placement or removal of components or contact elements on PCB/PWBs (automated component placement systems).	8479 89x
Automated machines for the placement or alignment of PCB/PWBs during the processing (registration equipment).	8479 89x
Machines for cleaning the copper surfaces of PCB/PWBs during the manufacturing	8479 89x
Solder ball mounter for PCB/PWB assembly	8479 89x
Anti-static equipment of PCB/PWB processing	8479 89x
Vacuum frames for holding one or more PCB/PWBs during assembly	8479 89x
Routing equipment used for internal and external profiling during PCB/PWB processing	8479 89x
Parts of apparatus for the regeneration and mixing of etchant solutions	8479 90x
Parts of apparatus for coating dry film photo resist, photosensitive layers, soldering paste or other adhesive materials on substrates or components used for the manufacture of PCB/PWBs.	8479 90x
Parts of automated machines for the placement or removal of components or contact elements on PCB/PWBs.	8479 90x
Parts of machines for cleaning the copper surfaces of PCB/PWBs during the manufacturing	8479 90x
Induction or dielectric furnaces and ovens for the manufacture of PCB/PWBs	8514 20x
Apparatus for curing solder or adhesives during PCB/PWB processing	8514 30x
Heating equipment and ovens for the manufacture of PCB/PWBs	8514 30x
Parts of furnaces and ovens for the manufacture of PCB/PWBs	8514 90x
Machines for soldering components on PCB/PWBs (reflow soldering equipment, hot air solder leveling equipment, wave soldering equipment).	8515 19x
Apparatus used to bring molten solder into contact with assembled PCB/PWBs	8515 19x
Wet processing apparatus used to clean, strip and plate the edge connectors during PCB/PWB processing.	8515 19x
Apparatus for appliction, coating or laminating of PCB/PWBs during processing	8518 19x, 8479 89x
Parts of machines for soldering components on PCB/PWBs	8515 90x
Apparatus for wet etching, developing, stripping or cleaning PCB/PWBs and their connectors including cleaning equipment, horizontal/vertical wet processing equipment, finger plating equipment..	8543 30x
Parts of apparatus for wet etching, developing, stripping or cleaning PCB/PWBs and their connectors	8543 90x
Laser photo plotters	9006 10x
Parts of laser photo plotters	9006 10x
Apparatus for the projection or drawing of circuit patterns on sensitized substrates for the manufacture of PCB/PWBs (e.g., exposure equipment, direct imaging equipment).	9010 50x

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Parts and accessories of apparatus for the projection or drawing of circuit patterns on sensitized substrates for the manufacture of PCB/PWBs.	9010 90x
Photo plotter for drawing or photo-tool for use in the production of PCB/PWB assemblies	9010 50x, 9017 10x
Apparatus for the physical inspection of concealed solder joints on PCB/PWBs (e.g., automatic optical inspection equipment).	9022 19x
Apparatus for measuring or checking electrical quantities in PCB/PWB assemblies	9030 39x
Electrical bare board test apparatus used to determine continuity or non-continuity of a finished PCB or PWB (known as ''Flying Probe'' and ''Fixture''.	9030 39x
Instruments and apparatus with a recording device for measuring or checking PCB/PWBs and PCB/PWB assemblies (e.g., electrical bare board test equipment and in-circuit test equipment).	9030 83x
Other instruments and apparatus for measuring or checking PCB/PWBs and PCB/PWB assemblies (e.g., electrical bare board test equipment and in-circuit test equipment).	9030 89x
Parts and accessories of instruments and apparatus for measuring or checking PCB/PWBs and PCB/PWB assemblies.	9030 90x
Optical instruments and appliances for inspecting assembled PCB/PWBs and the surfaces of bare PCB/PWBs (e.g., automatic optical inspection equipment, error verification and repair equipment).	9031 49x
Parts and accessories of optical instruments and appliances for inspecting assembled PCB/PWBs and the surface of bare PCB/PWBs.	9031 90x
Flat Panel Display Manufacturing Equipment including but not limited to:	
Apparatus for chemical vapour deposition on LCD substrates	8419 89x
Parts of apparatus for chemical vapour deposition on LCD substrates	8419 90x
Spinners for coating photographic emulsions on LCD substrates	8421 19x
Parts of spinners for coating photographic emulsions on LCD substrates	8421 91x
Apparatus for dry-etching patterns on LCD substrates	8456 99x
Parts and accessories for apparatus for dry-etching patterns on LCD substrates	8466 93x
Apparatus for physical deposition on LCD substrates	8543 89x
Parts of apparatus for physical deposition on LCD substrates	8543 90x
Capacitor Manufacturing Equipment including but not limited to:	
Metal Can Sealing Machines for capacitor manufacturing	8424.89x
Paper Masking Machines for capacitor manufacturing	8424.89x
Automatic Resin Mixer-Doser for capacitor manufacturing	8424.89x
Capacitor Assembly Machines	8424.89, 8479.89x
Sorting and Pre-Flattening Machines/Capacitor Winding Machines	8424.89x
Registration Systems for capacitor manufacturing	8477.80x
Winders for Capacitor manufacturing	8479.81x
Satellite and Navigational Equipment, including but not limited to:	
Radar apparatus, radio navigational aid apparatus and radio remote control apparatus	8526
Fully computerized Vessel Traffic Systems used for radar surveillance and traffic management of harbors and ships, integrating charts, radar and positioning information.	852610
Car navigation system	852691x
Spacecraft (including satellites) and Sub-Orbital and Spacecraft Launch Vehicles	880260
Parts of Communications Satellites	88039030
Cables and connectors, and parts thereof, used by information technology products, including but not limited to:	
Plugs	85363080
Parts suitable for use solely or principally with the apparatus of headings Nos. 85.35, 85.36 or 85.37	8538
Insulated wire, cables, and other electrical conductors	8544
Coaxial cable and other coaxial electric conductors	854420
Other electric conductors for a voltage not exceeding 80V, fitted with connectors, of a kind used for data transmission.	854441x
Other electrical conductors, for a voltage not exceeding 80V of a kind used for data transmission	854449x
Other electric conductors, for a voltage exceeding 80V but no 1000V, fitted with connectors, of a kind used for data transmission.	854451x
Other electric conductors, for a voltage exceeding 80V but not exceeding 1000V, not fitted with connectors.	854459
Electrical insulators of any material	8546
Other insulating fittings of ceramics	85471080x
Insulating fitting of plastics for electrical machines, appliances or equipment	854720
Other insulating fittings	8547900010
Machinery and equipment for household and office use, and parts thereof, including but not limited to:	
Duplicating machines, including digital	847210
Duplicating machines	847210
ADP supported self-service machines, such as information terminals and ticket dispensers	847290x
ADP supported banking machines other than ATMs (including payment terminals, chipcard, bank card or cash card processing retailer terminals and document processing terminals.	847290x
Parts and accessories (other than covers, carrying cases and the like) of typewriters and word processing machines for heading no. 8469.	847310
Parts and accessories for ADP supported banking machines and self-service machines, other than ATMs, such as information terminals and ticket dispenser, of heading ex 8472 90.	847340x
Parts and accessories for digital duplicating machines of heading ex 847210	847340x

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Parts and accessories (other than covers, carrying cases and the like) of other office machines (e.g., stencil duplicating machines, addressing machines, automatic banknote dispensers, etc.) of heading 8472 (excluding parts and accessories for automatic teller machines covered in ITA).	847340x
Coin/bill changers/acceptors as part of vending machines	847690x
Microphones and Stands therefor	851810
Single loudspeaker mounted in their enclosure	851821
Multiple loudspeakers, mounted in the same enclosure	851822
Other loudspeakers not mounted in enclosure, including speaker Assy/With Wires for PC	851829
Headphones, Earphones, combined Microphone/speaker sets	851830
Audio frequency electric amplifiers	851840
Subwoofer	85184020x
Electric sound amplifier sets	851850
Parts of heading 8518	851890x
Parts of microphones, loudspeakers, headphones, earphones, audio frequency electric amplifiers, and electric sound amplifier sets.	851890x
Coin acceptors as parts of juke boxes	851910x
Other record players without speakers	851921
Other record players with speakers	851929
.	
Turntables (record decks) with automatic record changing mechanisms	851931
Other turntables (record decks without automatic records)	851939
Transcribing machines	851940
Pocket size cassette players	851992
Other sound reproducing apparatus (cassette type)	851993
Other non-cassette sound reproducing apparatus	851999
CD player	8519990045x
Dictating machines using only external power	852010
Digital audio type magnetic tape recorders incorporating sound reproducing apparatus	852032
Other cassette type magnetic tape recorders incorporating sound reproducing apparatus	852033
Other non-cassette tape recorders incorporating sound reproducing apparatus	852039
Other magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device.	852090
Video recorders or reproducers, magnetic tape type	852110
Digital video cassette recorders connectable to personal computers	852110x
Other video recorders or reproducers, excluding magnetic tape-type	852190
DVD player	852190x
Parts and accessories suitable for use solely or principally with apparatus of headings 8519 or 8521	8522
Pick up cartridges for record players	852210
Television surveillance cameras	8522530x
Parts and accessories of turntables, record-players, magnetic tape recorders, video recording or reproducing apparatus, etc.	852290
Parts and accessories of telephone answering machines not covered in the ITA	852290x
Cards incorporating a magnetic stripe	852330
Phonograph records	852410
Discs for laser reading systems for reproducing sound only	852432
Other discs for laser reading systems	85243980
Other magnetic tapes for reproducing sound or image of a width not exceeding 4mm	852451
Other magnetic tapes for reproducing sound or image—of a width exceeding 4mm but not exceeding 6.5mm.	852452
Other magnetic tapes for reproducing sound or image—of a width exceeding 6.5mm	852453
Cards incorporating a magnetic stripe	852460
Other recorded media	85249990
(All) radio transmission apparatus not covered in ITA	852510x
Studio TV cameras	85253060
Cameras for video conferencing	85253090
Cameras for video conferencing	85253090
Television surveillance cameras for professional use in controlling roads, including vehicle speed	852530x
(All) still image video cameras and other video camera recorders not covered in ITA	852540x
Digitial moving image video camera recorder	852540x
Pocket-size radio cassette players	852712
Radio-broadcast receivers capable of operating without an external source of power, including apparatus capable of receiving also radio-telephony or radio-telegraphy, other than pocket-size radio cassette-players.	852713
Radio-broadcast receivers, battery-type, not elsewhere specified or included	852719
Radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radio-telephony or radio-telegraphy.	852721x
Digital audio component connectable to personal computers	852731x
Other receivers without speakers	852739x
Color reception apparatus for the televisions	852812
Data projector for automatic data processing machines with video input terminal	85281230x
Integrated receiving decoder for satellite transmission	852812x

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
TV connectable to internet	852812x
Black and white and other monochrome reception apparatus for televisions	852813
Colour video monitors	852821
Black and white or other monochrome video monitors	852822
Video projectors	852830
Data projector for automatic data processing machines with video input terminal	852830x
Aerials and aerial reflectors of all kinds; parts suitable for use therewith, not covered by ITA	852910x
Aerials and aerial reflectors of kinds used for devices classified under subheading 8526	852910x
Aerial filters and separators	852910x
Tuners	85299029
Flat panel screen assemblies for the apparatus of subheadings 8528.12.62, 8528.12.64, 8528.12.68, 8528.12.72, 8528.21.55, 8528.21.60, 8528.21.65, 8528.21.70, 8528.30.62, 8528.30.64, 8528.30.66 and 8528.30.68.	85299053
Multi-media printers as parts for TV cameras	85299081x
Parts for TV cameras	85299083x
Linear control coils for computer monitors	8529909345x
Other, other parts of apparatus of heading 8525 to 8528	8529909380
Parts suitable for use solely or principally with the apparatus of heading Nos. 8525 to 8528, not covered by ITA.	852990x
Parts suitable for use with apparatus of heading 8526	852990x
Other apparatus	853180
Flat Panel displays (including LCD, Electro luminescence, Plasma and other technologies) for products falling within ITA–II (not already covered by ITA).	853180x
Parts of flat panel displays not already covered by ITA	853190x
Other sound signaling apparatus	8531x
Color cathode ray television picture tubes, including video monitor cathode ray tubes	854011
Black and white or other monochrome cathode ray television picture tubes, including video monitor cathode ray tubes.	854012
Television camera tubes; image converters with intensifiers, other pho-cathode tubes	854020
Data/graphic display tubes, color, with a phosphor dot screen pitch smaller than 0.4 mm	854040
Data/graphic display tubes, black & white or monochrome, with dot pitch less than 0.4mm	854050
Other cathode ray tubes	854060
Magnetrons	854071
Klystrons	854072
Other microwave tubes excluding grid controlled tubes	854079
Receiver or amplifiers valves and tubes	854081
Other valves and tubes, including numerical indicator tubes, fluorescent type	854089
Parts for cathode ray tubes	854091
CRT Front Panel Assembly	85409115
Other CRT Parts	85409150
Deflection yoke coils and deflection yoke core for CRT monitor use	854091x
Other parts of articles of heading 8540	854099
Contact image sensors	854890x
Memory cards in multicombinational form, including flash cards (IC–E—PROM cards); Contact image sensors.	854890x
Hands Free Car Kit for Cell Phones;	858130x
Electronic Keyboards>$100.00	920710x
Coin/bill acceptors as parts of video games	950410x
Coin acceptors as parts of gaming machines	950430x
Bill acceptors as parts of gaming machines	950490x
Typewriter or similar ribbons < 30mm	961210
Motors, power supplies and similar equipment, and parts thereof, used in information technology products, including but not limited to:	
Speed drive controllers	8404x
Stepping motor driver	84128090
Motors of an output not exceeding 37.5w: under 18.65w	850110
Motors of an output not exceeding 37.5w: ov 18.65W or more: AC/DC for ADP	85011060x
DC motors not exceeding 10w	850110x
Electric motors and generators: universal AC/DC motors of an output exceeding 37.5w but not exceeding 74.6w.	85012020
Electric motors and generators: universal AC/DC motors of an output exceeding 37.5w; of an output exceeding 74.6w but not exceeding 735w.	85012040
Direct drive servo motor	85013140x
DC motors not exceeding 750W	850131x
DC motors exceeding 750W but not exceeding 75Kw	850132x
DC motors exceeding 75Kw but not exceeding 375Kw	850133x
DC motors exceeding 375Kw	85013430
Other AC motors, single phase, of an output exceeding 37.5w but not exceeding 74.6w	850140
Other AC motors, multi-phased, of an output not exceeding 750w	850151
AC motors, multi-phased, of an output exceeding 750W but not exceeding 75Kw	850152
AC motors, multi-phased, of an output exceeding 75Kw	850153
Electric rotary converters	850240

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Ballasts for discharge lamps or tubes	850410
Other electrical transformers having a power handling capacity not exceeding i kVa	850431
Transformers having the capacity to handle 40 VA or greater but less than 1 kVA	8504314065
SMD type I.F. Transformer, SMD type current transformer, SMD type signal transformer	850431x
Other electrical transformers having a power handling capacity exceeding 1 kVa but not exceeding 16 kVa.	850432
Other electrical transformers having a power handling capacity exceeding 16 kVa but not exceeding 500 kVa.	850433
Speed drive controllers for electric motors	85044040
Other: rectifiers and rectifying apparatus, including power supplies and parts thereof; inverters, other	85044095
Static converters not exceeding 50w	850440x
System Test Racks	850440x
Static converters providing uninterrupted power supplies	850440x
Other Inductors	850450
Chip type fixed inductor	850450x
Parts of electrical transformers, static converters (for example, rectifiers) and inductors	850490
Permanent Magnets and articles intended to become permanent magnets after magnetization, of metal.	850511
Neodymium metal magnet	850511x
Permanent Magnets and articles intended to become permanent magnets after magnetization, other	850519
Other: electromagnets, including parts	85059080
Primary cells and primary batteries; parts thereof	8506
Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof.	8507
Nickel-cadmium electric accumulators, including separators therefor whether or not rectangular (including square).	850730
Lithium ion battery	850780x
Parts of electric accumulators	850790
Regulators	85118060x
Fuses, for electric circuits of a voltage exceeding 1000 volts	853510
Automatic circuit breakers, for electric circuits of a voltage exceeding 1kV and less than 72.5 kV	853521
Automatic circuit breakers, for electric circuits of a voltage exceeding 72.5 kV	853529
Isolating switches and make-and-break switches, other than knife	85353080
Surge suppressors	853540x
Motor overload protectors	85359040x
Other electrical apparatus exceeding 1,000v	85359080
Fuses for electric circuits of a voltage not exceeding 1000 volts	853610
Automatic circuit breakers, for electric circuits of a voltage not exceeding 1000 volts	853620
Relays for a voltage not exceeding 60 V	853641
Relays for a voltage exceeding 60 V	853649
Motor starters for voltage less than 1000 volts; rotary witches for a voltage less than 1000 volts; push button switches for a voltage less than 100 volts; slide action, knife slide limit and other switches not covered in ITA.	853650x
Centerpin	853690x
Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in elected circuits, for a voltage not exceeding 1000 V, not included in ITA.	8536x
Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, for a voltage not exceeding 1000 V.	853710
Panel boards, distribution boards and fame supervisory panels used in the manufacture of goods falling within the Agreement.	853710x
Cabinets of heading 8536 for voltage not exceeding 1000 V, including apparatus for automatic connection of separate computer units, fuses as well as microprocessor.	853710x
Items in 853710 for a voltage not exceeding 1000V (Line and equipment controller)	853710x
I/O Backplane Board, Motor control centers, remote controllers, <1000V	853710x
Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, for a voltage exceeding 1000 V including medium voltage starters.	853720
Parts of boards, panels, consoles, desks, cabinets and other bases for the goods of heading 8537, not equipped with their apparatus (parts of line and equipment controller).	853810x
Parts of apparatus of heading 8535, 8536, 8537 other than boards, panels, consoles, desks, cabinets and other bases for the goods of heading No. 8537, not equipped with their apparatus including video switching apparatus.	853890
Parts, including printed circuit assemblies, for products falling within ITA–II not already covered by ITA	853890x
Parts used in the manufacture of goods falling into ITA/ITA–II	853890x
Electrical filament or discharge lamps, including sealed beam lamp units and ultra-violet or infrared lamps; arc lamps; part thereof: other filament lamps, excluding ultraviolet or infrared lamps; tungsten halogen; other; of a power less than 500 w.	8539214040x
Other parts, machinery, apparatus and other inputs used in the production of information technology products, including but not limited to:	
Air or vacuum pumps, air or other gas compressors and fans: ventilating or recycling hoods incorporating a fan whether or not fitted with filters; parts thereof; fans: other.	8414

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Vacuum pumps, including cryopumps, dry pumps, turbo pumps, diffusion pumps	841410
Other industrial or laboratory furnaces and ovens, except parts, not including furnaces and ovens for the roasting, milting or other heat treatment of ores, pyrites or of metals or bakery ovens.	841780
Other dryers including those used in production of inkjet marking assemblies	8419390080x
Other machinery; plant or equipment including horizontal wet processing equipment; machinery for the treatment of materials by a process involving a change in temperature; used in product of inkjet marking assemblies.	8419899085x
Other parts of other machinery, plant or laboratory equipment including of Dryers used in production of inkjet marking assemblies.	8419908080x
Parts of filtering or purging machinery and apparatus for liquids of gases	842199
Water treatment systems and apparatus for the production of semiconductors	8421x
Labelling Machines for production of Inkjet Marking Assemblies	8422309020x
Filling Machinery for production of Inkjet Marking Assemblies	8422309040x
Sealing machines used in production of Inkjet Marking Assemblies	8422309060x
(Other) machines for filling, sealing, or labeling, used in production of Inkjet Marking Assemblies	8422309090x
Parts of machines for filling, sealing, or labeling used in production of Inkjet Marking Assemblies	8422909095x
Solder Paste Etching Machine	8422x
Paper Masking Machine	8422x
Scales for continuous weighing on conveyors used in production of Inkjet Marking Assemblies	842320x
Mechanical appliances for dispersing of spraying; used in production of Inkjet Marking Assemblies	8424897090x
Parts of mechanical appliances for dispersing of spraying; used in production of Inkjet Marking Assemblies.	8424908085x
Suction nozzle tip	84249080x
Automatic resin mixer-doser; hot air solder leveling equipment; capacitor assembly machines; sorting pre-flattening machines.	8424x
Other cont.-action elevators and conveyors for goods and materials: used in production of Inkjet Marking Assemblies.	8428398000x
Industrial Robots for lifting, handling, loading, unloading for production of Inkjet Marking Assemblies	8428908015x
Parts of Elevators and Conveyors used in production of Inkjet Marking Assemblies	8431398015x
Parts in Industrial Robots for lifting, handling, loading, unloading for production of Inkjet Marking Assemblies.	8431398085x
PCLM Panlemark/Cover Marker/Auto Backside Ink Mark System for IT Products	844230x
Digital Proofers Digital half-tone color proofing device	844351x
Coating Equipment for Photosensitive Liquids (screen printing)	84435950x
Parts of ink-jet printing machines	84439050x
Laser marking machine for IC's PCBA's, cartridges and other encapsulating packages	84561010x
Machines Tools for the removal of material operated by laser for production of Inkjet Marking Assemblies.	84561080x
Laser Drills	84569910x
Machining centres	845710
Horizontal lathes for removing metal, not numerically controlled	845819
Drill Bits and Other Cutting Tools	845940x
Milling machines, knee type, for removing metal, not numerically controlled	845959
Other milling machines for production of Inkjet Marking Assemblies	8459610080x
Other threading or tapping machines	845970
Flat surface grinding machines, not numerically controlled	846019
Cleaning Machines/Surface Preparation	8460908080x
Edge Finishing Machine	846090x
Sawing or cutting off machines for removing metal	846150
Forging or die-stamping machines (including presses) and hammers for removing metal	846210
Machine tools for working metal; for production of Inkjet Marking Assemblies	8462218085x
Bending, folding, straightening or flattening machines (including presses) for working metal, not numerically controlled.	846229
Hydraulic presses for working metal	846291
Pneumatic presses for production of information technology equipment	8464x
Depanel machines for separating substrates	8464x
Scoring Machines (Sawing), including equipment to separate individual substrates from panel (multipack from).	84659190x
CNC Routing Machine	8465920090x
Bending or Assembling Machines for production of Inkjet Marking Assemblies	8465940090x
CNC Drilling and Routing Machine	8465950090x
Scoring Machines (Cutting), Depanelization Equipment	846599x
Registration Systems (used for punching a PWB or inner layer)	846599x
Parts of Bending or Assembling Machines for production of Inkjet Marking Assemblies	8466925090x
Parts of machine tools for the removal of material operated by laser for production of Inkjet Marking Assemblies.	8466939585x
Laser machine parts	846693x
Parts and accessories suitable for use solely or principally with the machines of headings no. 8462 or 8463.	846694
Parts of machine tools for working metal for production of Inkjet Marking Assemblies	8466948585x
Hot Air Soldering Leveling HASL Equipment/Paste Printer	846880x
Registration Systems (for punching film and for punching prereg)	847780x

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Vacuum Frames	847790x
Industrial robots not elsewhere specified including component placement machines, machines that automatically sockets cartridges, load packages into magazines, automatically load magazine duct into Seal Furnace, unload sealed units and turn components or assemblies over in the trays.	847950
Other machines and mechanical appliances for treating metal, including electric wire coil-winders	847981
Machines and mechanical appl. not spec. or incl. elsewhere for production of Inkjet Marking Assemblies.	8479899797x
All surface mount ''pick and place'' equipment	847989x
Apparatus for placement of components or contact element on semiconductor materials, printed circuit boards or printed wiring boards, ceramic substrates or other substrate materials.	847989x
Machines to dispense thermal grease onto the processor	847989x
Other parts of machines and mechanical appliances	84799097
Parts of Machines and mechanical appl. not spec. or incl. elsewhere for production of Inkjet Marking Assemblies.	847990x
Metal disks for winding machines; heating elements; winding needles, injection needles, clinchers (stamp plate).	847990x
Mould bases	848020
Moulds for metal or metal carbides, injection or compression types	848041
Valves with hydraulic actuators	84818090x
Solenoid valves, taps, cocks and valves, other solenoid valves	84818090x
Valves with pneumatic actuators	84818090x
Other chain sprockets and parts thereof, not forged	8483901050
Rapid Thermal Processors	851410x
Seal Furnace for I/C+s and IC Cartridges	851420x
Other furnaces and ovens	85143080
Other industrial furnaces, Solder Reflow Ovens IR: Temperature Cycle Chamber	851430x
Wave Soldering Equipment	851519x
Fully or partly automatic machines and apparatus for resistance welding of metal	851521
Electric, laser, ultrasonic, etc. brazing or welding machines not elsewhere specified or included; electric machines for hot spraying of metals or sintered metal carbides.	851580
Ultrasonic Welding Machines for production of Inkjet Marking Assemblies	8515808045x
Other soldering, brazing or welding machines for production of Inkjet Marking Assemblies	8515808085x
Parts for electric laser, ultrasonic etc. welding etc. machines, parts for electric machines for hot spraying of metals of sintered metal carbides.	851590
Parts of Ultrasonic Welding Machines for production of Inkjet Marking Assemblies	85159030x
Parts of other solder, brazing or welding machines for production of Inkjet Marking Assemblies	85159040x
Machines and apparatus for electroplating electrolysis or electrophoresis, including CNC and Non-CNC Vertical Processing Machines; Plating line.	854330
Microwave amplifiers	85438980
Computer-based Products Specific to Video and Audio Data Processing, including Optical amplifiers, Anechoic chamber kit, parts and assessories for measuring form Em>C. (counter measure for noise reduction).	854389x
Anechoic chamber kit, parts and accessories for measuring for E.M.C. (counter measure for noise reduction).	854389x
Optical amplifiers	854389x
Oscillators and amplifiers, including repeaters, used in the manufacture of goods falling within this Agreement.	854389x
Parts for electrical machines and apparatus, such as ion implanters for doping semiconductor materials, machines and apparatus for electroplating electrolysis or electrophoresis, proximity cards and tags etc., under heading no. 8543.	854390
Printed circuit assemblies Parts for everything on list that is in 8543	854390x
EMI filter	854390x
Electrical parts of machinery or apparatus not specified or included elsewhere in this chapter	854890
Optical and photographic instruments and apparatus, parts and accessories, including but not limited to:	
Optical fibers, optical fiber bundles and cables	900110x
Lenses for telecommunications equipment	900219x
Optical units for photocopying apparatus	900290x
Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof; other.	90029095
Image link Microimagers (High volume rotary microfimers)	900620x
Advanced Photo System Cameras Hybrid film/digital camera	900652x
Digital Camera (Fixed Focus)	90065940x
Digital Camera (Other than fixed focus)	90065990x
Microprocessor-Controlled Projectors	900810x
Electrostatic photocopying apparatus: operating by reproducing the original image via an intermediate onto the copy (indirect process).	900912
Other photocopying apparatus of the contact type	900922
Thermo-copying apparatus	900930

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Apparatus and equipment for photographic laboratories not specified or included elsewhere in this chapter; negatoscopes; projection screens, parts and accessories thereof, including Advanced Photo System Mini-labs Point-of Sale hybrid film digital imaging system processing eqpt., exposure equipment for photosensitive materials, CNC direct imaging systems, motion imaging workstations, still imaging workstations, graphic arts proofing workstations, digital optical recording systems and media, color proofing workstations, copy print, film transfer machine parts, curing system for solder mask, film digitizers (parts and accessories).	9010
Compound optical microscopes, including those for photomicrography, cinemicrography or micro-projection; parts and accessories thereof.	9011
Electron microscopes	901210x
Electron microscope parts and accessories	901290x
Liquid crystal devices consisting of a liquid crystal layer sandwiched between two sheets or plates of glass or plastic, whether or not fitted with electrical connections, other than Flat Panel Displays provided for in headings 8471 or 8531 and excluding uu*,; and parts.	9013x
Other devices, appliances and instruments, specifically fiber-optic isolators and integrated optical switches (photonic opto-chips).	901380x
Instruments, apparatus and testing equipment including but not limited to:	
Dynamic navigation positioning systems and autopilots for ships and drilling platforms	901410x
Fully computerized Airport Surveillance Tactical Display Systems, integrating charts, radar, information and tactical information.	901420x
Echo sounding instruments and ultra sonic sounding or detecting equipment, including vessel bridge instrumentation systems and computerized echo sounders and under water navigation systems.	901480x
Parts and accessories of items described in 9014.10x–9014.80x	901490x
Instruments and appliances used in medical, surgical, dental or veterinary sciences..; and parts and accessories thereof.	9018
Apparatus based on the use of x-rays or of alpha, beta or gamma radiations; including computed radiography systems, digital radiographic imaging systems, energy dispersive microanalysis, other x-ray machines, medical digital interface (converts digital data between modalities); and parts and accessories.	9022
Simulator systems, specifically ship bridge simulators, marine process simulators and offshore process simulators.	9023x
Other material Testing equipment used in production of Inkjet Marking Assemblies	902480x
Parts of other material testing equipment used in production of Inkjet marking assemblies	902490x
Gas or smoke analysis apparatus	902710
Exposure meters	902740
Microtomes	90279020
Parts and Accessories of Articles of subheading 9027.10, 9027.40 and 9027.90.20	902790x
Instruments and Apparatus for Measuring and Detecting Ionizing Radiation	903010
Cathode Ray Oscilloscopes and Cathode Ray Oscillographs	903020
Multimeters, without a recording device, including digital	903031
Instruments and apparatus for measuring or checking voltage, current resistance or power, without a recording device, excluding multimeters, neosi including Digital Circuit Testers, signal analyzers, spectrum analyzers/Automatic Parametric Tester, other instruments for measuring/checking pressure used in production of Inkjet Marking Assemblies, pull testers.	903039
Other instruments and apparatus, with a recording device, including in Circuit Test Equipment; Electrical BarBoard Testors; Automatic Optical Inspection Equipment; cable testors-metallic.	903083
Other instruments and apparatus without a recording device (including ATM/broadband Test System, ATM Service Module, Telecom/Datacom...etc.).	903089
Parts and Accessories	903090
Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof not currently included in ITA.	9031x
Automatic regulating or controlling instruments and apparatus; parts and accessories	9032
Auto Chief and Data Chief: fully computerized ships engine control, alarm and surveillance systems; parts and accessories thereof.	9032x
Parts for semiconductor production equipment	9033x
Other products	
Virtual reality equipment such as head-mounted display, cyber glove, 3D trackball	Uncertain

[FR Doc. 98–3428 Filed 2–10–98; 8:45 am]
BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko, Acting Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On December 31, 1997, the National Science Foundation published a notice in the **Federal Register** of a permit modification application received. A permit modification was issued on

January 30, 1998 to the following applicant:

Rennie S. Holt, Permit No. 97WM–4a

Joyce A. Jatko,

Acting Permit Officer.

[FR Doc. 98–3436 Filed 2–10–98; 8:45 am]

BILLING CODE 7555–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

[No. 98–1]

Sunshine Act Meeting

Regular Meeting of the Board of Directors

TIME & DATE: 2:00 p.m., Friday, February 20, 1998.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW, Suite 800, Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, 202/376–2441.

AGENDA:

I. Call to Order
II. Approval of Minutes: December 11, 1997 Regular Meeting
III. Audit Committee Report: January 26, 1998 Meeting
  a. Annual Audit Report for FY 1997
  b. Internal Audit Director's Report
IV. Budget Committee Report:
  a. Proposed FY 1998 Budget Revisions
V. Appointment of Board Home-Ownership Oversight Special Committee
VI. Appointment of Deputy Executive Director/Treasurer
VII. Treasurer's Report
VIII. Executive Director's Quarterly Management Report
IX. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 98–3530 Filed 2–6–98; 5:09 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–20644; License No. 37–21428–01; EA 95–025]

Power Inspection, Inc., Wexford, PA; Order Imposing Civil Monetary Penalty

I

Power Inspection, Inc., (PI or Licensee) is the holder of NRC Materials License No. 37–21428–01 issued by the Nuclear Regulatory Commission (NRC or Commission). The license authorizes the Licensee to possess sealed radioactive sources and to utilize those sources to conduct industrial radiography in accordance with the conditions specified therein. The license expired on January 31, 1994.

II

An NRC inspection of the Licensee's activities was conducted on December 2–3, 1993, and a subsequent NRC investigation was conducted from March 9 through December 22, 1994. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated February 18, 1997. The Notice states the nature of the violations, the provisions of NRC requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations.

Two officers of the Licensee responded to the Notice in letters dated May 13, 1997, October 28, 1997, and January 6, 1998. The officers' responses did not deny the violations and proposed no reason for mitigating the civil penalties; rather, each officer maintained that he was not responsible for the violations and each officer proposed that the other officer should be held responsible for the violations and associated civil penalties.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and arguments for liability of the civil penalties contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalties proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $40,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406–1415.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above; and

(b) Whether, on the basis of the violations described in the NRC's Notice, this Order should be sustained.

Dated at Rockville, Maryland this 3rd day of February 1998.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Acting Deputy Executive Director for Regulatory Effectiveness.

Appendix—Evaluation and Conclusions

On February 18, 1997, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $40,000 was issued to Power Inspection, Inc., (PI or Licensee) for violations identified during an NRC inspection conducted on December 2–3, 1993, and a subsequent investigation was conducted from March 9 through December 22, 1994. Two officers of the Licensee responded to the Notice in letters dated May 13, 1997, October 28, 1997, and January 6, 1998. The officers' responses did not deny

the violations and proposed no reason for mitigating the civil penalties; rather, each officer maintained that he was not responsible for the violations and each officer proposed that the other officer should be held responsible for the violations and associated civil penalties.

Summary of the Licensee's Responses Concerning Liability and Responsibility for the Violations

1. PI's Response Dated May 13, 1997 (Submitted by Mr. Chambers, PI's Secretary/Treasurer): Mr. Chambers protested the proposed civil penalties arguing that he is neither the owner nor President of PI, and that his involvement with PI was strictly as an investor. In addition, Mr. Chambers maintained that he did not take part in the day-to-day operations of PI and that Mr. Kumar, President and major stockholder of PI, is fully responsible for the violations. Mr. Chambers subsequently provided the NRC a copy of ''Stock Restriction and Purchase Agreement'' among PI, Mr. Chambers, and Mr. Kumar as evidence that his involvement was strictly as an investor.

2. PI's Responses Dated October 28, 1997, and January 6, 1998 (Submitted by Mr. Kumar, PI's President): Mr. Kumar's responses submitted by Mr. Manifesto, Mr. Kumar's counsel, argued that Mr. Chambers was the secretary/treasurer of PI during the relevant time period and that PI was owned jointly by Mr. Kumar and Mr. Chambers. Mr. Kumar further argued that Mr. Chambers had total control of the bank account of the corporation, and had equal financial control over all financial matters, as evidenced by the fact that no payment in excess of $1,000.00 could be made without Mr. Chambers' signature. In addition, Mr. Kumar maintained that: (1) Mr. Chambers served not only as an officer, but also on the Board of Directors of PI; and (2) after Mr. Kumar severed his relation with PI in August 1994, Mr. Chambers maintained all of the assets of PI, including bank accounts and equipment.

NRC Evaluation of the Licensee's Responses

The Licensee's arguments, as set forth above, do not provide a basis under the NRC's Enforcement Policy for mitigation or remission of the civil penalties. As to the question of responsibility, PI must pay the civil penalty in accordance with this Order. The Licensee's arguments do not relieve Mr. Chambers or Mr. Kumar of their responsibilities for ensuring that PI pays the civil penalty. Both Mr. Chambers and Mr. Kumar were part-owners and corporate officers of PI during the time period when the violations of NRC requirements occurred.

Therefore, after careful consideration of the responses, the NRC has determined that neither Mr. Chambers nor Mr. Kumar provided an adequate basis for the NRC to conclude that they should not be responsible for ensuring payment of the civil penalties by PI concerning its violations of NRC requirements. The NRC's determination is based on the fact that:

- Mr. Chambers served as an officer, and on the Board of Directors, of PI during the relevant time period; Mr. Chambers had control of all personnel matters during the relevant time period; Mr. Chambers had total financial control of PI; and Mr. Chambers maintained all of PI's assets, including bank accounts and equipment after PI became defunct.
- Mr. Kumar was the President of PI during the relevant time period; Mr. Kumar is the last known President of Power Inspection as noted in a July 16, 1996 ''Stock Restriction and Purchase Agreement''; Mr. Kumar is currently listed as the Chief Executive Officer of PI on the Pennsylvania Department of State Corporate/Limited Partnership records; and Mr. Kumar is currently listed as the Chief Executive Officer/President of PI on the Dunn & Bradstreet listing.

NRC Conclusion

The NRC has considered all of the arguments the Licensee made and concluded that the Licensee has not provided an adequate basis for mitigation of the proposed civil penalties. In addition, the NRC has concluded that Mr. Chambers and Mr. Kumar are responsible for ensuring payment of the civil penalties by PI concerning its violations of NRC requirements. Consequently, the civil penalties in the amount of $40,000 should be imposed by order.

[FR Doc. 98–3433 Filed 2–10–98; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Public Meeting.

SUMMARY: The Licensing Support System Advisory Review Panel (LSSARP) will hold its next meeting on February 24 and 25, 1998, in Las Vegas, Nevada. A future notice will specify the exact location for the meeting. The meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94–463, 86 Stat. 770–776).

AGENDA: The meeting will be held from 8:30 a.m. to 4:30 p.m. on Tuesday, February 24, and from 8:30 a.m. to 10:00 a.m., as needed, on Wednesday, February 25, 1998. The purpose of the meeting is to discuss amendments proposed by the Nuclear Regulatory Commission (NRC) to its regulations concerning the design and operation of the Licensing Support System (LSS). The proposed amendments were published in the **Federal Register** on November 13, 1997 (62 FR 60789). The time period for comments on the proposed amendments expires on March 30, 1998.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) established the LSSARP in 1989 to provide advice and recommendations to the NRC and to the Department of Energy (DOE) concerning the design, development and operation of an electronic information management system, known as the Licensing Support System (LSS), for the storage and retrieval of information relevant to the Commission's future licensing proceeding for a geologic repository for the disposal of high-level radioactive waste. Membership on the panel consists of representatives of the State of Nevada, Nye County Nevada, a coalition of local counties of Nevada and California adjoining Nye County, the National Congress of American Indians, the Nevada Nuclear Waste Task Force, the nuclear industry, DOE, NRC and other agencies of the Federal government which have experience with large electronic information management systems.

FOR FURTHER INFORMATION CONTACT: John C. Hoyle, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: telephone 301–415–1969.

Public Participation: Interested persons may make oral presentations to the Panel or file written statements. Requests for oral presentations should be made to the contact person listed above as far in advance as practicable so that appropriate arrangements can be made.

Dated: February 5, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–3430 Filed 2–10–98; 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 January 16, 1998, through January 30, 1998. The last biweekly notice was published on January 28, 1998 (63 FR 4308).

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 and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 13, 1998, 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: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The change increases the surveillance interval to allow verification that a reactivity anomaly does not exist to every 1100 MWD/T (megawatt-days per metric ton) average core exposure (approximately 41 days) instead of once every one effective full power month (approximately 30 days).

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?

This change increases the surveillance interval to allow verification that a reactivity anomaly does not exist every 1100 MWD/T average core exposure (approximately 41 days) instead of once every one effective full power month (approximately 30 days). Reactivity anomalies are not considered to be initiators of any analyzed event. Operating history has shown that the difference between predicted and monitored core reactivity is continually acceptable during the extended Surveillance interval. The consequences of an accident are not affected by relaxing the Frequency of the Surveillance since the consequences of an event with a reactivity anomaly during the current interval (due to not detecting the existence of a reactivity anomaly between Surveillances) are the same as the consequences of an event with a reactivity anomaly during the additional period. Additionally, the most common outcome of the performance of a Surveillance is the successful demonstration that the acceptance criteria are satisfied. This change does not alter assumptions relative to the mitigation of an accident or transient event. Therefore, this change does not involve a significant increase in the probability or consequences of a previously analyzed accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The change introduces no new mode of plant operation and it does not involve physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change is acceptable since the proposed Frequency is adequate for ensuring a reactivity anomaly does not exist. Operating history has shown that the difference between predicted and monitored core reactivity is continually acceptable during the extended Surveillance interval. Also, this change is considered acceptable since the most common outcome of the performance of a Surveillance is the successful demonstration that the acceptance criteria are satisfied. The safety analysis assumptions will still be maintained, thus, no question of safety exists. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The current Technical Specifications (TS) for the Brunswick Steam Electric Plant (BSEP) only address a single inoperable scram accumulator, requiring entry into TS 3.0.3 for direction to shut down a unit if additional scram accumulators become inoperable. The proposed change corrects this situation by revising the declared status of control rods with inoperable scram accumulators and allowing a short out-of-service time for the control rod scram accumulators before requiring a unit shutdown, consistent with the Improved Technical Specifications (ITS) (NUREG–1433, ''Standard Technical Specifications General Electric Plants, BWR/4,'' Revision 1, April 1995). In the event scram accumulators are inoperable concurrent with low charging water header pressure, the ITS require that the reactor mode switch be placed in the ''shutdown'' position, which ensures that all control rods are inserted and the unit is shutdown. The proposed change deviates from the ITS in that it requires a manual scram under these conditions which also ensures that all control rods are inserted and the unit is shutdown. Details associated with this deviation are included in a Carolina Power & Light Company letter dated September 11, 1997 (see response to NRC comment 3.1.5–2), which is available to the public.

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 revises the declared status of control rods with inoperable scram accumulators and allows a short out-of-service time for the control rod scram accumulators before requiring a plant shutdown. Inoperable scram accumulators are not considered initiators for any accidents previously evaluated, and therefore, cannot increase the probability of such accidents. The extended time period to declare a control rod inoperable provides a reasonable time to attempt investigation and restoration of the inoperable control rod scram accumulator. This time period is acceptable since the time period is sufficiently short such that it does not increase the risk significance of an ATWS [anticipated transient without scram] event. Furthermore, this change will add actions which will address the situation where multiple control rod scram accumulators may rapidly become inoperable. In addition, the change that allows modifying the status of a control rod with an inoperable scram accumulator is acceptable since the numbers and distribution of control rods are restricted and Technical Specification actions continue to ensure that the control rods can still perform their safety function when required. As a result, this change will not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve physical modification to the plant. The change in the operation is consistent with current safety analysis assumptions. 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 a margin of safety?

The proposed change is consistent with the assumptions of the current safety analysis. The extended time to evaluate and access two or more inoperable control rod scram accumulators and the allowance to declare any control rod with an inoperable scram accumulator ''slow'' when operating at a reactor pressure [greater than or equal to] 950 psig proposed by this change is acceptable since adequate controls are added to the Technical Specifications which ensure charging water header pressure to the control rod scram accumulators is maintained and action is provided to immediately shutdown the reactor before the scram safety function is significantly impacted in the event cha[r]ging water header pressure cannot be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The proposed changes extend the refueling interval surveillance Frequencies that are currently specified as 18 months for surveillances other than those associated with instrumentation channel calibration to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes involve a change in the surveillance Frequency from 18 months to 24 months. The change in surveillance Frequency is not assumed to be an accident initiator for any accidents previously evaluated in the SAR [Updated Final Safety Analysis Report]. Therefore, this change will have no impact on the probability of an accident previously evaluated. By changing the Surveillance Frequency from 18 months plus grace to a maximum of 30 months, the consequences of an accident previously evaluated in the SAR are not significantly increased. This is based on the fact that the evaluation of the subject changes demonstrated that the overall impact, if any, on the systems[’] availability is minimal. Since the impact on the systems is minimal, it can be concluded that the overall impact on the plant accident analysis is negligible. Furthermore, it is shown that the performance history for the subject systems does not indicate any failures which would invalidate the conclusions reached in this evaluation.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

This proposed change will not involve any physical changes to plant systems, structures, or components. The changes in normal plant operation are consistent with the current safety analysis assumptions. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The margin of safety has not been significantly reduced. Although, there will be an increase in the interval between the subject surveillance tests, the evaluation of the changes demonstrates that there is no evidence of any failures which would impact the subject systems[’] availability. Based on the fact that the increased testing interval has a minimal impact on the subject systems, it can be concluded that the assumptions in the licensing basis are not impacted by the changes in the subject requirements and commitments.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The proposed change involves a change in the instrumentation channel calibration surveillance testing intervals from 18 months to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves a change in the instrumentation channel calibration surveillance testing intervals from 18 months to 24 months. The proposed change does not physically impact the plant nor does it impact any design or functional requirements of the associated systems. That is, the proposed change does not degrade the performance or increase the challenges of any safety systems assumed to function in the accident analysis. The proposed change does not impact the Surveillance Requirements themselves nor the way in which the Surveillances are performed. Additionally, the proposed change does not introduce any new accident initiators since no accidents previously evaluated have as their initiators anything related to the frequency of surveillance testing. The proposed change does not affect the availability of equipment or systems required to mitigate the consequences of an accident because of the availability of redundant systems or equipment and because other test[s] performed more frequently will identify potential equipment problems. Furthermore, a historical review of surveillance test results indicated that all failures identified were unique, non-repetitive, and not related to any time-based failure modes, and indicated no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed change does not increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves a change in the instrumentation channel calibration surveillance testing intervals from 18 months to 24 months. The proposed change does not introduce any failure mechanisms of a different type than those previously evaluated since there are no physical changes being made to the facility. In addition, the Surveillance Requirements themselves and the way Surveillances are performed will remain unchanged. Furthermore, a historical review of surveillance test results indicated no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

Although the proposed change will result in an increase in the interval between surveillance tests, the impact on system availability is small based on other, more frequent testing or redundant systems or equipment, and there is no evidence of any failures that would impact the availability of the systems. Therefore, the assumptions in the licensing basis are not impacted, and the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The proposed change allows a short out-of-service time for various combinations of inoperable emergency core cooling system (ECCS) subsystems instead of an immediate plant shutdown.

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 allows a short out-of-service time for various combinations of inoperable ECCS subsystems instead of an immediate plant shutdown. ECCS equipment is used to mitigate the consequences of an accident, but the inoperability of ECCS equipment is not considered as the initiator of any previously analyzed accident. As such, the inoperability of ECCS subsystems will not increase the probability of any accident previously evaluated. The proposed combinations of inoperable ECCS subsystems are bounded by the analysis summarized in NEDC–31624P which utilizes an NRC [Nuclear Regulatory Commission] approved methodology for determining consequences. This analysis demonstrated that adequate core cooling would still be provided with the proposed change. Therefore, the consequences of an event occurring during the proposed allowed outage time are the same as the consequences of an event occurring during the current period allowed to place the plant in a shutdown condition. As a result, the change does not involve a significant increase in the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not involve physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed combinations of inoperable ECCS subsystems are bounded by the analysis summarized in NEDC–31624P which utilizes an NRC approved methodology. This analysis demonstrated that adequate core cooling would still be provided with the proposed change. In addition, the allowable outage time specified is based on a reliability study (Memorandum from R.L. Baer (NRC) to V. Stello, Jr. (NRC), ''Recommended Interim Revisions to LCOs [limiting conditions

for operation] for ECCS Components,'' December 1, 1975) and has been found to be acceptable through operating experience. Any reduction in the margin of safety is offset by the benefit of reducing the transient risk associated with an immediate plant shutdown. 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: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The proposed change reduces the number of automatic depressurization system (ADS) valves required to be OPERABLE from seven to six.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change reduces the number of ADS valves required to be OPERABLE from seven to six. The number of ADS valves required to be OPERABLE is not assumed in the initiation of any analyzed event. Therefore, the change does not increase the probability of an accident previously evaluated.

The ADS valves function to mitigate the consequences of analyzed events by reducing the reactor vessel pressure to allow low pressure ECCS [emergency core cooling system] components to function as needed in the event of a HPCI [high-pressure coolant injection] System failure. The change is based on the analysis summarized in NEDC–31624P, ''Brunswick Steam Electric Plant Units 1 and 2 SAFER/GESTR–LOCA Loss-of-Coolant Accident Analysis,'' Revision 2, July 1990. This analysis shows that adequate core cooling is provided during a small break LOCA and a simultaneous HPCI System failure (limiting LOCA) with two of the seven ADS valves out-of-service. NEDC–31624P was previously reviewed and accepted by the NRC [Nuclear Regulatory Commission] as documented in a letter from E.G. Tourigny (NRC) to L.W. Eury (CP&L), ''SAFER/GESTR–LOCA Analysis, Brunswick Steam Electric Plant, Units 1 and 2 (TAC Nos. 72854/72855),'' dated 06/01/89 and a letter from E.G. Tourigny (NRC) to L.W. Eury (CP&L), ''Revision of SAFER/GESTR–LOCA Analysis—Brunswick Steam Electric Plant, Units 1 and 2 (TAC Nos. 77585 and 77586),'' dated 01/10/91. The change is considered acceptable since the analyses show that only five ADS valves are required to perform the intended safety function of lowering reactor pressure. As a result, the change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve physical modification to the plant and the proposed change continues to provide assurance that the ADS can perform its intended safety function when required. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

This proposed change does not involve a significant reduction in a margin of safety since sufficient ADS valves are maintained to ensure the safety analysis assumptions are met. The safety analysis shows that, with a HPCI failure, five ADS valves are sufficient to lower reactor pressure to allow low pressure ECCS injection and cooling. Thus, the proposed change does not impact the 10 CFR 50.46 limits. NEDC–31624P was previously reviewed and accepted by the NRC as documented in a letter from E.G. Tourigny (NRC) to L.W. Eury (CP&L), ''SAFER/GESTR–LOCA Analysis, Brunswick Steam Electric Plant, Units 1 and 2 (TAC Nos. 72854/72855),'' dated 06/01/89 and a letter from E.G. Tourigny (NRC) to L.W. Eury (CP&L), ''Revision of SAFER/GESTR–LOCA Analysis—Brunswick Steam Electric Plant, Units 1 and 2 (TAC Nos. 77585 and 77586),'' dated 01/10/91. As a result, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: This change will raise the minimum pressure at which the automatic depressurization system (ADS) is required to be OPERABLE to 150 psig.

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?

This change will raise the minimum pressure at which ADS is required to be OPERABLE to 150 psig. The OPERABILITY of the ADS valves below 150 psig is not assumed in the initiation of any analyzed event. The ADS is assumed in the mitigation of consequences of a LOCA [loss-of-coolant accident] which occurs at high reactor pressure. The ADS is not assumed in the mitigation of low reactor pressure events since its function is to lower the pressure to within the capabilities of the low pressure makeup systems. Low pressure injection systems are analyzed (per NEDC–31624P, ''Brunswick Steam Electric Plant Units

1 and 2 SAFER/GESTR–LOCA Loss-of-Coolant Accident Analysis,'' Revision 2, July 1990) to begin injection into the RPV [reactor pressure vessel] at pressures well above 150 psig. As a result, the proposed change does not impact the ability of the ECCS [emergency core cooling system] to perform [its] intended safety function and 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 change does not involve physical modification to the plant and the proposed change continues to provide assurance that the ADS can perform its safety function when required. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The purpose of the ADS is to lower reactor pressure sufficiently to allow low pressure ECCS to inject and cool the core in the event of a HPCI [high-pressure coolant injection] System failure. Revising the minimum pressure for required ADS valve OPERABILITY is acceptable since the low pressure ECCS can provide core cooling at reactor pressures well above 150 psig and since the HPCI System is not required to be OPERABLE below 150 psig. As a result, 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.

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Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The proposed change relaxes the low pressure emergency core cooling system (ECCS) pump flow acceptance criteria under operational conditions 1 (power operation), 2 (startup), and 3 (hot shutdown).

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 relaxes the low pressure ECCS pump flow acceptance criteria. Low pressure ECCS equipment is used to mitigate the consequences of an accident, but is not considered as the initiator of any previously analyzed accident. As such, the change does not increase the probability of any accident previously evaluated. The proposed low pressure ECCS pump flow acceptance criteria are assumed in the analysis summarized in NEDC–31624P [''Brunswick Steam Electric Plant Units 1 and 2 SAFR/GESTR–LOCA Loss-of-Coolant Accident Analysis,'' Revision 2, July 1990] which utilizes an NRC approved methodology for determining consequences. The resulting peak cladding temperature for all the cases analyzed in NEDC–31624P is below 1600 °F (a significant margin to the 10 CFR 50.46 limit). As a result, the ECCS subsystems assumed to be available during events analyzed will continue to provide adequate core cooling. Therefore, the change does not involve a significant increase in the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not involve physical modification to the plant. In addition, the low pressure ECCS flow rates will not be determined in a new or different way. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed low pressure ECCS pump flow acceptance criteria are assumed in the analysis summarized in NEDC–31624P which utilizes an NRC approved methodology. NEDC–31624P concludes that the ECCS subsystems can still provide adequate core cooling with the proposed pump flow acceptance criteria and in all cases analyzed peak cladding temperature is maintained below 1600 °F. In addition, plant procedures will continue to trend the performance of the low pressure ECCS pumps and ensure that any adverse trends in equipment performance are identified and appropriate actions taken. 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.

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Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The proposed change relaxes the core spray (CS) pump flow acceptance criterion during shutdown conditions.

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 relaxes the CS pump flow acceptance criterion. Low pressure ECCS [emergency core cooling

system] equipment is used to mitigate the consequences of a reactor vessel draindown event during shutdown conditions, but is not considered as the initiator of any previously analyzed accident. As such, the change does not increase the probability of any accident previously evaluated. The proposed low pressure ECCS pump flow acceptance criteria are assumed in the analysis summarized in NEDC–31624P [''Brunswick Steam Electric Plant Units 1 and 2 SAFR/GESTR–LOCA Loss-of-Coolant Accident Analysis,'' Revision 2, July 1990] which utilizes an NRC approved methodology for determining consequences. The resulting peak cladding temperature for all the cases analyzed in NEDC–31624P is below 1600 °F (a significant margin to the 10 CFR 50.46 limit). This analysis assumes the reactor was operating at high power. This analysis did not invalidate the long term cooling analysis described in NEDO–20566A [''General Electric Company Analytical Model for Loss of Coolant Analysis in accordance with 10 CFR 50 Appendix K'']. Therefore, since the CS pump flow proposed by this change is adequate for high power conditions, it is reasonable to assume the CS pump flow is adequate to restore and maintain adequate vessel level during an inadvertent vessel draindown event while shutdown. The required low pressure ECCS subsystems during events analyzed in shutdown conditions will continue to provide adequate redundancy and coolant makeup capability. Therefore, the change does not involve a significant increase in the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not involve physical modification to the plant. In addition, the CS pump flow rate will not be determined in a new or different way. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed CS pump flow acceptance criterion is assumed in the analysis summarized in NEDC–31624P which utilizes an NRC approved methodology. NEDC–31624P concludes that the ECCS subsystems can still provide adequate core cooling with the proposed CS pump flow acceptance criterion and in all cases analyzed peak cladding temperature is maintained below 1600 °F. Since the analysis assumed high power conditions, it is reasonable to assume that, with the proposed change, adequate coolant makeup capability is maintained during shutdown conditions. In addition, plant procedures will continue to trend the performance of the low pressure ECCS pumps and ensure that any adverse trends in equipment performance are identified and appropriate actions taken. 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.

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Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: This proposed change eliminates current Technical Specification (CTS) 3/4.6.1.5, Primary Containment Internal Pressure.

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?

This proposed change eliminates CTS 3/4.6.1.5, Primary Containment Internal Pressure. This change does not result in any hardware or operating procedure changes. The primary containment pressure is not assumed to be an initiator of any analyzed event. It is an initial condition in the containment analysis (e.g., following a DBA LOCA [design-basis accident loss-of-coolant accident]). CTS 3/4.6.1.5 was necessary to maintain this assumption which helps ensure that the primary containment design pressure is not exceeded following an accident. However, the power uprate analysis modified this initial drywell pressure value such that the assumed value is greater than the RPS [reactor protection system] high drywell trip. The results of the power uprate analysis show that this modified initial drywell pressure is acceptable for ensuring primary containment pressure design limits are not exceeded. This modified initial pressure was utilized in determining a new P_a [calculated peak containment internal pressure related to the design basis accident], and has been submitted to the NRC to support the BNP [Brunswick Nuclear Plant] power uprate amendment.

The initial drywell pressure assumption is being ensured by the RPS high drywell pressure scram, which will trip the unit prior to exceeding the assumed drywell pressure value, effectively placing the unit in MODE 3. While the RPS trip is not required in MODE 3, the Emergency Operating Procedures (EOPs) will govern actions if the drywell pressure exceeds the assumed drywell pressure value. The EOPs will require entry into the Reactor Vessel Control and Primary Containment Control actions. These actions require steps to reduce primary containment pressure to below the value assumed in the accident analyses and to cool down the reactor at normal cooldown rates to MODE 4 if pressure cannot be reduced below the reactor trip setpoint. The negative pressure limit is controlled and met by the design and proper operation of the reactor building-to-suppression chamber and the suppression chamber-to-drywell vacuum breakers. These vacuum breakers, which are required to be OPERABLE in MODES 1, 2, and 3, are designed to ensure the negative pressure design limit of the primary containment is not exceeded. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not require physical modification to the plant. 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 a margin of safety?

No significant reduction in a margin of safety is involved. The upper pressure limit is maintained by the design and proper operation of the RPS high drywell pressure trip, a Technical Specification required instrumentation function, and the EOPs. The negative pressure limit is being maintained by the design and proper operation of the reactor building-to-suppression chamber and suppression chamber-to-drywell vacuum breakers, also Technical Specification required components. Therefore, adequate controls exist with respect to the primary containment pressure limits to ensure the primary containment pressure will not be exceeded in the event of a design basis event.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The proposed change relocates requirements and surveillances for the Containment Air Dilution (CAD) system from the Technical Specifications to a licensee controlled document. Licensee analysis has demonstrated that the CAD system is not needed to maintain the primary containment atmosphere below flammability limits.

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 relocates requirements and surveillances for structures, systems, components or variables that do not meet the criteria for inclusion in Technical Specifications as identified in the Application of Selection Criteria to the BNP [Brunswick Nuclear Plant] Technical Specifications. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components or variables will be relocated from the Technical Specifications to an appropriate administratively controlled document which will be maintained pursuant to 10 CFR 50.59. In addition, the affected structures, systems, components or variables are addressed in existing surveillance procedures which are also controlled by 10 CFR 50.59 and subject to the change control provisions imposed by plant administrative procedures, which endorse applicable regulations and standards. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements and adequate control of existing requirements will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. In addition, the relocated requirements and surveillances for the affected structure, system, component or variable remain the same as the existing Technical Specifications. Since any future changes to these requirements or the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59, no reduction in a margin of safety will be permitted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The proposed change applies to the Brunswick Steam Electric Plant (BSEP), Units 1 and 2, and provides longer out-of-service times for various combinations of inoperable service water (SW) pumps and deletes various limitations of which pumps can be inoperable.

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 provides longer out-of-service times for various combinations of inoperable SW pumps and deletes various limitations of which pumps can be inoperable (*e.g.*, a remaining unit specific NSW [nuclear service water] pump must be electrically separated from the remaining CSW [conventional service water] pump). The SW System supports safety related systems used to mitigate the consequences of an accident, but the inoperability of the SW System is not considered as the initiator of any previously analyzed accident. As such, the inoperability of SW pumps will not increase the probability of any accident previously evaluated. The proposed

combinations of inoperable SW pumps are bounded by the analyses summarized in CP&L calculations PCN GOO50A–10 [''BSEP Unit No. 1 Service Water System Hydraulic Analysis,'' Revision 6, dated July 29, 1993] and PCN GOO50A–12 [''BSEP Unit No. 2 Service Water System Hydraulic Analysis,'' Revision 5, dated August 11, 1992] which have been previously evaluated by the NRC. These analyses demonstrate that adequate SW cooling capability would still be provided with the proposed changes. Therefore, the consequences of an event occurring during the proposed allowed outage times are the same as the consequences of an event occurring during the current allowed outage time period or the current period allowed to place the plant in a shutdown condition. As a result, the change does not involve a significant increase in the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve physical modification to the plant or changes in parameters governing normal plant operation. The proposed change continues to provide assurance that the SW System is capable of performing its required support function. 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 a margin of safety?

The proposed combinations of inoperable SW pumps are bounded by the analyses summarized in CP&L calculations PCN GOO50A–10 and PCN GOO50A–12 which have been previously evaluated by the NRC. These analyses demonstrate that adequate SW cooling capability would still be provided with the proposed change. In addition, the proposed allowable outage times and the capability of the SW System to support additional single failures are consistent with the allowable outage times and capability of other safety related systems with similar levels of degradation. Any reduction in the margin of safety is offset by the benefit of reducing the transient risk associated with an unnecessary plant shutdown. 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.

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Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The proposed change allows the extension of the Allowed Outage Time (AOT) from 24 hours to 7 days of a shutdown unit's 4.16 kilovolt (kV) balance of plant (BOP) bus which is needed to support loads required by the operating unit.

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?

Extending AOT of a shutdown unit's BOP bus from 24 hours to 7 days will not increase the probability of occurrence of an accident on the operating unit. The probability of a previously evaluated accident would not be increased by the longer AOT since de-energization of a single BOP bus is not considered in the initiation of any previously analyzed event. The BOP buses support the distribution of offsite power to the Class 1E AC Electrical Power Distribution System, which supports equipment necessary for the mitigation of accidents. Extending the AOT of a shutdown unit's BOP bus will not significantly increase the consequences of an accident on the operating unit. The consequences of an accident occurring during the proposed 7 day AOT would be the same as the consequences associated with the existing 24 hour AOT. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not involve a physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The margin of safety is defined by the scenario where a LOCA [loss-of-coolant accident] occurs on the operating unit concurrent with loss of offsite power and the worst case single failure (e.g., loss of a DG [diesel generator] and associated supported loads). The intentional de-energization of one of the AC Electrical Power Distribution System load groups primarily associated with the shutdown unit, as a result of de-energization of a BOP bus associated with the shutdown unit, will leave three AC Electrical Power Distribution System load groups OPERABLE each with their associated emergency diesel generator and two sources of offsite power OPERABLE. Two of these AC Electrical Power Distribution System load groups will be associated with the operating unit and one with the shutdown unit. Loss of an AC Electrical Power Distribution System load group primarily associated with the shutdown unit is not as limiting to the operating unit as the loss of one of its emergency power system load groups; there are fewer operating unit loads required for mitigation of accident and transients affected by the removal of an AC Electrical Power Distribution System load group primarily associated with the shutdown unit. The intentional de-energization of an AC Electrical Power Distribution System load group primarily associated with the shutdown unit, as a result of de-energization of a BOP bus, is enveloped by the LOCA scenario described above.

There are a number of operating unit loads required for mitigation of accidents and transients which will become inoperable when an AC Electrical Power Distribution System load group primarily associated with the shutdown unit is removed from service as a result of de-energization of the associated BOP bus. A review of the loads supported by each of the load groups indicates that operating unit loads required for mitigation of accidents and transients can either be

supplied from an alternate source or the Technical Specifications would allow an AOT of 7 days or greater for the affected loads. Changing the AOT from 24 hours to 7 days for an inoperable BOP bus associated with the shutdown unit would not exceed the AOT for these individual loads. In addition, operating unit primary containment isolation valves supplied from the shutdown unit's out of service load group (RHR [residual heat removal] Outboard Injection, RHR Inboard Injection, and RHR Torus Spray) would be closed, in accordance with the Technical Specification requirements of the operating unit, to ensure they perform their safety function if needed. The proposed AOT for an inoperable BOP bus associated with [the] shutdown unit provides the benefit of improved reliability and availability of the AC Electrical Power Distribution System and the associated offsite power circuits (via upstream BOP buses) since the longer AOT will allow maintenance of the buses of these load groups to be performed on a more optimum schedule. As a result, the proposed change does not involve a significant decrease 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.

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NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The proposed change allows extension of the Allowed Outage Time (AOT) from 8 hours to 7 days of one of the shutdown unit's emergency load groups which is needed to support loads required by the operating unit.

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?

Extending the Allowed Outage Time (AOT) of an AC Electrical Power Distribution System load group primarily associated with a shutdown unit from 8 hours to 7 days will not increase the probability of occurrence of an accident on the operating unit. The probability of a previously evaluated accident would not be increased by the longer AOT since de-energization of a single load group is not considered in the initiation of any previously analyzed event. The Class 1E AC Electrical Power Distribution System supports equipment necessary for the mitigation of accidents. Extending the AOT of an AC Electrical Power Distribution System load group primarily associated with a shutdown unit will not significantly increase the consequences of an accident on the operating unit. The consequences of an accident occurring during the proposed 7 day AOT would be the same as the consequences associated with the existing 8 hour AOT. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not involve a physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The margin of safety is defined by the scenario where a LOCA [loss-of-coolant] occurs on the operating unit concurrent with loss of offsite power and the worst case single failure (e.g., loss of a DG [diesel generator] and associated supported loads). The intentional de-energization of one of the AC Electrical Power Distribution System load groups primarily associated with the shutdown unit will leave three AC Electrical Power Distribution System load groups OPERABLE each with their associated emergency diesel generator and two sources of offsite power OPERABLE. Two of these AC Electrical Power Distribution System load groups will be associated with the operating unit and one with the shutdown unit. Loss of an AC Electrical Power Distribution System load group primarily associated with the shutdown unit is not as limiting to the operating unit as the loss of one of its emergency power system load groups; there are fewer operating unit loads required for mitigation of accident and transients affected by the removal of an AC Electrical Power Distribution System load group primarily associated with the shutdown unit. The intentional de-energization of an AC Electrical Power Distribution System load group primarily associated with the shutdown unit is enveloped by the LOCA scenario described above.

There are a number of operating unit loads required for mitigation of accidents and transients which will become inoperable when an AC Electrical Power Distribution System load group primarily associated with the shutdown unit is removed from service. A review of the loads supported by each of the load groups indicates that operating unit loads required for mitigation of accidents and transients can either be supplied from an alternate source or the Technical Specifications would allow an AOT of 7 days or greater for the affected loads. Changing the AOT from 8 hours to 7 days for an inoperable AC Electrical Power Distribution System load group primarily associated with a shutdown unit would not exceed the AOT for these individual loads. In addition, operating unit primary containment isolation valves supplied from the shutdown unit's out of service load group (RHR [residual heat removal] Outboard Injection, RHR Inboard Injection, and RHR Torus Spray) would be closed, in accordance with the Technical Specification requirements of the operating unit, to ensure they perform their safety function if needed. The proposed AOT for an inoperable AC Electrical Power Distribution System load group provides the benefit of improved reliability and availability of the AC Electrical Power Distribution System since the longer AOT will allow maintenance of the buses of these load groups to be performed on a more optimum schedule. As a result, the proposed change does not involve a significant decrease 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: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The proposed change allows reactor coolant system (RCS) hydrostatic pressure and leakage testing to be performed with average reactor coolant temperature in excess of 212°F and not consider the plant to be in MODE 3 (hot shutdown) provided certain conditions are met.

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 allows RCS hydrostatic pressure and leakage testing to be performed with average reactor coolant temperature in excess of 212°F and not consider the plant to be in MODE 3 provided certain conditions are met. The probability of a leak or a pipe break in the reactor coolant pressure boundary during inservice leak and hydrostatic testing is not increased by allowing reactor coolant temperature to exceed 212°F because the Reactor Coolant System is designed for temperatures exceeding 500°F with similar pressures. In addition, because an inspection is being performed on the Reactor Coolant System piping while it is being pressurized, the probability of a crack going unnoticed and resulting in a pipe break is reduced. Reactor vessel integrity will not be compromised by performing hydrostatic pressure and leakage testing at temperatures in excess of 212°F. Performing hydrostatic pressure and leakage testing above 212°F would allow steam, rather than water to emit from a leak or pipe break. The hydrostatic or inservice leak test is performed with a water solid reactor pressure vessel. An engineering analysis was performed to determine the reactor building pressure and temperature effects if a pipe break occurred during the hydrostatic pressure and inservice leak testing at a reactor coolant temperature of 275°F. A recirculation line break was used in the analysis since it was considered the most conservative pipe break with primary containment breached during the test. This analysis has concluded that the recirculation line break during the performance of the test could result in a rise in reactor building pressure sufficient to cause the opening of the reactor building blowout panel and result in a breach of secondary containment. Furthermore, this analysis has shown without credit for HVAC [heating, ventilation, and air conditioning] operation, there would also be a short term increase in the reactor building ambient temperature. However, when compared to the UFSAR [Updated Final Safety Analysis Report] LOCA [loss-of-coolant accident] analysis and the UFSAR main steam line break analysis, it can be concluded that the consequences relative to offsite doses, reactor building pressures and temperatures are bounded by previously analyzed accidents. This change will require that secondary containment be OPERABLE and capable of handling airborne radioactivity from steam leaks that could occur during the performance of hydrostatic pressure or inservice leak testing. Requiring secondary containment to be OPERABLE will conservatively ensure that, in the absence of a pipe break, potential airborne radiation from steam leaks will be filtered through the Standby Gas Treatment System, thereby minimizing radiation releases to the environment. Leaks to secondary containment would typically be detected by leakage inspections before significant inventory loss occurred. This is an integral part of the hydrostatic pressure and inservice leak testing program. In addition, there is no mechanism to impart additional fission products into the reactor coolant. Since the hydrostatic pressure test is performed after refueling, few noncondensible gases remain in the reactor coolant. In the proposed condition, the stored energy in the reactor core will be the same as that at 212°F. This stored energy is sufficiently low such that even with the loss of inventory following a recirculation line break, the core coverage could be maintained and the fuel would not exceed its peak clad temperature limit. Therefore, no significant release of fission products would occur. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical changes to plant structures, systems, or components (no new or different type of equipment will be installed and no equipment will be removed). The change will not alter assumptions made in the safety analyses. Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change allows RCS hydrostatic pressure and leakage testing to be performed with average reactor coolant temperature in excess of 212° F and not consider the plant to be in MODE 3 provided certain conditions are met. Secondary containment will be required to be maintained during the test and all required systems with the reactor in MODE 4 [cold shutdown] will be OPERABLE in accordance with the Technical Specifications. Since the hydrostatic or leak tests are performed water solid, at low decay heat values, and near MODE 4 conditions, the stored energy in the reactor core will be very low. Under these conditions, the potential for failed fuel and a subsequent increase in coolant activity is minimized. The reactor pressure vessel would rapidly depressurize in the event of a large primary system leak and the low pressure injection systems normally OPERABLE in MODE 4 would be adequate to keep the core flooded. This would ensure that the fuel would not be uncovered and would not exceed the 2200° F peak clad temperature limit. Moreover, requiring secondary containment, including isolation capability, to be OPERABLE will assure that potential airborne radiation from small leaks can be filtered through the Standby Gas Treatment System. This will ensure that doses remain within the limits of 10 CFR 100 guidelines. The potential doses from any leak or pipe break during the test are bounded by design basis accident doses presented in the UFSAR. Small system leaks would be detected by inspections before significant inventory loss has occurred. In addition, the change provides the benefit of avoiding depressurization and repressurization of the reactor pressure vessel during system hydrostatic or

leakage pressure tests because of the lack of sufficient margin to the MODE 4/MODE 3 reactor coolant temperature transition limit. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The proposed change adds explicit exceptions to 10 CFR 50 Appendix J in the primary containment leakage testing program which were previously approved by the Nuclear Regulatory Commission for the Brunswick Steam Electric Plant Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves reformatting, renumbering, and rewording the existing Technical Specifications. The reformatting, renumbering, and rewording process involves no technical changes to the existing Technical Specifications. As such, this change is administrative in nature and does not impact initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or eliminate any old requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no impact on any safety analyses assumptions. This change is administrative in nature. 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: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: The proposed change would change the requirement of the Rod Block Monitor (RBM) to be Operable when Thermal Power is greater than or equal to 29% of Rated Thermal Power and less than 90% of the Rated Thermal Power with the minimum critical power ratio (MCPR) less than 1.70.

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 provides more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed change does impose different requirements. However, these changes are consistent with the assumptions in the safety analyses and licensing basis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The imposition of more restrictive requirements either has no impact on or increases the margin of plant safety. As provided in the discussion of the change, each change in this category is by definition, providing additional restrictions to enhance plant safety. The change maintains requirements within the safety analyses and licensing basis. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

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 amendment request: November 1, 1996.

Description of amendment request: A Rod Worth Minimizer (RWM) CHANNEL FUNCTIONAL TEST is currently required to be performed during both a shutdown and a startup. The amendment request would modify the test frequency to require that the CHANNEL FUNCTIONAL TEST only be performed once provided the last test performance occurred within a 92-day period.

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?

CTS [Current Technical Specification] 4.1.4.1.1 requires a CHANNEL FUNCTIONAL TEST to be performed prior to withdrawal of control rods for the purpose of making the reactor critical and when the RWM is initiated during a plant shutdown. ITS [Improved TS] Surveillance Requirements are similar to CTS 4.1.4.1.1 except a test Frequency is specified (92 days). The proposed change effectively extends a[n] RWM Surveillance Frequency, i.e., the CHANNEL FUNCTIONAL TEST is not required to be performed if a startup or shutdown occurs within 92 days of a previous startup or shutdown. The RWM and associated Surveillance Requirements are not assumed as initiators of any previously analyzed accidents. In addition, operating history has shown that the RWM would be continually reliable during the extended Surveillance interval. The consequences of an accident are not affected by relaxing the Frequency of the Surveillance since the consequences of a design basis accident with the RWM inoperable during a reactor startup or shutdown (due to an undetected failure) are the same as the consequences of a design basis accident with the RWM inoperable for the proposed 92 day period. Additionally, the most common outcome of the performance of a Surveillance is the successful demonstration that the acceptance criteria are satisfied. This change does not alter assumptions relative to the mitigation of an accident or transient event. Therefore, this change does not significantly increase the probability or consequences of a previously analyzed accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The change introduces no new mode of plant operation and it does not involve physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change to the Frequency is acceptable since the ITS Surveillance Frequency is adequate for ensuring the RWM is maintained OPERABLE.

Operating history has shown that the RWM would be continually reliable during the extended Surveillance interval. The most common outcome of the performance of a Surveillance is the successful demonstration that the acceptance criteria are satisfied. Also, the proposed change provides a benefit of eliminating unnecessary testing prior to startup and during a shutdown which reduces wear on the instruments, thereby increasing overall reliability. As such, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: December 16, 1997.

Description of amendment request: The amendment request proposes to revise the Technical Specifications for the Shearon Harris Nuclear Plant. Specifically, the amendment request proposes revisions to TS 4.7.1.2.1.a.2.a, Auxiliary Feedwater System Surveillance Requirements, to change the differential pressure and flow requirements of the steam turbine-driven Auxiliary Feedwater (AFW) pump to allow testing of the pump at a lower speed than is currently 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 amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the recirculation flow test parameters at which the turbine-driven AFW pump is tested will demonstrate pump operability while allowing the surveillance to be performed at a speed that is less detrimental to the pump. Appropriate testing will continue to ensure that the Auxiliary Feedwater System (AFS) is capable of performing its intended function. The proposed amendment will not introduce any new equipment or require existing equipment to function different from that previously evaluated in the Final Safety Analysis Report (FSAR) or TS. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the recirculation flow test parameters at which the turbine-driven AFW pump is tested will demonstrate pump operability while allowing the surveillance to be performed at a speed that is less detrimental to the pump. Appropriate testing will continue to ensure that the AFS is capable of performing its intended function. The proposed amendment will not introduce any new equipment or require existing equipment to function different from that previously evaluated in the Final Safety Analysis Report (FSAR) or TS.

The proposed amendment will not create any new accident scenarios, because the change does not introduce any new single failures, adverse equipment or material interactions, or release paths. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

Changing the recirculation flow test parameters at which the turbine-driven AFW pump is tested will demonstrate pump operability while allowing the surveillance to be performed at a speed that is less detrimental to the pump. Appropriate testing will continue to ensure that the AFS is capable of performing its intended function. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: December 12, 1997.

Description of amendment request: The proposed amendments would modify the bypass logic for Main Steam Line Isolation Valve Isolation Actuation Instrumentation on Condenser Low Vacuum as stated in Technical Specification (TS) Tables 3.3.2–1 and 4.3.2.1–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The reactor vessel steam dome pressure switches, which are proposed to be removed from the Main Steam Isolation Valve (MSIV) closure scram bypass logic and the Condenser Vacuum—Low MSLIV [main steam line isolation valve] isolation bypass logic cause the above trip functions to become active when the reactor mode switch is not in the RUN position and the reactor pressure is greater than 1043 psig. The setpoints of the reactor vessel steam dome pressure switches are the same as the reactor vessel steam dome pressure—high scram function. Also, any pressure transients as a result of MSIV closure when not in Operational Condition 1, Run mode, are minor due to low steam flow compared to the same event at rated power. Therefore, the reactor pressure switches being removed from the bypass logic of the MSIV closure scram has little or no affect on reactor startup, operation, shutdown, or analyzed accidents.

The condenser vacuum—low isolation function bypass is interlocked by the same pressure switches that bypass the MSIV closure scram when the reactor mode switch is not in the RUN position. In addition to reactor pressure not high, the bypass of the condenser vacuum—low is bypassed only if the reactor mode switch is not in the RUN position, all Turbine Stop Valves (TSVs) are not full open, and the keylock bypass switches are in BYPASS (one for each channel).

With the reactor pressure interlock removed, the remaining interlocks assure that the condenser will not be overpressurized in Operational Conditions 2 and 3. The Reactor mode switch interlock limits reactor thermal power to less than about 12 percent in Operational Condition 2 (Control Rod withdrawal block on APRM [average power range monitor] High setpoint in Operational Conditions 2 and 5) and to much less than 1 percent power when all control rods are fully inserted in Operational Condition 3 after initial thermal power decay due to decay heat following reactor shutdown. The Turbine bypass valves can not be opened with condenser vacuum low (approximately the same as the isolation setpoint, but different instrumentation). The TSVs remain closed with condenser vacuum low due to a turbine trip on low condenser vacuum. Therefore, the remaining bypass interlocks assure that the isolation of the main steam lines will occur when needed to prevent overpressurization of the main condenser when vacuum is low or gone.

The change to the position information in the TS Table notes for the TSV bypass interlock corrects misinformation in the TS. The design has always used contacts from the auxiliary relays associated with the ''not-full-open'' limit switches for the MSIV closure scram. Therefore, the setpoints are the same as the MSIV closure scram in TS 2.2.1. The setpoint in the notes * are made approximate to avoid conflict with the RPS [reactor protection system] setpoints, which are controlling. Also, [sic] surveillances for the RPS function for TSV closure scram will continue to be performed per TS 4.3.1 at the frequencies specified in TS Table 4.3.1.1–1.

The setpoint for the TSV interlock is not a critical parameter for the isolation bypass interlock, since the normal position of the TSVs with low condenser vacuum is fully closed. Therefore, the use of an approximate value is sufficient, since the actual setpoints and surveillances are controlled by other specifications.

The reactor pressure switches being removed from the above bypass circuits are not used for the mitigation of any analyzed accidents or transients and may actually [decrease] the probability of a scram or isolation in Startup mode due to the potential for misoperation. Also, the correction to the TSV position in the bypass notes is more consistent with the actual setpoints, which are controlled by the Limiting Safety System Settings for RPS trip function due to TSV closure.

The rewording of Note * in TS Table 4.3.2.1–1 to be more like Note * in TS Table 3.3.2–1 helps avoid confusion due to wording differences and is an administrative type change.

Therefore, there is no 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 because:

The removal of the reactor pressure switches from the bypass logic for the MSIV closure scram function and the condenser vacuum—low MSLIV isolation function with a setpoint equal to the reactor pressure scram setpoint is not a significant change and does not alter the reactor modes in which the trips are or can be bypassed. When not in RUN mode, energy levels are low compared to events that could occur at rated power levels. These pressure switches only slightly change the bypass logic and do not affect the scram and isolation circuitry such that a new or different kind of accident would occur.

The correction of the TSV position interlock for the bypass function for the condenser vacuum—low MSLIV isolation is not a physical change to the

plant, so no failure modes are affected or created.

The rewording of Note * in TS Table 4.3.2.1–1 to be more like Note * in TS Table 3.3.2–1 helps avoid confusion due to wording differences and is an administrative type change.

Therefore, the possibility of a new or different kind of accident is not created.

(3) Involve a significant reduction in the margin of safety because:

The removal of the rector pressure switches from the bypass logic of the MSIV closure scram function and the bypass logic from the condenser vacuum—low MSLIV isolation function does not reduce the margin of safety, because the setpoints were not established from analyses that have been performed. The setpoints were set at the value of the reactor scram on high reactor pressure as a convenient setpoint out of the way of normal plant operation, rather than initially removing the bypass interlock.

Also, the high reactor pressure scram is required to be operable in Operational Conditions 1, 2, and 3, and has no installed means of bypass, so the removal of the MSIV closure scram in Operational Conditions other than mode 1, Run mode becoming active due to high reactor pressure does not reduce the margin for reactor pressurization events.

The remaining bypass interlocks, associated with TSV position for the bypass of the condenser vacuum—low MSLIV isolation, assure that the main condenser will be protected from overpressurization events with low condenser vacuum. The TSVs are closed due to a main turbine trip with low condenser vacuum, so if the TSVs were to fail open, the MSLIV will occur in Operational Conditions 2 and 3 when required. The removal the reactor pressure bypass interlock and the correction to the TSV position will not be a significant reduction in the margin of safety.

The rewording of Note * in TS Table 4.3.2.1–1 to be more like Note * in TS Table 3.3.2–1 helps avoid confusion due to wording differences and is an administrative type change.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 11, 1997.

Description of amendment request: The licensee proposed to revise Table 3.3–4 of the units' Technical Specifications, changing the Nuclear Service Water System Suction Transfer (from Lake Wylie to the Standby Nuclear Service Water Pond (SNSWP)) to a higher level of Lake Wylie. The Nuclear Service Water System is the ultimate heat sink for various heat loads during normal operation and design basis accidents. The system also provides makeup water to various systems. Lake Wylie provides the normal water supply whereas the SNSWP provides an assured water source should Lake Wylie water becomes unavailable. The transfer of suction is currently required to occur automatically when Lake Wylie's levels drops to an elevation of 552.9 feet. The proposed revision would change this requirement to a more conservative level about 2.5 feet higher than the current level. This change would correct previously identified nonconservative aspects of the net positive suction head (NPSH) calculation for the Nuclear Service Water System pumps.

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 analysis is presented below.

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The revised suction transfer point would increase reliability of the Nuclear Service Water System by increasing the NPSH available to the system. No previously analyzed accidents were initiated by transfer of the suction source, and the transfer of suction was not a factor in the consequences of previously analyzed accidents. Therefore, the proposed change will have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Will the change create the possibility of a new or difference kind of accident from any accident previously evaluated?

No. Other than requiring suction be transferred at a higher level of Lake Wylie, the proposed change would not lead to any hardware or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the design and operation of the plant. The proposed change to the Technical Specifications does not involve any change to plant design or operation. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, 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: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Project Director: Herbert N. Berkow.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 18, 1997; revised on January 26, 1998.

Description of amendment request: The licensee proposed to revise the units' facility operating licenses (FOL) NPF–35 and NPF–52 to delete license conditions which have been fulfilled, to update information to reflect current plant status and regulatory requirements, and to make other editorial corrections. All the requested changes are administrative.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment to the FOL involves administrative changes only. No actual plant equipment, operating practices, or accident analyses are affected by this proposed amendment. Therefore, the proposed amendment has no impact on the possibility (sic) of any type of accident: new, different, or previously evaluated.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment to the Catawba FOL involves administrative changes only. No actual plant equipment, operating practices, or accident analyses are affected by this proposed amendment and no failure modes not bounded by previously evaluated accidents are created. Therefore, the proposed amendment has no impact on the possibility (sic) of any type of accident: new, different, or previously evaluated.

3. Will the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed license amendment is administrative in nature and only updates the Catawba FOL to eliminate outdated or completed requirements; therefore, no reduction in any existing margin of safety is involved.

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: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Project Director: Herbert N. Berkow.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: December 12, 1997, with supplement dated August 13, 1997.

Description of amendment request: The proposed amendment establishes an alternate repair criteria for the segment of steam generator tubes that are located within the upper tube sheet.

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 Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The steam generators are used to remove heat from the reactor coolant system during normal operation and during accident conditions. The steam generator tubing forms a substantial portion of the reactor coolant pressure boundary. A steam generator tube failure is a violation of the reactor coolant pressure boundary and is a specific accident analyzed in the ANO–1 Safety Analysis Report.

The purpose of the periodic surveillance performed on the steam generators in accordance with ANO–1 Technical Specification 4.18 is to ensure that the structural integrity of this portion of the reactor coolant system (RCS) will be maintained. The technical specification plugging limit of 40% of the nominal tube wall thickness requires tubes to be repaired or removed from service because the tube may become unserviceable prior to the next inspection. Unserviceable is defined in the TS as the condition of a tube if it leaks or contains a defect large enough to affect its structural integrity in the event of an operating basis earthquake, a loss-of-coolant accident, or a steam line break.

The proposed technical specification specifies an alternate plugging limit for upper tubesheet volumetric outer diameter intergranular attack (ODIGA) indications. Based upon extensive testing and plant experience, it has been determined that upper tubesheet volumetric ODIGA flaws with a bobbin voltage indication less than that specified by the proposed technical specification can remain in service while maintaining the serviceability of the tube.

From testing performed on simulated flaws within the tubesheet, it has been shown that the patch IGA indications within the upper tubesheet, with depths up to 100% through-wall, do not represent structurally significant flaws which would increase the probability of a tube failure beyond that currently assumed in the ANO–1 Safety Analysis Report. The dose consequences of a MSLB accident are analyzed in the ANO–1 accident analysis. This analysis assumes the unit is operating with a 1 gpm steam generator tube leak and that the unit has been operating with 1% defective fuel. Increased leakage during a postulated MSLB accident resulting from applying the voltage-base repair criteria to upper tubesheet volumetric ODIGA is not expected. ODIGA has been present in the ANO–1 steam generators for many years with no known leakage attributed to this damage mechanism. Because of its localized nature and morphology, the flaw does not open under accident conditions. To further support this conclusion, hot leak testing at the bounding MSLB temperature, pressure, and load was performed on tubing with representative laboratory generated flaws. The leak testing was performed on 29 samples with volumetric ODIGA with bobbin indications of 0.04 to 1.62 volts. None of these flaws showed signs of leakage as a result of these loads. Additionally, four specimens created by electrodischarge machining (EDM) with depths up to approximately 95% through-wall were tested with no leakage detected. It was, therefore, concluded that volumetric ODIGA flaws with an eddy current indication up to 1.62 volts will not leak under accident conditions, and that this is an acceptable threshold value to use to assume zero accident leakage.

This change allows volumetric ODIGA flaws within the tubesheet, which are not projected to meet or exceed the 1.62 volt threshold when considering eddy current uncertainty and an allowance for growth, to remain in service. Continued operation with these flaws present does not result in a significant increase in the probability or consequences of an accident previously evaluated for ANO–1.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The steam generators are passive components. The intent of the technical specification surveillance requirements are being met by this change in that adequate structural and leakage integrity will be maintained. Additionally, the proposed change does not introduce any new modes of plant operation.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does Not Involve a Significant Reduction in the Margin of Safety.

The margin of safety is not reduced by the implementation of the proposed technical specification change allowing

volumetric ODIGA flaws within the upper tubesheet which meet the proposed acceptance criteria to remain in service.

Testing of upper tubesheet volumetric ODIGA flaws removed from the ANO–1 OTSGs during 1R13, showed the flawed tubes to be capable of withstanding differential pressures of 10,000 psid without the presence of the tubesheet. Testing of simulated through-wall flaws of up to 0.5 inch in diameter within a tubesheet showed that the tubes always failed outside of the tubesheet. Thus the structural requirements listed in the bases of the technical specification are satisfied considering this change.

Tubes with volumetric ODIGA indications within the tubesheet which satisfy the acceptance criteria specified in the proposed technical specification change are not anticipated to leak under accident conditions. This is due to the small size of the flaws and their morphology. This premise has been demonstrated through years of actual plant operation with no known leakage attributable to these flaws, even considering a plant transient in 1996 which exposed the ''B'' steam generator to a primary-to-secondary pressure differential of 2100 psid. The potential for leakage under accident conditions was the focus of testing performed on representative samples of flawed OTSG tubing. These tests confirmed for tubesheet flaws, within the bounds of the proposed technical specification change, that leakage is not expected under accident conditions. With no increased accident leakage anticipated as a result of the proposed technical specification change, the offsite dose consequences from a MSLB accident remain unchanged from that currently analyzed in the ANO–1 Safety Analysis Report.

Therefore, this change does not involve a significant reduction in the margin of safety.

In conclusion, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Project Director: John Hannon.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 18, 1996, as supplemented by letter dated January 21, 1998.

Description of amendment request: The amendment requests a change to Technical Specification (TS) Surveillance Requirement 4.4.8.3.1.b to test the Shutdown Cooling System suction line relief valves in accordance with TS 4.0.5. Editorial changes to 4.4.8.3.1 and 4.4.8.3.1.a. have also been requested.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change will not affect the assumptions, design parameters, or results of any accident previously evaluated. The proposed change does not add or modify any existing equipment. The proposed change will not diminish the ability of the valves to perform as required during an accident. The proposed Shutdown Cooling System suction line relief valves testing schedule will be in accordance with Section XI of the ASME.

Boiler and Pressure Vessel Code and applicable Addenda as required by 10 CFR [Part] 50, Section 50.55a(g). This ensures the operational readiness of the valves. Therefore, the proposed change will not involve an increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

No. The proposed change does not involve modifications to any existing equipment. The proposed change will not affect the operation of the plant or the manner in which the plant is operated. No new failure modes that have not been previously considered will be introduced. The net effect of the change is to allow the plant staff the option of reducing the frequency of valve testing to a level that has been acknowledged as acceptable by the applicable ASME Code. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

No. The proposed change does not involve a decrease in the number or capacity of the valves in the system, nor does it involve a change in the relief valve setpoints, operability requirements, or limiting conditions for operation. The margin of safety for the relief valves is, in part, preserved by compliance with Section XI of the ASME Boiler and Pressure Vessel Code and applicable Addenda as required by 10 CFR [Part] 50, Section 50.55a(g). Although the proposed change will allow a slightly longer testing frequency, the proposed change will continue to preserve compliance with 10 CFR [Part] 50, Section 50.55a(g). Therefore, the proposed change will 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: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005–3502.

NRC Project Director: John N. Hannon.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: December 29, 1997.

Description of amendment request: The licensee proposed to modify specifications for selected cycle-specific reactor physics parameters so that they refer to the St. Lucie Unit 2 Core Operating Limits Report (COLR) for limiting values. Minor administrative changes are also included. The proposed Technical Specification (TS) changes utilized the guidance provided in Generic Letter 88–16 and are intended to be consistent with the Standard Technical Specifications for Combustion Engineering Plants (NUREG–1432, Revision 1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment relocates the calculated values of selected cycle-specific reactor physics parameter limits from the TS to the COLR, and includes minor editorial changes which do not alter the intent of stated requirements. The amendment is administrative in nature and has no impact on any plant configuration or system performance relied upon to mitigate the consequences of an accident. Parameter limits specified in the COLR for this amendment are not changed from the values presently required by Technical Specifications. Future changes to the calculated values of such limits may only be made using NRC approved methodologies, must be consistent with all applicable safety analysis limits, and are controlled by the 10 CFR 50.59 process. Assumptions used for accident initiators and/or safety analysis acceptance criteria are not changed by this amendment. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment relocates the calculated values of cycle specific reactor physics limiting parameters to the COLR and will not change the physical plant or the modes of operation defined in the facility license. The changes do not involve the addition of new equipment or the modification of existing equipment, nor do they alter the design configuration of St. Lucie plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The cycle specific parameter limits being relocated to the COLR by this amendment have not been changed from the values presently required by the TS, and a requirement to operate the plant within the bounds of the limits specified in the COLR is retained in the individual specifications. Future changes to the calculated values of these limits by the licensee may only be developed using NRC-approved methodologies, must remain consistent with all applicable plant safety analysis limits addressed in the Final Safety Analysis Report (FSAR), and are further controlled by the 10 CFR 50.59 process. As discussed in Generic Letter 88–16, the administrative controls established for the values of cycle specific parameters using the guidance of that letter assure conformance with 10 CFR 50.36. Safety analysis acceptance criteria are not being altered by this amendment. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: October 30, 1996.

Description of amendment request: The proposed amendment, included as part of the proposed conversion from current Technical Specifications (TS) to improved TS, would relax the required flowrates in core spray, low pressure coolant injection (LPCI), and high pressure coolant injection (HPCI) systems, based on the DAEC loss-of-coolant-accident (LOCA) analysis, using an NRC-approved code, SAFER/GESTR–LOCA.

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 will lower ECCS required flowrates in accordance with accident analysis assumptions. The ECCS subsystems affected by this change are not assumed to be initiators of analyzed events. Therefore, the proposed change does not increase the probability of any accident. The role of these ECCS subsystems is in the mitigation of accident consequences. The proposed change decreases pump flow rate requirements for Core Spray, LPCI and HPCI. The proposed change does not increase the consequences of an accident because accident analysis presented in NEDC–31310P, Duane Arnold Energy Center SAFER/GESTR-LOCA Loss-of-Coolant Accident Analysis, uses these reduced pump flow rates as analysis inputs and demonstrates that peak cladding temperatures are maintained within regulatory limits. Therefore, this change will not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change will not involve any physical changes to plant systems, structures, or components (SSCs), or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. As demonstrated in NEDC–31310P, Duane Arnold Energy Center SAFER/GESTR–LOCA Loss-of-Coolant Accident Analysis, at the reduced flowrates, adequate ECCS capability will still exist to mitigate the consequences of accidents. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change does not significantly reduce the margin of safety because accident analysis presented in NEDC–31310P, Duane Arnold Energy Center SAFER/GESTR–LOCA Loss-of-Coolant Accident Analysis, uses these reduced pump flow rates as analysis inputs. The accident analysis demonstrates that with these reduced ECCS pump flow rates, the peak clad temperature remains below the regulatory limit. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Kathleen H. Shea, Morgan, Lewis, & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

Acting NRC Project Director: Richard P. Savio.

IES Utilities Inc., Docket No. 50–331 Duane Arnold Energy Center, Linn County, Iowa

Date of amendment requests: January 9, 1998.

Description of amendment requests: The proposed amendment would revise the limiting condition for operation for primary containment isolation valves (PCIVs). The revision would allow 72 hours to isolate a failed valve associated with a closed system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change extends the time to isolate single PCIV penetrations from 4 hours to 72 hours. The time allowed to isolate the penetration is not assumed to be an initiator of any analyzed event. The 72 hour period provides the necessary time to perform repairs on a failed containment isolation valve when relying on an intact closed system. Use of a closed system for isolation is directly equivalent to isolating a failed containment isolation valve by use of a single valve. The closed systems are subject to a Type A containment leakage test, are missile protected, and are seismic Category 1 piping. Allowing an additional 68 hours to isolate these penetrations will not significantly increase the consequences of an accident since the intact closed system provides adequate isolation. Also, the consequences of an event occurring during the proposed 72 hour period are the same as those during the current 4 hour period. The 72 hour period is consistent with NRC-approved Traveler TSTF–30, Revision 2. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change extends the time allowed to isolate single PCIV penetrations from 4 hours to 72 hours. The additional 68 hours that the penetrations are not isolated will not create the possibility of a new or different kind of accident. Use of a closed system for isolation is directly equivalent to isolating a failed containment isolation valve by use of a single valve. The closed systems are subject to a Type A containment leakage test, are missile protected, and are seismic Category 1 piping. This change will not physically alter the plant (no new or different type of equipment will be installed). The change in allowed out-of-service-time is consistent with current safety analysis assumptions. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

This change extends the time allowed to isolate single PCIV penetrations from 4 hours to 72 hours. During the additional time allowed, a limiting event would still be assumed to be within the bounds of the safety analysis assuming no single active failure. The 72 hour period is consistent with NRC-approved Traveler TSTF–30, Revision 2. Use of a closed system for isolation is directly equivalent to isolating a failed containment isolation valve by use of a single valve. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 00 First Street, SE., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Al Gutterman, Morgan, Lewis & Brockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Acting Project Director: Richard P. Savio.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 11, 1997.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to add a new Limiting Condition for Operation (LCO) for an inoperable engineering safety features (ESF) logic subsystem.

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.

Omaha Public Power District (OPPD) proposes to incorporate a new Limiting Condition for Operation (LCO) into Specification 2.15 which will apply to an engineered safety features (ESF) logic subsystem when the minimum operable channels or minimum degree of redundancy requirements listed in Tables 2–3 and 2–4 are not met. The LCO proposes an allowed outage time (AOT) of 48 hours to restore sufficient channels to operability so as to exceed minimum requirements, or the plant must be placed in hot shutdown within the following 12 hours.

The ESF logic system is a Class 1 protection system designed to satisfy the criteria of IEEE 279, August 1968. Two functionally redundant ESF logic subsystems ''A'' and ''B'' are provided to ensure high reliability and effective in-service testing. These logic subsystems are designed for individual reliability and maximum attainable mutual independence both physically and electrically. Either ESF logic subsystem acting alone can automatically actuate ESF equipment and essential supporting systems.

The design of the ESF logic system is not being altered by this change. The change allows a reasonable time to contact trained personnel and adequately troubleshoot, perform and test repairs on an inoperable ESF logic subsystem. The proposed AOT ensures that repairs are thoroughly planned and accomplished without undue haste. In this situation, the opposite ESF logic subsystem is operable as verified through surveillance testing and capable of providing both automatic and manual ESF equipment actuation.

The proposed AOT is similar to that of LCO 3.3.5, ''Engineered Safety Features Actuation System (ESFAS)

Logic and Manual Trip (Analog),'' of Combustion Engineering Owners Group (CEOG) Standard Technical Specification (STS), Rev. 1, dated April 7, 1995.

Additional administrative revisions are proposed to either support the new LCO (e.g., footnotes in Tables 2–3 & 2–4) or clarify existing information. Therefore, OPPD concludes that the proposed LCO and administrative revisions 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.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits because of these proposed changes. No changes in operating modes are proposed. The proposed LCO provides a reasonable AOT to troubleshoot, repair, and test an inoperable ESF logic subsystem. The remaining ESF logic subsystem is still operable and capable of both automatic and manual ESF equipment actuation. The remaining changes are administrative in nature and thus none of the proposed changes 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 LCO provides a reasonable AOT to troubleshoot, repair, and test an inoperable ESF logic subsystem. The remaining ESF logic subsystem is still operable as verified by surveillance testing and capable of both automatic and manual ESF equipment actuation. With an inoperable ESF logic subsystem, the ESF logic system would not be single failure proof for a brief period of time. However, it is OPPD's position that making repairs while the plant is at power and stable is preferable to imposing a transient (manual shutdown) on the plant at a time when the ESF logic system is no longer single failure proof. Therefore, OPPD concludes that the proposed LCO and supporting administrative changes do not result in a significant reduction in a margin of safety.

Based on the above considerations, it is OPPD's position that this proposed amendment does not involve significant hazards considerations as defined by 10 CFR 50.92 and the proposed changes will not result in a condition which significantly alters the impact of the Station on the environment. Thus, the proposed changes meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9) and pursuant to 10 CFR 51.22(b) no environmental assessment need be prepared.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Project Director: William H. Bateman.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: January 12, 1998.

Description of amendment request: The Philadelphia Electric Company submitted a Technical Specifications (TS) Change Request, requesting an amendment to the TS (Appendix A) of Operating License No. NPF–39 for Limerick Generating Station (LGS), Unit 1. This proposed change will revise TS Table 4.4.6.1.3–1 to change the withdrawal schedule for the first capsule to be withdrawn from 10 Effective Full Power Years (EFPY) to 15 EFPY.

A revision to TS Surveillance Requirement 4.4.6.1.4 is also proposed. This revision will remove the references to flux wire removal and analysis that was originally required following the first cycle of operation. The referenced flux wires were never located following the first cycle of operation. This TS Surveillance Requirement will be changed to refer to the flux wires that are located within the surveillance capsules, which will be removed and analyzed in accordance with the surveillance capsule removal schedule located in TS Table 4.4.6.1.3–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not increase the probability of occurrence of an accident previously evaluated in the safety analysis report and do not affect any accident initiators as described in the SAR [Safety Analysis Report]. The changes revise the withdrawal schedule for the reactor vessel material surveillance capsules from 10 Effective Full Power Years (EFPY) to 15 EFPY. The capsules are not an initiator of any previously analyzed accident nor does the withdrawal schedule of the surveillance capsule affect the probability or consequences of any previously analyzed accident.

These changes will not affect the Pressure-Temperature (P–T) limits as given in LGS Technical Specification (TS) Figure 3.4.6.1–1 and UFSAR [Updated Final Safety Analysis Report] Figure 5.3–4. P–T limits are imposed on the reactor coolant system to ensure that adequate safety margins exist during normal operation, anticipated operational occurrences, and system hydrostatic tests. The P–T limits are related to the RT_{NDT} [reference temperature], as described in ASME Section III, Appendix G. Changes in the fracture toughness properties of reactor pressure vessel (RPV) beltline materials, resulting from neutron irradiation and the thermal environment, are monitored by a surveillance program in compliance with the requirements of 10 CFR 50 Appendix H. The effect of neutron fluence on the shift in the RT_{NDT} is predicted by methods given in Regulatory Guide 1.99, Rev. 2.

As detailed in Attachment 3 [of the licensee's application dated January 12, 1998], for LGS Unit 1, the combination of low expected RT_{NDT} shift for the plate material due to low predicted fluence and excellent material chemistry, Supplemental Surveillance Program (SSP) data on similar material, and the inherent margin in the P–T curve calculations—with the withdrawal schedule of the first surveillance capsule modified from 10 EFPY to 15 EFPY—will result in a more credible set of surveillance data while ensuring the continued safe operation of LGS Unit 1.

LGS's current P–T limits were established based on adjusted reference temperatures developed in accordance with the procedures prescribed in Regulatory Guide 1.99, Rev. 2, Regulatory Position 1, ''Surveillance Data Not Available.'' Calculation of adjusted reference temperature by these procedures includes a conservative base fluence estimate, power rerate adjustment of a 110% fluence multiplier from startup—instead of a 105% fluence

multiplier since 1R06 [Unit 1 refueing outage 6], and a margin term to ensure conservative, upper-bound values are used for the calculation of the P–T limits. Revision of the first capsule withdrawal schedule will not affect the P–T limits because the capsule constitutes one set of credible surveillance data. The curves will continue to be established in accordance with Regulatory Position 1 procedures.

As per Regulatory Guide 1.99, Radiation Embrittlement of Reactor Vessel Materials, Revision 2, Regulatory Position 2, ''Surveillance Data Available,'' the collection of two or more sets of credible surveillance data is necessary to empirically calculate the adjusted reference temperature (ART). Each surveillance capsule constitutes one set of credible surveillance data. This calculated ART can be used to revise the Pressure-Temperature (P–T) curves (Technical Specification Figure 3.4.6.1–1). Without two or more sets of credible data, the ART must be calculated and the P–T curves revised, based upon the calculational methodologies as provided in the Regulatory Guide 1.99, Rev. 2, Regulatory Position 1, ''Surveillance Data Not Available.'' These methodologies use plant specific chemistry and fluence values to determine a calculated shift in RT_{NDT}. A ''margin'' term is then added to obtain conservative, upper-bound values of adjusted reference temperature.

The existing LGS Unit 1 P–T curves are currently valid up to 12 EFPY. With first capsule removal at *either* 10 *or* 15 EFPY, the existing P–T curves will require a revision prior to reaching 12 EFPY based upon the calculational methodologies as contained in the Regulatory Guide 1.99, Rev. 2, Regulatory Position 1, ''Surveillance Data Not Available.'' Therefore, the revision to the first capsule withdrawal schedule results in no impact to the calculational methodologies that will be used for the P–T curve revision that will be necessary to extend the curves beyond 12 EFPY.

The fluence data as determined from the surveillance capsule flux wires at 15 EFPY will provide an accurate indication of neutron fluence. In accordance with Regulatory Guide 1.99, Rev. 2, Regulatory Position 1 methodology, data from these flux wires will permit an adjustment of TS Figure 3.4.6.1–1 in accordance with TS surveillance requirement 4.4.6.1.3, if required, and will meet the requirements of 10 CFR 50 Appendix H and ASTM E–185.

These changes will not affect any plant safety limits or limiting conditions of operation. The proposed changes will not affect reactor pressure vessel performance as they do not involve any physical changes, and LGS P–T limits will remain conservative in accordance with Reg. Guide 1.99, Rev. 2 requirements. The proposed changes will not cause the RPV or interfacing systems to be operated outside of their design or testing limits.

The proposed changes do not increase the consequences of a malfunction of equipment important to safety previously evaluated in the SAR. The proposed changes do not involve any physical changes to equipment important to safety. The potential for RPV failure will be adequately assessed by the proposed withdrawal schedule. In addition, the results from the SSP will provide industry data that bounds the materials used in the LGS Unit 1 reactor pressure vessel until the data from the first LGS Unit 1 capsule is available. The proposed changes provide the same level of confidence in the integrity of the vessel.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a different type of accident than any previously evaluated in the SAR. The proposed changes will revise the withdrawal schedule for the first reactor pressure vessel (RPV) material surveillance capsule from 10 Effective Full Power Years (EFPY) to 15 EFPY. These proposed changes do not involve a physical modification of the design of plant structures, systems or components. The proposed changes will not impact the manner in which the plant is operated, as plant operating and testing procedures will not be affected by the changes. No new accident types or failure modes will be introduced as a result of the proposed changes.

LGS's current Pressure-Temperature (P–T) limits were established based on adjusted reference temperatures developed in accordance with the procedures prescribed in Regulatory Guide 1.99, Rev. 2, Regulatory Position 1, ''Surveillance Data Not Available.'' Calculation of adjusted reference temperature by these procedures includes a conservative base fluence estimate, power rerate adjustment of a 110% fluence multiplier from startup—instead of a 105% fluence multiplier since 1R06, and a margin term to ensure conservative, upper-bound values are used for the calculation of the P–T limits. Revision of the first capsule withdrawal schedule will not affect the P–T limits because the capsule constitutes one set of credible surveillance data. The curves will continue to be established in accordance with Regulatory Position 1 procedures.

The existing LGS Unit 1 P–T curves are currently valid up to 12 EFPY. With first capsule removal at *either* 10 *or* 15 EFPY, the existing P–T curves will require a revision, prior to reaching 12 EFPY, based upon the calculational methodologies as contained in the Regulatory Guide 1.99, Rev. 2, Regulatory Position 1, ''Surveillance Data Not Available.''

Therefore, the Technical Specification (TS) revision to the first capsule withdrawal schedule results in no impact to the calculational methodologies that will be used for the P–T curve revision that will be necessary to extend the curves beyond 12 EFPY.

The fluence data as determined from the surveillance capsule flux wires at 15 EFPY will provide an accurate indication of neutron fluence. In accordance with Regulatory Guide 1.99, Rev. 2, Regulatory Position 1 methodology, data from these flux wires will permit an adjustment of TS Figure 3.4.6.1–1 in accordance with TS Surveillance Requirement 4.4.6.1.3, if required, and will meet the requirements of 10 CFR 50 Appendix H and ASTM E–185.

The potential for reactor pressure vessel (RPV) failure will continue to be adequately assessed by the proposed withdrawal schedule. As detailed in Attachment 3, the combination of the low expected shift for the plate material, SSP data on similar material, and the inherent margin in the P–T curve calculations will result in a credible set of surveillance data, while ensuring the continued safe operation of LGS Unit 1. The proposed changes provide the same level of confidence in the integrity of the RPV.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes to the Technical Specifications (TS) do not reduce the margin of safety as defined in the Bases for any TS. The proposed changes will not affect any safety limits, limiting safety system settings, or limiting conditions of operation. The proposed changes do not represent a change in initial conditions, system response time, or in any other parameter

affecting the accident analyses supporting the Bases of any TS. The proposed changes do not involve revision of the P–T limits but rather a revision of the withdrawal schedule for the first surveillance capsule. The current P–T limits were established based on the adjusted reference temperatures for vessel beltline materials calculated in accordance with Regulatory Position 1 of Reg. Guide 1.99, Rev. 2. P–T limits will continue to be revised as necessary for changes in adjusted reference temperature due to changes in fluence according to Regulatory Position 1 until two or more credible surveillance data sets become available. When two or more credible surveillance data sets become available, P–T limits will be revised as prescribed by Regulatory Position 2 of Reg. Guide 1.99, Rev. 2 or other NRC approved guidance.

The current P–T limit curves are inherently conservative and provide sufficient margin to ensure the integrity of the reactor pressure vessel. The proposed changes do not adversely affect these curves. The fluence data as determined from the surveillance capsule flux wires at 15 EFPY will provide an accurate indication of neutron fluence.

In accordance with Regulatory Guide 1.99, Rev. 2, Regulatory Position 1 methodology, data from these flux wires will permit an adjustment of TS Figure 3.4.6.1–1 in accordance with TS Surveillance Requirement 4.4.6.1.3, if required, and will meet the requirements of 10 CFR 50 Appendix H and ASTM E–185.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: John F. Stolz.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: September 2, 1997.

Description of amendment request: This proposed Technical Specification (TS) Change Request revises TS Sections 4.0.5, and Bases Sections B 4.0.5 and B 3/4.4.8, for Limerick Generating Station (LGS), Units 1 and 2, pertaining to the surveillance requirement associated with Inservice Inspection (ISI) and Inservice Testing (IST) activities for American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code, Class 1, 2, and 3 components.

The existing wording in TS Section 4.0.5, and Bases Sections B 4.0.5 and B 3/4.4.8, stipulates that ISI and IST surveillance activities for ASME Code Class 1, 2, and 3 components be conducted in accordance with the requirements of Section XI of the ASME Code as required by 10 CFR 50.55a(g). The proposed changes will revise the applicable TS sections to only make reference to 10 CFR 50.55a, since the current regulations have separated the specific requirements for ISI and IST into sections 50.55a(g) and 50.55a(f), respectively.

The existing wording of TS Section 4.0.5, and Bases Sections B 4.0.5 and B 3/4.4.8, also requires that ISI and IST surveillance activities be conducted in accordance with the requirements of Section XI of the ASME Boiler and Pressure Vessel Code, except where specific written relief has been granted by the NRC. This wording precludes the immediate implementation of alternative testing in the event that a Code required inspection has been identified as clearly impractical. The proposed TS changes will revise the applicable TS sections to eliminate the requirement that written relief be obtained *prior to* implementation of alternative testing during the initial 120-month inspection interval, and the initial 12 months of subsequent intervals in cases where the Code required inspections have been found to be clearly impractical. NUREG–1482, ''Guidelines for Inservice Testing at Nuclear Power Plants,'' discusses impracticality as being a situation where a test cannot be performed due to limitations in design (which includes prohibitive dose rates), construction, or system configuration.

Furthermore, TS Section 4.0.5b. currently discusses the required frequency of ISI and IST surveillance activities required by the ASME Code. The existing TS address testing frequencies of up to one (1) year. In some cases, the ASME Code requires that testing be performed on a two (2) year frequency. The proposed TS changes will also revise the TS to include a reference for tests that are conducted on a biennial frequency. Inclusion of this reference will permit the application of TS 4.0.2 criteria for ISI and IST surveillance activities. This will permit a 25 percent time extension to be applied to the surveillance frequency, if necessary, in order to allow for consideration of plant operating conditions when scheduling ISI and IST 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 Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes are administrative in nature and do not make physical modifications or changes to the plant structures, systems, or components (SSC). Plant SSC will continue to function as designed. The proposed TS changes will not alter equipment operational practices or procedures.

In the event that an ASME Section XI Code required inspection or test is found to be impractical due to unforeseen conditions, written relief would still be requested from the NRC in accordance with established procedures. No code required inspection will be eliminated from the ISI or IST Programs until written approval has been granted by the NRC as required [by] 10CFR50.55a. It is anticipated that the only time this provision would be utilized would be in the event that an inspection or test is discovered to be impossible or impractical to perform due to unforeseen or unexpected high radiation conditions, or physical limitations. This change will also clarify the applicability of surveillance intervals to biennial tests or examinations.

The proposed TS changes will remove the inconsistencies between the LGS TS and the requirements of 10CFR50.55a, and will also ensure that the implementation of the LGS ISI and IST Programs are consistent with current NRC guidance as specified in NUREG–1482 and NUREG–1433, Revision 1.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes apply to the administrative requirements for testing of plant systems. No physical modifications to systems or components are involved. No new failure modes which could cause or contribute to the cause of an accident are being introduced.

The proposed TS changes will remove the inconsistencies between the LGS TS and the requirements of 10CFR50.55a, and will also ensure that the implementation of the LGS ISI and IST Programs are consistent with current NRC guidance as specified in NUREG–1482 and NUREG–1433, Revision 1.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

No physical plant modifications or operational procedure changes are being made as a result of the proposed TS changes. The proposed TS changes apply to the ISI and IST Programs' surveillance requirements and do not modify the scope or frequency of these Programs as required by 10 CFR 50.55a. The proposed TS changes will eliminate inconsistencies between current TS wording and the requirements specified in 10CFR50.55a. In addition, the proposed changes are consistent with the guidance stipulated in NUREG–1482 and NUREG–1433, Revision 1. No physical plant modifications or operational procedure changes are being introduced as a result of this proposed TS Change.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: John F. Stolz.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: October 8, 1997.

Description of amendment request: This amendment proposes revisions to the actions to be taken in the event multiple control rods are inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The number and distribution of inoperable control rods is not a precursor to any accident, therefore the probability of an accident is not affected. The proposed changes assure the assumptions used in evaluation of accidents are satisfied, therefore there will be no increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

Changing the allowable number and distribution of inoperable control rods and the power level at which these limits apply to be consistent with the accident analyses does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety because:

The proposed changes assure the assumptions used in the accident analyses are satisfied, therefore there will be no affect on the margin of safety as a result of these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Project Director: S. Singh Bajwa, Director.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: November 6, 1995, as supplemented by letter dated January 9, 1998. The supplemental submittal supersedes the staff's proposed no significant hazards consideration determination evaluation for the requested changes that were published on April 10, 1996 (61 FR 15996).

Description of amendment requests: In the November 6, 1995, letter, the licensee proposed to revise Technical Specification (TS) 3.5.1, ''Safety Injection Tanks,'' to extend, in general, the allowed outage time (AOT) for a single inoperable safety injection tank (SIT) from 1 hour to 24 hours. Additionally, the licensee proposed to extend the SIT AOT from 1 hour to 72 hours if a single SIT becomes inoperable due to malfunctioning SIT water level and/or nitrogen cover pressure instrumentation. The January 9, 1998, letter modifies the original request by adding a new TS 5.5.2.14, ''Configuration Risk Management Program,'' that ensures a proceduralized probabilistic risk assessment-informed process is in place that assesses the overall impact of plant maintenance on plant risk.

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 Injection Tanks (SITs) are passive components in the Emergency Core Cooling System (ECCS). The SITs are not accident initiators in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The SITs are designed to mitigate the consequences of Loss of Coolant Accidents (LOCAs). The proposed changes do not affect any of the assumptions used in deterministic LOCA analysis. Therefore, the consequences of accidents previously evaluated do not change.

To fully evaluate the SIT Completion Time extension, Probabilistic Safety Analysis (PSA) methods were utilized. The results of these analyses show no significant increase in core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated.

The proposed change pertaining to SIT inoperability based solely on instrumentation malfunction does not involve a significant increase in the consequences of an accident as evaluated and endorsed by the Nuclear Regulatory Commission (NRC) in

NUREG–1366, ''Improvements to Technical Specifications Surveillance Requirements.''

The Configuration Risk Management Program is an Administrative Program that assesses risk based on plant status. Adding the requirement to implement this program for Technical Specification 3.5.1 does not affect the probability or the consequences of an accident.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change does not change the design, configuration, or method of operation of the plant. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect the limiting conditions for operation or their bases that are used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrate that the changes are either risk neutral or risk beneficial.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: November 8, 1995, as supplemented by letter dated January 9, 1998. The supplemental submittal supersedes the staff's proposed no significant hazards consideration determination evaluation for the requested changes that were published on April 10, 1996 (61 FR 15996).

Description of amendment requests: In the November 8, 1995, letter, the licensee proposed to revise Technical Specification (TS) 3.5.2, ''ECCS—Operating,'' to extend the allowed outage time from 72 hours to 7 days for a single low pressure safety injection train. The January 9, 1998, letter modifies the original request by adding a new TS 5.5.2.14, ''Configuration Risk Management Program,'' that ensures a proceduralized probabilistic risk assessment-informed process is in place that assesses the overall impact of plant maintenance on plant risk.

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 Low Pressure Safety Injection (LPSI) system is a part of the Emergency Core Cooling System (ECCS) subsystem. Inoperable LPSI components are not considered to be accident initiators. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The LPSI system is primarily designed to mitigate the consequences of a large Loss of Coolant Accident (LOCA). This proposed change does not affect any of the assumptions used in the deterministic LOCA analysis. Therefore, the consequences of accidents previously evaluated do not change.

To fully evaluate the LPSI Completion Time extension, Probabilistic Safety Analysis (PSA) methods were utilized. The results of these analyses show no significant increase in core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated.

The Configuration Risk Management Program is an Administrative Program that assesses risk based on plant status. Adding the requirement to implement this program for Technical Specification 3.5.2 does not affect the probability or the consequences of an accident.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change does not change the design, configuration, or method of operation of the plant. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the limiting conditions for operation or their bases that are used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate these changes.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: July 29, 1996.

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3.7, ''Plant Systems,'' and TS 4.3, ''Fuel Storage,'' to permit an increase in the licensed storage capacity of the spent fuel pools.

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.

In the course of previous analyses and the analyses required to support the consolidation and storage of spent fuel assemblies generated by the San Onofre Nuclear Generating Station Units 1, 2 and 3 (SONGS 1, 2 and 3), the

enveloping scenarios described below have been considered. The limiting event or accident is considered that which produces the greatest radiological dose consequences.

(1) *Design Basis Fuel Handling Accidents.* Postulated fuel handling accidents consider drops of either a spent fuel assembly or a consolidated fuel canister in the spent fuel pool (SFP) or cask pool. In addition to damage to the dropped fuel assembly or consolidated fuel canister, a fuel assembly or consolidated fuel canister seated in the SFP or the cask pool may be impacted by the drop. Alternatively, the dropped assembly or canister may fall over an empty rack cell, or fall onto the pool floor/liner. These various scenarios have been considered.

The reference fuel in the analysis presented below is SONGS 2 and 3 fuel. Due to the longer decay time, lower burnup, and lower operating power of SONGS 1 fuel, the consequences of damage to SONGS 1 fuel are bounded by the consequences of damage to SONGS 2 and 3 fuel.

(a) *Dropped Fuel Assembly.* The limiting and design basis fuel assembly drop event is a 254-inch drop of a vertically-oriented fuel assembly, which has decayed for 72 hours, onto the SFP floor, followed by rotation of the fuel assembly to the horizontal position. The postulated bounding event results in a total of 60 fuel rods failing, which will not change as a result of fuel consolidation.

The probability of a spent fuel assembly drop during movement of spent fuel is slightly increased by fuel consolidation because the candidate fuel assemblies are moved from their individual rack cell location to the cask pool for consolidation. However, this increase in probability is not significant since the process and equipment used to move fuel assemblies will not be changed. Additionally, fuel movement activities will be performed by personnel trained, qualified, and certified in fuel handling operations. Therefore, the increase in probability of a spent fuel assembly drop due to fuel consolidation is not significant.

The SFP water leakage consequences of a fuel assembly drop are bounded by the consequences of a postulated empty spent fuel rack drop. The resulting leakage (approximately 49 gallons per minute) is well within the makeup water supply capability (150 gallons per minute). Additionally, the water loss would be contained within the spent fuel pool leak chase system and would not be released to the soil or the environment.

Spent fuel assemblies will be decayed (subcritical) at least 72 hours prior to being moved and at least 6 months prior to being consolidated. Administrative controls will require that fuel assemblies being moved to and from the consolidation work station, and when in the work station, be separated by more than 12 inches of water from edge to edge to maintain neutronic isolation. Criticality calculations show that with 1800 parts per million (ppm) minimum boron concentration in the SFP water (Technical Specifications limit of 1850 ppm includes 50 ppm measurement uncertainty), a dropped fuel assembly event will not result in fuel criticality.

Without crediting filtration by the fuel handling building (FHB) post-accident cleanup units, the offsite doses which result from this scenario are well within the required limits, i.e., less than 25 percent (%) of the limits imposed by 10 CFR 100. The control room doses meet 10 CFR 50, Appendix A, General Design Criterion (GDC) 19 limits when crediting the control room emergency air cleanup system. Therefore, the consequences of a fuel handling accident remain enveloped by the fuel assembly drop event.

In conclusion, the probability and consequences of a fuel assembly drop event will not be significantly increased by the proposed fuel consolidation activity.

(b) *Dropped Consolidated Fuel Canister.* A dropped consolidated fuel canister event does not involve significantly new failure mechanisms compared with a dropped fuel assembly event. The limiting event in this category is a 74-inch drop of a consolidated fuel canister from the spent fuel handling machine (SFHM) into a rack cell containing a consolidated fuel canister. The structural integrity of the racks would not be impacted and both consolidated fuel canisters would remain intact. However, it is conservatively assumed that all 944 fuel rods within the two canisters (472 rods/canister $\times$ 2 canisters) are damaged.

The probability of a consolidated fuel canister drop is not expected to vary significantly from that expected for a fuel assembly drop because the methods and equipment used to move consolidated fuel canisters will not be significantly different from those used for fuel assemblies. Additionally, effective training methods, administrative controls, and equipment design will be developed to minimize the likelihood of dropping a canister during the consolidation process.

The SFP water leakage consequences of a consolidated fuel canister drop are bounded by the consequences of a postulated empty spent fuel rack drop as discussed previously in Item 1.1(a).

The criticality calculations show that, with the required 1800 ppm boron concentration in the SFP and cask pool water, there are no criticality consequences of postulated consolidated fuel canister drops. In all cases, the structural integrity of the racks will be maintained. The portions of the canisters where fuel is contained (above and inclusive of the bottom plate) will maintain their structural integrity in all drop cases.

The offsite doses which result from this scenario are bounded by the fuel assembly drop event discussed previously in Item 1.1(a) (60 failed fuel rods in an assembly which has decayed 72 hours) and are well within (less than 25% of) the limits imposed by 10 CFR 100. The control room doses meet the GDC 19 limits when crediting the control room emergency air cleanup system. Therefore, the consequences of a consolidated fuel canister drop event are enveloped by the limiting fuel assembly drop event.

In conclusion, the probability and consequences of the limiting fuel drop event will not be significantly increased by storing consolidated fuel in canisters.

(2) *Spent Fuel Pool (SFP) Gate Drop.* The limiting case is a SFP gate drop on a fuel assembly. Analysis has shown that only one assembly would be impacted and all 236 rods in the assembly potentially damaged subsequent to a drop of the SFP gate. The radiological consequences are shown to be acceptable (less than 25% of 10 CFR 100 limits).

Current gate lift height restrictions (no more than 30 inches above the racks) will be maintained for fuel consolidation. With these restrictions, fuel in only one rack cell (either a spent fuel assembly with 236 rods or a consolidated fuel canister with 472 rods) would be impacted with all rods in the fuel assembly or canister being potentially damaged.

The probability of a SFP gate drop is not significantly increased by fuel consolidation because the process and equipment used to move the gate will not change and because the gate will be kept open and not moved or removed when fuel is located in the cask pool during consolidation (administrative control).

Despite the additional fuel rods in a consolidated fuel canister (472 rods versus 236 rods in a fuel assembly), the minimum six month decay time allows more than 99.9% of the radioactive gases to decay. Thus, a gate drop that results in a damaged fuel assembly 72

hours after shutdown is more limiting than a gate drop that results in a damaged consolidated fuel canister. With the analysis demonstrating impact of fuel in only one cell, offsite doses remain well within (less than 25% of) the limits of 10 CFR 100 without taking credit for the FHB filters. The control room emergency air cleanup system will maintain control room doses within GDC 19 limits.

Therefore, the probability and consequences of a gate drop will not be significantly increased due to the proposed fuel consolidation activity.

(3) Test Equipment Skid Drop. Current test equipment skid height restrictions (no more than 72 inches above rack cells containing SONGS 2 and 3 fuel assemblies or 30 feet 8 inches above those containing SONGS 1 assemblies) will be maintained after fuel consolidation is implemented. These restrictions will ensure that the potential depth of penetration of test equipment skid into the racks is not sufficient to damage stored fuel.

The probability of a test equipment skid drop is not affected by fuel consolidation because the methods and equipment used to move the skid will not change. In addition, there are no adverse criticality consequences of a test equipment skid drop on a fuel assembly or consolidated fuel canister, since the structural configuration of the fuel or of the impacted storage rack cells is not significantly changed because of the drop impact.

Since no fuel is damaged, the probability and consequences of a test equipment skid drop will not be significantly increased due to the proposed fuel consolidation activity.

(4) Cask Handling Crane Load Drops. The types of loads currently lifted by the cask handling crane include spent fuel casks, transshipment casks, and the crane load block. To support consolidation activities, lifts of the fuel consolidation equipment will also be performed by the cask handling crane. The travel path of the cask handling crane does not extend over spent fuel in the SFP. Administrative controls will prohibit operation of the cask handling crane, including the crane load block, within ten feet of the edge of the cask pool when fuel is present in the cask pool during consolidation. The handling of heavy loads by the cask handling crane is governed by the SONGS heavy loads program which has received Nuclear Regulatory Commission (NRC) approval. The movement of fuel consolidation equipment by the cask handling crane will be evaluated under the heavy loads program. Thus, an accident resulting from cask handling crane load drops into the SFP or onto irradiated fuel in the cask pool is not credible.

It is expected that the consolidation work station in the cask pool will be temporarily removed prior to any spent fuel cask, transshipment cask, or other load lifts/movements over the cask pool. Other than insertion and removal of the consolidation work station, the equipment and procedures used to lift and move cask handling crane loads will be unaffected by fuel consolidation.

Therefore, the probability and consequences of a spent fuel cask or transshipment cask drop are not significantly increased by the proposed fuel consolidation activity.

(5) Mispositioning of a Consolidated Fuel Canister. The probability of mispositioning a consolidated fuel canister is expected to be comparable to that for mispositioning of a spent fuel assembly because the methods and equipment used to move and position consolidated fuel canisters in rack cells will not be significantly different from those used for fuel assemblies. Additionally, fuel movement activities are and will continue to be performed by personnel trained, qualified, and certified in fuel handling operations.

The potential consequences of a mispositioned consolidated fuel canister relate to fuel criticality. The burnup of the fuel stored in the SFP before, during, and after consolidation will conform to the criteria provided in the Technical Specifications. With the minimum required 1800 ppm (1850 ppm plus 50 ppm measurement uncertainty) boron concentration in the SFP and the Region II racks loaded with fuel which meets the burnup criteria of Technical Specification 3.7.18, k-eff remains less than 0.90 for a consolidated fuel canister mispositioned in the Region II racks.

Therefore, the probability and consequences of mispositioning a consolidated fuel canister are not significantly higher than the probability and consequences of mispositioning a fuel assembly.

(6) *Maximum Flow Blockage to Cool Spent Fuel.* Flow blockage to a consolidated fuel canister may be caused by either damage to the canister or loose material in the spent fuel pool or cask pool. Canisters will be inspected prior to being placed in the cask pool (prior to loading with fuel), and if damaged during movement or placement in the spent fuel pool. Additionally, the existing foreign material exclusion control in the spent fuel pool area will be utilized for fuel consolidation. Therefore, the probability of blocking flow to a consolidated fuel canister will not be significantly increased.

The temperature effects of a postulated flow blockage of a consolidated fuel canister were evaluated relative to the anticipated maximum cladding temperature of 700 degrees Fahrenheit (700°F) during reactor full power. Each rack storage cell has large or multiple flow holes to virtually eliminate the possibility that all flow in a cell would be blocked by debris or foreign material. The flow openings in the canisters will be designed to maintain a clear flow area of at least 20% under all postulated blockage conditions. For the postulated 80% flow blockage, the resulting maximum cladding temperature is 233.1°F, which is well below the maximum anticipated cladding temperature of 700°F during reactor full power.

Therefore, the probability and consequences of flow blockage will not be significantly increased by the proposed fuel consolidation activity.

(7) *Loss of Spent Fuel Pool (SFP) Cooling.* The probability of loss of SFP cooling is not affected by fuel consolidation because the existing SFP cooling system will perform its design function without modification.

The overall design basis (maximum abnormal) heat load will be increased due to an increased number of spent fuel elements stored. The cask pool may be used for temporary storage of spent fuel assemblies during consolidation. Loss of cooling flow to the cask pool has not been specifically analyzed. However, because of administrative controls which limit the amount of fuel permitted in the cask pool during consolidation and require the gate between the cask pool and the SFP to be open when fuel is present in the cask pool, this accident scenario is bounded by the SFP boiling case discussed below.

An analysis of loss of SFP cooling has been performed using the design basis consolidated fuel heat load. This analysis shows that, without crediting the FHB filters, the offsite doses will remain well within (less than 25% of) the 10 CFR 100 limits. Since the reactivity will decrease with increasing temperature at 0 ppm boron concentration, there will be no adverse criticality effects. Additionally, the normal makeup sources to the SFP will continue to maintain adequate inventory and flow capacity (150 gallons per minute or gpm) to compensate for evaporative losses due to boiling (<112 gpm maximum). The temperature effects of SFP boiling on the SFP liner plate and concrete

structure have been determined to be acceptable.

Therefore, the probability and consequences of a loss of SFP cooling event will not be significantly increased by the proposed fuel consolidation activity.

(8) *Consolidation Work Station Accidents.* Fuel consolidation will require additional fuel handling operations. However, since the fuel handling methods and equipment will not be significantly different from those currently used, consolidation work station accidents will be similar to fuel handling accidents already discussed in this Safety Analysis (dropped fuel assembly, dropped consolidated fuel canister, or other load drops). To avoid a significant increase in the probability of any of these accidents, personnel training methods, equipment design, and administrative controls will be utilized. Administrative controls will require a minimum decay time of six months for spent fuel prior to its movement into the cask pool for consolidation. This restriction ensures that the limiting radiological offsite and control room dose consequences from a work station accident remain bounded by a fuel assembly drop. The results are well within (less than 25% of) 10 CFR 100 and meet GDC 19 dose limits.

Fuel assemblies in the work station shall be separated by more than 12 inches of water from edge to edge to maintain neutronic isolation (administrative control). The total spent fuel which will be permitted in the cask pool at any given time is 553 fuel rods (administrative control). This quantity of fuel is equivalent to two full SONGS 2 or 3 fuel assemblies plus a damaged fuel rod storage canister or basket containing up to 81 fuel rods. A criticality analysis has shown that, in the worst case scenario, at 1800 ppm (Technical Specification limit of 1850 ppm includes 50 ppm measurement uncertainty) boron concentration, k-eff will be below 0.95. Additional administrative controls will be imposed to ensure that a minimum of 400 fuel rods or non-fuel rods will be loaded into a SONGS 2 or SONGS 3 consolidated fuel canister and a minimum of 324 fuel rods or non-fuel rods will be loaded into a SONGS 1 consolidated fuel canister.

The canisters shall be designed for storage of fuel rods within a maximum allowed rod pitch. For canisters not fully loaded, the rod pitch shall be maintained by restraints inserted within the canister to ensure against rod displacement during canister movement (administrative control). These limitations ensure that the k-eff for a loaded consolidated fuel canister will not exceed 0.95 with zero ppm boron concentration, considering worst case pitch between consolidated rods. With 1800 ppm boron concentration in the pool, k-eff will be below 0.88 for the worst case canister pitch between rods. Thus, there are no adverse criticality consequences since the minimum number of rods consolidated in a canister is administratively controlled and SFP and cask pool boron concentration will be maintained at or above 1800 ppm during consolidation.

Therefore, the consequences of a consolidation work station accident are not significantly increased as a result of the proposed fuel consolidation activity.

(9) *Seismic Events.* The probability of occurrence of a seismic event is unaffected by the proposed fuel consolidation activity. The consequences of a design basis earthquake (DBE) have been analyzed, and the fuel consolidation process and consolidated fuel canisters will not affect the ability of the racks to maintain their required design basis function during and after a DBE. The spent fuel racks are designed, and the consolidated fuel canisters will be designed, to Seismic Category I requirements, and the consolidation equipment will be designed to Seismic Category II/I requirements as defined by NRC Regulatory Guide 1.29, Revision 3.

The consolidation process provides the capability to store more spent fuel (up to approximately 2867 fuel assemblies) than previously approved by the NRC (up to 1542 fuel assemblies) in the SFP. The fuel handling building and the SFP and cask pool structures have been evaluated for the increased loading from fully-loaded consolidated fuel canisters and the loads found to be within the design allowables.

Thus, the probability or consequences of a seismic event are not significantly increased by the proposed fuel consolidation activity.

(10) *Consolidated Fuel Canister Stuck in a Spent Fuel Rack.* The probability of a consolidated fuel canister being stuck in a spent fuel rack is not known from experience since fuel consolidation demonstration projects conducted to date have not reported this type of occurrence. However, the canisters will be designed to be handled by the spent fuel handling machine (SFHM), will have the same approximate cross-sectional dimensions as spent fuel assemblies, and similar handling equipment and methods will be used. Therefore, the failure mechanisms are expected to be comparable to those for a stuck fuel assembly. On this basis, the probability of a consolidated fuel canister being stuck in a spent fuel rack is estimated to be comparable to that for a stuck fuel assembly.

The canisters will be designed to accommodate all operational and handling loads. A design requirement will be imposed that the canisters be capable of withstanding the maximum SFHM lift load of 6000 pounds and remain intact with no fuel spillage. This is consistent with the criteria utilized previously during SFP reracking for the spent fuel racks and a jammed fuel assembly. With these design criteria and restrictions, deformation of rack cell geometry would not be sufficient to exceed the criticality acceptance criterion (k-eff≤0.95). Therefore, the consequences of a stuck consolidated fuel canister would be bounded by the consequences of a stuck fuel assembly.

Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated due to the proposed fuel consolidation activity.

(11) *Limiting Component Cooling Water (CCW) System Heat Load Effects on Spent Fuel Pool Cooling.* The maximum calculated heat load for the CCW system occurs during a Loss of Coolant Accident (LOCA). The probability of a LOCA, and therefore the probability of maximum heat load being imposed on the CCW system, is not affected by fuel consolidation. The reason is that spent fuel handling operations in the SFP or the cask pool are not, of themselves, LOCA initiators. For the purposes of assessing the heat load on the CCW system, the LOCA is divided into two phases, ''safety injection'' and ''recirculation.''

During the safety injection phase, the SFP heat load is isolated from the CCW system. During the recirculation phase, CCW system cooling to the SFP may be reestablished manually. The recirculation phase represents the highest design heat load for the CCW system. Considering the limiting consolidated fuel heat load contribution from the SFP (assuming a minimum of 60 days decay of the most recent half-core discharged into the SFP), the CCW system has adequate capacity to still remove its design basis heat load.

Therefore, the probability or consequences of a limiting design basis heat load event on the CCW system are not significantly increased by the proposed fuel consolidation activity.

Therefore, operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or

different kind of accident from any accident previously evaluated.

The proposed change will allow the consolidation of San Onofre Units 1, 2 and 3 spent fuel in canisters and the storage of these canisters along with fuel assemblies in the Units 2 and 3 spent fuel pools. Fuel consolidation is similar in nature to fuel reconstitution within a fuel assembly since individual rods are manipulated in both processes. Accidents involving consolidated fuel canisters are similar in nature to fuel assembly handling accidents since both use similar fuel handling processes and equipment. Administrative controls will be instituted to provide assurance that postulated events involving consolidated fuel will be enveloped by the spectrum of design basis fuel handling accidents. Furthermore, heavy load drops during spent fuel handling operations are accidents that have been previously evaluated. Additional evaluations have been performed to demonstrate that when the minimum boron concentration requirements of the Technical Specifications have been met, the criticality criterion is satisfied for all postulated accidents.

Therefore, operation of the facility in accordance with the proposed change 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 issue of ''margin of safety,'' when applied to spent fuel consolidation and storage, includes the following areas:
(1) Nuclear criticality,
(2) Thermal-hydraulics,
(3) Mechanical, material and structural aspects, and
(4) Offsite doses.

These four areas are addressed below.

(1) *Nuclear Criticality.* The margin of safety that has been established for nuclear criticality is that, including all uncertainties, there is a 95% probability at a 95% confidence level that the effective neutron multiplication factor (k-eff) in spent fuel pools shall be less than or equal to 0.95, under all normal and postulated accident conditions. This margin of safety has been adhered to in the criticality analyses for fuel consolidation and the storage of consolidated fuel canisters.

Criticality of fuel assemblies and consolidated fuel canisters in fuel storage racks is prevented by the rack design which precludes interactions between two fuel assemblies or two consolidated fuel canisters or between a fuel assembly and a consolidated fuel canister. This is accomplished by fixing the minimum separation between storage cells containing fuel assemblies or consolidated fuel canisters, using Boraflex, a neutron absorbing material, and utilizing strict administrative controls.

During the consolidation process, fuel rods which cannot be consolidated will be placed in a damaged fuel rod canister or basket. Fuel assemblies, consolidated fuel canisters, and damaged fuel rod canisters or baskets moving to and from the consolidation work station or present in the work station shall be separated by more than 12 inches of water, measured edge to edge, to ensure that they are neutronically isolated (administrative control). The total spent fuel which will be permitted in the cask pool at any give time is 553 fuel rods (administrative control). This quantity of fuel is equivalent to two full SONGS 2 or 3 spent fuel assemblies plus 81 fuel rods in a damaged fuel rod canister or basket. Additionally, the rod pitch inside partially loaded canisters shall be maintained by restraints inserted within the canister to ensure against rod displacement during canister movement (administrative control).

The analytical methods utilized in the criticality analyses conform with American National Standards Institute (ANSI) Standard N18.2–1973, ''Nuclear Safety Criteria for the Design of Stationary Pressurizer Water Reactor Plants,'' Section 5.7, Fuel Handling Systems; ANSI Standard 57.2–1983, ''Design Objectives for LWR Spent Fuel Storage Facilities at Nuclear Power Stations,'' Section 6.4.2; ANSI Standard N16.9–1975, ''Validation of Calculational Methods for Nuclear Criticality Safety;'' NRC Standard Review Plan (NUREG–0800), Section 9.1.2, ''Spent Fuel Storage''; and the NRC guidance, ''OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications,'' (April 1978), as modified (January 1979).

The criticality analyses performed for normal conditions assume zero boron concentration in the SFP water and worst-case fuel enrichments and burnups. Most credible accident conditions will not result in an increase in k-eff of the spent fuel racks. However, accidents, such as a heavy load drop, misloading a consolidated fuel canister or dropping a fuel assembly, can be postulated to increase reactivity. For these accident conditions, the double contingency principle of ANSI N16.1–1975 is applied. This principle states that it is not required to assume two unlikely, independent events to ensure protection against a criticality accident. Therefore, for accident conditions, the presence of soluble boron in the storage pool water can be assumed as a realistic initial condition since the absence of boron would be the second unlikely event.

Worst case accident analyses have been performed that show that 1800 ppm of soluble boron will maintain the spent fuel pool and cask storage pool k-eff less than 0.95, including uncertainties, at the required 95%/95% probability/confidence level.

(2) *Thermal-Hydraulics.* The relevant thermal-hydraulics considerations for determining if there is significant reduction in a margin of safety are: (1) maximum fuel temperature, and (2) increase in temperature of the water in the pool, and (3) increase in heat load rejection to the environment.

Similar to the criticality analysis, the SFP decay heat load calculation assumes worst-case fuel loading, enrichment, and burnup. The calculation uses the same methodology as that used for the original decay heat analysis. Standard Review Plan (SRP) Section 9.1.3 criteria for maximum normal and maximum abnormal heat load conditions were used in this evaluation.

The effect of the increased heat load has been evaluated and it has been shown that, under the SRP maximum normal heat load, the existing spent fuel pool cooling system will maintain the bulk pool water temperature below 145°F. This value considers a single active failure of one spent fuel pool cooling system pump, coincident with a loss of offsite power, and is consistent with Standard Review Plan, Section 9.1.3.III.1.d. The 145°F temperature represents a small increase in the currently approved SFP temperature of 140°F. However, this temperature limit was very conservatively calculated, considering only heat losses through the spent fuel pool heat exchangers, and conservatively neglecting losses through evaporation to the spent fuel pool area, as well as conduction to the fuel handling building structure mass. This increase in spent fuel pool temperature does not represent a significant reduction in the margin of safety, since the affected portions of the spent fuel pool cooling system and other important to safety equipment in the fuel handling building are qualified for this slightly higher temperature and will still perform the necessary safety functions when required.

A thermal-hydraulic analysis has been performed which shows that the maximum local water temperatures along the fuel channels will remain below the nucleate boiling condition values, even with the maximum postulated flow blockage (80%) of the consolidated fuel canisters. The

maximum calculated fuel cladding temperature for the design basis condition is 233.1°F, which is well below the anticipated maximum cladding temperature of 700°F during full power operation of the reactor.

SONGS 2 and 3 conduct refueling by offloading either half the core or the full core. The full core offload refueling provides the greater of the two heat loads. Therefore, in addition to the SRP criteria, the heat load during refueling operations was also evaluated. For this case the heat load was evaluated assuming a two year refueling cycle, the spent fuel pool completely filled with consolidated fuel (except for the last core offload), and the full core offloaded at 150 hours of decay. Under these conditions, a single SFP cooling pump with two heat exchangers will maintain the SFP temperature below 160°F, assuming the component cooling water temperature is 88°F and the ocean water temperature is 76°F. Thus, the SFP cooling system meets the single active failure criterion for the maximum refueling heat load condition.

With the postulated SRP maximum abnormal heat load, the bulk pool temperature will reach a maximum of 160°F with two pumps and two heat exchangers in operation. This maximum temperature is well below the SRP maximum temperature limit of 212°F. Also, according to the SRP guidance, a single active failure need not be considered for the maximum abnormal heat load case.

The shutdown cooling system (SDCS), if available, can be used as an alternate heat dissipation path for cooling the SFP. The SDCS has been evaluated for the maximum normal and maximum abnormal heat loads and it has been determined that the system and interconnecting ties are adequate to maintain the SFP temperature below 145°F for the maximum normal heat load and below 160°F for the maximum abnormal heat load. Since the maximum abnormal heat load bounds the maximum refueling heat load, there is no need to evaluate the SDCS for the maximum refueling heat load. For the maximum refueling heat load, the SDCS does not meet the single failure criterion for SFP cooling; however, the use of the SDCS for SFP cooling during Modes 5 and 6 of plant operation has previously been evaluated and considered acceptable by the NRC.

The heat load rejection to the environment will only increase by approximately 0.03%.

Thus, there is no significant reduction in a margin of safety, as determined by thermal-hydraulics considerations.

(3) *Mechanical, material, and structural aspects.* The main safety function of the spent fuel pool and the storage racks is to maintain the spent fuel assemblies and consolidated fuel canisters in a safe configuration through normal and/or abnormal loadings. Abnormal loads include an earthquake, impact due to a cask drop, drop of a spent fuel assembly or consolidated fuel canister, or drop of a heavy load including a spent fuel pool gate. The mechanical, material, and structural design of the consolidation work station and consolidated fuel canisters will be in accordance with the applicable portions of the ''NRC OT Position of Review and Acceptance of Spent Fuel Storage and Handling Applications'' and other applicable NRC guidance and industry codes. The canisters will be designed to Seismic Category I requirements, and the consolidation equipment will be analyzed and either restrained or anchored as appropriate to meet Seismic Category II/I requirements as defined by NRC Regulatory Guide 1.29, Revision 3. The consolidation work station and consolidated fuel canister materials will be compatible with the spent fuel rods and spent fuel assemblies, and the spent fuel pool water chemistry. Therefore, margins of safety relative to mechanical, material, and structural aspects of the proposed fuel consolidation activities will not be significantly reduced.

(4) *Offsite and Control Room Doses.* The offsite and control room dose consequences of accidents involving consolidated fuel canisters or fuel consolidation activities were evaluated. To determine the radiological consequences, all credible accidents related to fuel consolidation activities were considered. The analyses assume that spent fuel has decayed a minimum of 6 months prior to commencing the consolidation process.

The limiting accident for fuel consolidation is a 74-inch drop of a consolidated fuel canister from the Spent Fuel Handling Machine (SFHM) onto a rack cell containing a consolidated fuel canister. Although both consolidated fuel canisters would remain intact, it is conservatively assumed that all 944 fuel rods within the two canisters (472 rods/canister × 2 canisters) are damaged. The resultant release of radioactivity, after escaping from the spent fuel pool, is exhausted from the fuel handling building (FHB) over a two-hour period; no credit for FHB isolation system or FHB filters was taken.

The results demonstrate that, with a minimum decay time of 6 months and no credit taken for isolation or filtration, the radiological consequences of the worst case consolidated fuel accident would not result in releases that would exceed 25% of the 10 CFR 100 limits. The results also demonstrate that the control room doses would meet the 10 CFR 50, Appendix A, GDC 19 limits when crediting the control room emergency air cleanup system.

Therefore, operation of the facility according to this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: T.E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: January 24, 1997.

Description of amendment requests: The licensee proposes to revise Surveillance Requirement 3.8.1.9 to Technical Specification 3.8.1, ''AC Sources—Operating.'' This change will revise the surveillance requirement to more accurately reflect safety analysis conditions.

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 would revise Surveillance Requirement (SR) 3.8.1.9 to more clearly reflect test conditions and be in greater agreement with NUREG 1432.

The Voltage and Frequency limits are made tighter, to accurately reflect plant design requirements. Discussion regarding reactive power loading is eliminated from the SR, consistent with the wording of NUREG 1432, Rev. 1, and added to the Bases.

Operation of the facility would remain unchanged as a result of the proposed changes and no assumptions or results of any accident analyses are affected. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would revise Surveillance Requirement (SR) 3.8.1.9 to more clearly reflect test conditions and be in greater agreement with NUREG 1432.

Operation of the facility would remain unchanged as a result of the proposed change. Therefore, the proposed change 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 change would revise Surveillance Requirement (SR) 3.8.1.9 to more clearly reflect test conditions and be in greater agreement with NUREG 1432. The Voltage and Frequency limits are made more restrictive, to accurately reflect the assumptions made in the SONGS accident analysis. Consequently, no reduction in any margin to safety exists.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: T.E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (Farley), Units 1 and 2, Houston County, Alabama

Date of amendments request: December 31, 1997.

Description of amendments request: The proposed amendments would revise the Technical Specifications to change the nuclear instrumentation system intermediate range neutron flux reactor trip setpoint and allowable value.

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 in Intermediate Range reactor trip setpoint from 25% RTP [rated thermal power] to 35% RTP, the associated allowable value change, and the deletion of the redundant references to the IR [intermediate range] high flux and PR [power range] high flux low setpoints do not involve a significant increase in the probability or consequences of an accident previously evaluated in the Farley FSAR [Final Safety Analysis Report]. The IR reactor trip neither causes any accident nor provides primary protection for any accident in the Farley FSAR. No new accident initiators have been identified because of this proposed revision. No new performance requirements for any system that is used to mitigate dose consequences have been imposed by this proposed change. No input assumption to any dose consequence calculation is affected by this proposed change. All previously reported dose consequences remain bounding. Therefore, the radiological consequences to the public resulting from any accident previously evaluated in the FSAR have not significantly increased.

2. The proposed Technical Specifications change to the IR reactor trip setpoint, associated allowable value change, and the deletion of the redundant references to the IR high flux and PR high flux low setpoints do not create the possibility of a new or different kind of accident from any previously evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the increase in IR setpoint from 25% RTP to 35% RTP. No new challenges to the safety-related Reactor Trip System have been identified. The NIS [nuclear instrument system] hardware has not been modified, and Farley will continue to perform periodic IR channel calibration and surveillance in accordance with Technical Specifications. All previously identified accident scenarios remain bounding since the IR trip setpoint provides no primary accident protection. Therefore, the possibility of a new or different kind of accident is not created.

3. The proposed increase in the IR reactor trip setpoint from 25% RTP to 35% RTP, the associated allowable value change, and the deletion of the redundant references to the IR high flux and PR high flux low setpoints do not involve a significant reduction in the margin of safety. All previously established acceptance limits continue to be met for all events, since the IR trip does not provide any primary protective action for any accident scenario. Changing the IR setpoint and allowable value will not invalidate its backup function. There are no physical modifications required for the protection system. This change will not affect the operation of any other safety-related equipment. Farley-specific setpoint uncertainty calculations support the setpoint change. Since all acceptance limits continue to be met, 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: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama.

NRC Project Director: Herbert N. Berkow.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: January 22, 1998. The application supersedes, in its entirety, the application dated September 13, 1996.

Description of amendment request: The proposed application would change the Vogtle Electric Generating Plant (VEGP) Technical Specification (TS) 3.8.1, ''AC Sources—Operating,'' as follows: (1) The completion time for restoration of one required offsite circuit would be increased from 6 to 14 days from discovery of failure to meet the Limiting Condition for Operation (LCO); (2) a new required action B.2 would be added along with the existing Condition B required actions for one Diesel Generator (DG) inoperable, to verify the availability of the Standby Auxiliary

Transformer (SAT) within 1 hour and once per 12 hours thereafter, and restore the DG to operable status within 14 days from discovery of failure to meet the LCO; (3) a new required action B.5.1 would be added to verify that the combustion turbine electrical power generation capability of Plant Wilson is functional and sufficiently reliable to provide assurance of black-start generation capability within 72 hours of entry into Condition B or within 72 hours prior to entry into Condition B; (4) a new required action B.5.2 would be added for utilization when the combined combustion turbine generator (CTG) enhanced black start reliability falls below the required criteria. This condition allows the option to start or run at least one of the CTGs at Plant Wilson within 72 hours of entry to Condition B, or prior to entry into Condition B for preplanned maintenance; (5) a new condition C is being added for when one DG is inoperable and the required actions and completion times of B.2 are not met, i.e. the SAT is not verified to be available or becomes unavailable as an offsite source, or the required actions and completion times of B.5 associated with CTG operation and/or reliability are not met, then restore the DG to operable status within 72 hours; and (6) other changes associated with TS 3.8.1 conditions, required actions, or completion times are only the result of re-numbering due to the addition of the new condition and required actions of the DG extended Allowable Out-of-Service Time (AOT) and do not reflect a change to operating requirements.

In addition, a new TS 5.5.18, ''Configuration Risk Management Program (CRMP),'' would be added to the Administrative section of the TS. This section discusses the program description and use.

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?

No. The DGs are used to support mitigation of the consequences of an accident; however, they are not considered the initiator of any previously analyzed accident. The use of the SAT as an additional offsite power source coupled with the black start generation capability of Plant Wilson and the use of a configuration risk management program will more than compensate for the risk introduced by the extended DG Completion Times. As such, the extension of the DG Completion Times will not significantly increase the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not introduce a new mode of plant operation and does not involve a physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

No. This proposed TS only affects the length of the allowed outage time for DGs and does not change the DG testing or maintenance requirements. The proposed TS still requires the DGs to be maintained Operable to the same standard as before. The use of the SAT as an additional offsite power source coupled with the black start generation capability of Plant Wilson and the use of a configuration risk management program has been shown to provide more than adequate compensation for the potential risk of the extended DG Completion times. The proposed change in DG completion times in conjunction with the added availability of the SAT, continue to provide adequate assurance of the capability to provide power to the ESF [Engineered Safety Features] buses. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia.

NRC Project Director: Herbert N. Berkow.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: December 30, 1997.

Description of amendment request: The proposed amendment would change Table 3.5–1 and associated notes. The changes would remove a potential non-conservative operating configuration for the Residual Heat Removal Service Water (RHRSW) System pumps that could result in a loss of two pumps following a single failure of diesel-generator A or B thereby reducing the number of pumps available to less than the number required by the Final Safety Analysis Report. The changes also would allow (for units with fuel loaded) reducing the minimum-required number of RHRSW pumps by one pump for each unit that has been in cold shutdown for more than 24 hours. The associated Basis 3.5 also would be changed to reflect these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. 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 probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes do not involve any plant structures, systems, or components that are initiators of any accident previously evaluated, and the changes do not decrease the capability of the RHRSW system to transfer reactor core and emergency equipment heat loads to the ultimate heat sink.

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 there are no changes to plant structures, systems, or components, and the changes do not affect the manner by which the facility is operated. The proposed changes are consistent with the Final Safety Analysis Report analysis for the design basis accident.

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. The proposed amendment would increase the diversity of power supplies associated with the residual heat removal cooling function thereby improving conformance to the single failure criterion.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET l0H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Vermont Yankee Nuclear Power Corporation, Docket Nos. 50–271, Vermont Yankee Nuclear Power Station, Windham County, Vermont

Date of amendment request: December 11, 1997.

Description of amendment request: The proposed amendment would revise the safety limit minimum critical power ratio (SLMCPR) values for Cycle 20 operation. The specific changes are:

(1) Page 6, Technical Specification 1.1A. replace the cycle number (19) to (20) and the SLMCPR for Cycle 19 (1.10) with that for Cycle 20 (1.11).

(2) Page 6, Technical Specification 1.1A. replace the SLMCPR for Cycle 19 single loop operation (1.12) with the Cycle 20 value (1.13).

Calculations for Vermont Yankee Nuclear Power Station (VYNPC) by General Electric Company have determined that the current SLMCPR values for single and dual loop operation contained in the Technical Specifications (1.10 and 1.12) are not applicable to the upcoming fuel cycle (Cycle 20) due to core loading design and fuel type changes. The Cycle 20 values are 1.11 and 1.13.

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 basis of the Safety Limit MCPR is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPR preserves the existing margin to transition boiling and the probability of fuel damage is not increased. The derivation of the revised SLMCPR for Vermont Yankee Cycle 20 for incorporation into the Technical Specifications, and its use to determine cycle-specific thermal limits, have been performed using NRC approved methods. 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.

Based on the above, VYNPC has concluded that the proposed change will not result in 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 result only from a specific analysis for the Vermont Yankee Cycle 20 core reload design. 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.

Based on the above, VYNPC has concluded that the proposed change will not create the possibility of a new or different kind of accident from those previously evaluated.

3. Does this change 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 SLMCPR is calculated using NRC approved methods which are in accordance with the current fuel design and licensing criteria. Additionally, interim implementing procedures, which incorporate cycle-specific parameters, have been used. The SLMCPR remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity.

As a result, VYNPC has concluded that the proposed change will not result in 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: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ronald Eaton.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: December 5, 1997.

Brief description of amendment: Revisions to the Crystal River Unit 3 design basis relating to starting logic of reactor building fan coolers.

Date of publication of individual notice in the **Federal Register**: January 15, 1998 (63 FR 2423).

Expiration date of individual notice: February 17, 1998

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal River, Florida 34428.

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, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: October 2, 1997.

Brief description of amendment: The proposed change would revise the Updated Final Safety Analysis Report to revise the credit assumed for iodine decontamination by the spent fuel pool water during a postulated fuel handling accident.

Date of issuance: January 27, 1998.

Effective date: January 27, 1998.

Amendment No.: 177.

Facility Operating License No. DPR–23: Amendment authorizes changes to the facilitiy's Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register**: November 19, 1997 (62 FR 61838). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: May 21, 1996, as supplemented on November 18, 1997, December 3, 1997, January 8, 1998 and January 13, 1998.

Brief description of amendments: The amendments relocate the reactor coolant system pressure and temperature limits for heatup, cooldown, low-temperature operation and hydrostatic testing, and the low-temperature overpresssure protection (LTOP) system setpoint curves into a Pressure Temperature Limits Report (PTLR).

Date of issuance: January 23, 1998.

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 98, 98, 89, 89.

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:** December 18, 1997 (62 FR 66394). The January 8, 1998 and January 13, 1998, 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 January 23, 1998.

No 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. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 30, 1997, as supplemented by letter dated December 9, 1997. Additional information was submitted in ComEd's letters of May 23, 1997, August 8, 1997 and January 7, 1998.

Brief description of amendments: The amendments revise the technical specifications and associated bases related to the primary containment pressure and reactor coolant system volume. The changes resulted from the replacement of the steam generators at Byron, Unit 1 and Braidwood, Unit 1.

Date of issuance: January 22, 1998.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 97, 97, 88 and 88.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 23, 1997 (62 FR 19826) and December 19, 1997 (62 FR 66699).

The May 23, 1997, August 8, 1997, December 9, 1997 and January 7, 1998, letters provided additional 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 January 22, 1998.

No 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. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: February 18, 1997, as supplemented by letter dated September 22, 1997.

Brief description of amendments: The amendments change the Technical Specification requirements for steam generator water level to support steam generator replacement at Byron, Unit 1, and Braidwood, Unit 1.

Date of issuance: January 15, 1998.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 96, 96, 87 and 87.

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**: March 12, 1997 (62 FR 11491). The September 22, 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 January 15, 1998.

No 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. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: June 17, 1997, as supplemented November 26, 1997, and January 9, 1998.

Brief description of amendments: The amendments revise the technical specifications to update the containment vessel structural integrity surveillance requirements to meet the provisions of a recent revision to 10 CFR 50.55a, and to relocate details of the surveillance requirements to a licensee-controlled program.

Date of issuance: January 29, 1998.

Effective date: Effective immediately and shall be implemented within 60 days.

Amendment Nos.: 99, 99, 90 and 90.

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**: December 19, 1997 (62 FR 66697). The November 26, 1997, and January 9, 1998, letters provided additional clarifying information that did not change the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 1998.

No 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. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 8, 1997, as supplemented on January 6, 1998.

Brief description of amendments: The amendments revise Technical Specification (TS) 4.5.2.b.3 and the associated Bases to bring the Byron, Unit 1, and Braidwood, Unit 1, requirements into conformance with the Unit 2 requirements that were approved on August 13, 1997. The revision adds a requirement to the Unit 1 TS Surveillance Requirements for verifying that the Chemical and Volume Control (CV) System is full of water every 31 days; to include ultrasonically examining the piping at the CV206 valve for Byron, Unit 1 (CV207 valve for Braidwood, Unit 1), if the train B CV pump is idle. The revision also removes the condition that the Unit 1 requirements will be applicable only until the end of the current cycle (Unit 1-Cycle 8 for Byron, and Unit 1-Cycle 7 for Braidwood). The amendments affect Unit 2 only in that the units share common TS.

As an administrative action by the NRC that only involves the format of the licenses and does not authorize any activities outside the scope of the applications, the NRC has amended the Byron and Braidwood operating licenses to include an Appendix C, ''Additional Conditions,'' and added a license condition associated with the proposed TS changes.

Date of issuance: January 30, 1998.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 100, 100, 91 and 91.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Facility Operating Licenses and the Technical Specifications.

Date of initial notice in **Federal Register**: November 5, 1997 (62 FR 59914). The January 6, 1998, 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 January 30, 1998.

No 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. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: August 12, 1997.

Brief description of amendments: The amendments revise the LaSalle County Station Technical Specifications by removing Surveillance Requirement 4.7.1.3.c which requires that every 18 months all areas within the lake screenhouse be inspected to ensure that sediment has not been deposited to a depth greater than 1 foot.

Date of issuance: January 23, 1998.

Effective date: Immediately, to be implemented prior to restart from L1F35 for Unit 1 and prior to restart from L2RO7 for Unit 2.

Amendment Nos.: 122 and 107.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54870).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: September 11, 1997.

Brief description of amendments: These amendments relocate the reactor trip system and engineered safety feature actuation system reponse times from Technical Specification (TS) Tables 3.3–2 and 3.3–5 to Section 3 of the Beaver Valley Power Station, Unit Nos. 1 and 2 Licensing Requirements Manual (LRM) in accordance with the guidance provided in NRC Generic Letter 93–08. Neither the response time limits nor the surveillance requirements for performing response time testing are altered by these amendments. Any future changes to the LRM will be controlled in accordance with the requirements of 10 CFR 50.59. These amendments also make several editorial changes in TSs 3.3.1.1 and 3.3.1.2, as well as making conforming changes to the Bases for these TSs.

Date of issuance: January 20, 1998.

Effective date: Both units, as of date of issuance, to be implemented within 30 days.

Amendment Nos.: 210 and 88.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications and Appendices C (Unit No. 1) and D (Unit No. 2) of the Licenses.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54871).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 20, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: June 14, 1997, supplemented August 4, September 2, 17, 25, November 5, 15, 19, 21, December 3, 5, 11, 24, 1997, January 15, and 22, 1998.

Brief description of amendment: Changes to Technical Specification (TS) relating to small break loss of coolant accident mitigation, emergency diesel generator (EDG) upgrade and EDG load rejection test and steady state loads.

Date of issuance: January 24, 1998.

Effective date: January 24, 1998.

Amendment No.: 163.

Facility Operating License No. DPR–72: Amendment revised the TS.

Date of initial notice in **Federal Register**: October 8, 1997 (62 FR 52581). The letters dated August 4, September 2, 17, 25, November 5, 15, 19, 21, December 3, 5, 11, 24, 1997, and January 15, and 22, 1998, provided clarifying information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No.3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: December 1, and 13, 1997 and January 19, 1998.

Brief description of amendment: Revise License Condition 2.C.(5) to delete the requirement relating to installation and testing of flow indicators in the emergency core cooling system to provide indication of 40 gallons per minute flow for boron dilution.

Date of issuance: January 27, 1998.

Effective date: January 27, 1998.

Amendment No.: 164.

Facility Operating License No. DPR–72: Amendment revises License Condition 2.C.(5) and adds a new License Condition 2.C.11.

Date of initial notice in **Federal Register**: November 12, 1997 (62 FR 60733). Letters dated December 1 and 13, 1997 and January 19, 1998 provided supplemental information which did not affect the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: November 14, 1997.

Brief description of amendment: The amendment changes Technical Specification 4.5.2.d.1 to clarify the wording and increase the setpoint for the open pressure interlock.

Date of issuance: January 23, 1998.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 156.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 17, 1997 (62 FR 66138).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 9, 1995, as supplemented by letters dated October 17, 1996, and January 26, 1998.

Brief description of amendment: The amendment revises the technical specifications by deleting toxic gas monitoring requirements for all chemicals except ammonia. The monitoring requirements for ammonia will remain in the technical specifications.

Date of issuance: January 26, 1998.

Effective date: January 26, 1998.

Amendment No.: 183.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 1, 1995 (60 FR 11137).

The October 17, 1996, and January 26, 1998, supplemental letters provided additional clarifying information and did not change the staff's original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 26, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: October 24, 1997.

Brief description of amendment: This amendment changes Sections 3.1.3.6 and 4.1.3.6 of the Unit 1 Technical Specifications to allow operation of control rod 50–27, uncoupled from its driver, for the remainder of Cycle 7. The amendment specifies conditions under which control rod 50–27 may be operated and modifies existing surveillance requirements to verify control rod position by use of neutron instrumentation.

Date of issuance: January 16, 1998.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 124.

Facility Operating License No. NPF–39: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 19, 1997 (62 FR 61844).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: September 8, 1997, as supplemented November 3, 1997.

Brief description of amendment: The requested amendment modifies the f(ΔI) function. The f(delta I) function is defined in the TS as a function of the indicated difference between the top and bottom detectors of the power range nuclear ion chambers. This function is used in the calculation of the overtemperature delta T (OTdelta T) reactor trip.

Date of issuance: January 26, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 177.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54876). The November 3, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 26, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: S. Singh Bajwa.

Public Service Electric & Gas Company, Docket No. 50–272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: December 11, 1997.

Brief description of amendment: The amendment provides a one-time change to the Technical Specifications to allow purging of the containment during Modes 3 (Hot Standy) and 4 (Hot Shutdown) upon the return to power from the current refueling outage (1R13).

Date of issuance: January 29, 1998.

Effective date: As of the date of issuance, to be implemented within seven days.

Amendment No.: 206.

Facility Operating License No. DPR–70: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 18, 1997 (62 FR 66397).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 29, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 21, 1997.

Brief description of amendments: These amendments revise the Technical Specifications to extend the Modes from 1 and 2 that the Reactor Trip System Power Range Nuclear Instrumentation—low setpoint is to be operable to Modes 1, 2, and 3, when the reactor trip breakers are in the closed position and the control drive system is capable of rod withdrawl.

Date of issuance: January 29, 1998.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 205 and 187.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 19, 1997 (62 FR 68146).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

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: June 30, 1997, as supplemented September 25, 1997.

Brief Description of amendments: The amendments change the Technical Specifications to incorporate requirements necessary to change the basis for prevention of criticality in the fuel storage pool. The change eliminates the credit for Boraflex as a neutron absorbing material in the fuel storage pool criticality analysis.

Date of issuance: January 23, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–133; Unit 2–125.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: August 27, 1997 (62 FR 45464).

The staff found that the supplement did not change the conclusions of the proposed no significant hazards consideration; therefore, renotification of the Commission's proposed determination of no significant hazards consideration was not necessary.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 23, 1998.

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.

Dated at Rockville, Maryland, this 4th day of February 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–3269 Filed 2–10–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report eight new deferrals of budgetary resources, totaling $4.8 billion.

These deferrals affect programs of the Department of State, the Social Security Administration, and International Security Assistance.

William J. Clinton

The White House,
February 3, 1998

BILLING CODE 3110–01–P

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral No.	ITEM	Budgetary Resources
	Funds Appropriated to the President	
	International Security Assistance	
D98-1	Economic support fund and International Fund for Ireland	2,330,098
D98-2	International military education and training	43,300
D98-3	Foreign military financing program	1,483,903
D98-4	Foreign military financing loan program	60,000
D98-5	Foreign military financing direct loan financing account	657,000
	Agency for International Development	
D98-6	International disaster assistance, Executive	135,697
	Department of State	
	Other	
D98-7	United States emergency refugee and migration assistance fund	115,640
	Social Security Administration	
D98-8	Limitation on administrative expenses	7,369
	Total, deferrals	4,833,007

Deferral No. 98-1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**..... $ 2,419,600,000 (P.L. 105-118)
BUREAU: International Security Assistance	**Other budgetary resources**..... $ 486,647,204
Appropriation title and symbol: Economic support fund and International Fund for Ireland 1/ 727/81037 728/91037 72X1037	**Total budgetary resources**..... $ 2,906,247,204
	Amount to be deferred: **Part of year**..... $ _____ **Entire year**..... $ 2,330,097,776
OMB identification code: 72-1037-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other _____
Type of account or fund: [ ] Annual [X] Multi-year: September 30, 1999 (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund and International Fund for Ireland.....	727/81037	72-1037-0-1-152	$ 20,467,548
	728/91037	72-1037-0-1-152	$ 2,294,800,000
	72X1037	72-1037-0-1-152	$ 14,830,228
			$ 2,330,097,776 *

Justification: The President is authorized by the Foreign Assistance Act of 1961, as amended, to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability. Section 531(b) of the Act makes the Secretary of State, in cooperation with the Administrator of the Agency for International Development, responsible for policy decisions and justifications for economic support programs, including whether there will be an economic support program for a country and the amount of the program for each country. This deferral of funds for the Economic Support Fund has no effect on the availability of funds for the International Fund for Ireland.

These funds have been deferred pending the development of country-specific plans that assure that aid is provided in an efficient manner and are reserved for unanticipated program needs. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1997 (D97-1).

* Subsequent releases have reduced the amount deferred to $1,249,778,456.

Deferral No. 98-2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**..... $ 50,000,000 (P.L. 105-118)
BUREAU: International Security Assistance	**Other budgetary resources**..... $ --
Appropriation title and symbol: International military education and training 1181081	**Total budgetary resources**..... $ 50,000,000 **Amount to be deferred:** **Part of year**..... $ 43,300,000 * **Entire year**..... $ ---
OMB identification code: 11-1081-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other _____
Type of account or fund: [X] Annual [ ] Multi-year: _____ (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: The President is authorized by the Foreign Assistance Act to furnish military education and training to military and related civilian persons in friendly countries to facilitate the common defense, foster mutually beneficial relations, improve the ability of foreign countries to use their defense resources, and increase awareness of basic issues involving internationally recognized human rights.

These funds have been deferred pending the review of specific grants to eligible countries by the Departments of State, Treasury, and Defense. The review process will ensure that, in each proposed program, the proposed recipients are qualified and that the limits of available funds are not exceeded. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

* Subsequent releases have reduced the amount deferred to $1,400,000.

Deferral No. 98-3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**..... (P.L. 105-118)	$ 50,000,000
BUREAU: International Security Assistance	**Other budgetary resources**.....	$ --
Appropriation title and symbol: International military education and training 1181081	**Total budgetary resources**.....	$ 50,000,000
	Amount to be deferred: **Part of year**.....	$ 43,300,000 *
	Entire year.....	$ ---
OMB identification code: 11-1081-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act	
Grant program: [X] Yes [ ] No	[ ] Other _____	
Type of account or fund: [X] Annual	**Type of budget authority:** [X] Appropriation	
[ ] Multi-year: _____ (expiration date)	[ ] Contract authority	
[ ] No-Year	[ ] Other _____	

Justification: The President is authorized by the Foreign Assistance Act to furnish military education and training to military and related civilian persons in friendly countries to facilitate the common defense, foster mutually beneficial relations, improve the ability of foreign countries to use their defense resources, and increase awareness of basic issues involving internationally recognized human rights.

These funds have been deferred pending the review of specific grants to eligible countries by the Departments of State, Treasury, and Defense. The review process will ensure that, in each proposed program, the proposed recipients are qualified and that the limits of available funds are not exceeded. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

* Subsequent releases have reduced the amount deferred to $1,400,000.

Deferral No. 98-4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority.....** (P.L. 105-118)	$ 60,000,000
BUREAU: International Security Assistance	**Other budgetary resources.....**	$ ---
Appropriation title and symbol: Foreign military financing loan program 1/	**Total budgetary resources.....**	$ 60,000,000
	Amount to be deferred:	
1181085	**Part of year.....**	$ 60,000,000
	Entire year.....	$ ---
OMB identification code: 11-1085-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act	
Grant program: [ ] Yes [X] No	[ ] Other _____	
Type of account or fund:	**Type of budget authority:**	
[X] Annual	[X] Appropriation	
[ ] Multi-year: _____ (expiration date)	[ ] Contract authority	
[ ] No-Year	[ ] Other _____	

Justification: The President is authorized by the Arms Export Control Act to sell or finance by credit, loan guarantees, or grants, articles and defense services to friendly countries to facilitate the common defense. Under section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under this Act. Executive Order 11958 further requires the Secretary of State to obtain prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding consistency of transactions with national security and financial policies.

As required by the Federal Credit Reform Act of 1990, this account records the subsidy costs associated with the direct loans obligated and loan guarantees for foreign military financing committed in FY 1992 and beyond. The foreign military financing credit program provides loans that finance sales of defense articles, defense services, and design and construction services to foreign countries and international organizations. The subsidy amounts are estimated on a present value basis.

These funds have been deferred pending the review of specific grants to eligible countries by the Departments of State, Treasury, and Defense. The review process will ensure that in each proposed program the proposed recipients are qualified and that the limits of available funds are not exceeded. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1997 (D97-3).

Deferral No. 98-5

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**..... $ 597,000,000 (P.L. 105-118)
BUREAU: International Security Assistance	**Other budgetary resources**..... $ 60,000,000
Appropriation title and symbol: Foreign military financing direct loan financing account 1/ 11X4122	**Total budgetary resources**..... $ 657,000,000
	Amount to be deferred: **Part of year**..... $ 657,000,000 **Entire year**..... $ ---
OMB identification code: 11-4122-0-3-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: The President is authorized by the Arms Export Control Act to sell or finance by credit, loan guarantees, or grants, articles and defense services to friendly countries to facilitate the common defense. Under section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under this Act. Executive Order 11958 further requires the Secretary of State to obtain prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding consistency of transactions with national security and financial policies.

As required by the Federal Credit Reform Act of 1990, this account records the financing costs associated with the direct loans obligated and loan guarantees for foreign military financing committed in FY 1992 and beyond. The foreign military financing credit program provides loans that finance sales of defense articles, defense services, and design and construction services to foreign countries and international organizations. The subsidy amounts are estimated on a present value basis.

These funds have been deferred pending the review of specific grants to eligible countries by the Departments of State, Treasury, and Defense. The review process will ensure that in each proposed program the proposed recipients are qualified and that the limits of available funds are not exceeded. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1997 (D97-4).

Deferral No. 98-6

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**..... $ 190,000,000 (P.L. 105-118)
BUREAU: Agency for International Development	**Other budgetary resources**..... $ 15,000,000
Appropriation title and symbol: International disaster assistance, Executive 1/ 11X1035	**Total budgetary resources**..... $ 205,000,000 **Amount to be deferred:** **Part of year**..... $ _____ **Entire year**..... $ 135,697,000
OMB identification code: 11-1035-0-1-151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [X] Yes [ ] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world.

These funds have been deferred pending the development of country-specific plans to ensure that aid is provided in an efficient manner to those most in need. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1997 (D97-5).

Deferral No. 98-7

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State	**New budget authority**..... $ 50,000,000 (P.L. 105-118)
BUREAU: Other	**Other budgetary resources**..... $ 70,309,081
Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	**Total budgetary resources**..... $ 120,309,081 **Amount to be deferred:** **Part of year**..... $ _____ **Entire year**..... $ 115,639,811
OMB identification code: 11-0040-0-1-151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94-141) and section 414(b)(1) of the Refugee Act of 1980 (Public Law 96-212) amended section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State, but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1997 (D97-6).

Deferral No. 98-8

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Social Security Administration **BUREAU:**	**New budget authority**..... $ 190,000,000 (P.L. 105-78) **Other budgetary resources**..... $ 463,702,272 **Total budgetary resources**..... $ 653,702,272
Appropriation title and symbol: Limitation on administrative expenses 1/ 28X8704	**Amount to be deferred:** **Part of year**..... $ _____ **Entire year**..... $ 7,368,964
OMB identification code: 20-8007-0-7-651 **Grant program:** [ ] Yes [X] No	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This account includes funding for construction and/or renovation of Social Security trust Fund-owned headquarters and field office buildings. In addition, funds remain available for costs associated with acquisition of land in Colonial Park Estates adjacent to the Social Security Administration complex in Baltimore, Maryland. In FY 1998, the Social Security Administration has received an apportionment for $50,000 to cover potential upward adjustments of prior year costs related to field office roof repair and replacement projects. Deferred funds may be made available for two purposes: (1) purchase of 9.8 acres of privately-owned land consisting of fourteen scattered lots within the Social Security Administration complex that the Federal Government made a commitment to the original owners to purchase and to pay relocation costs contingent upon the owner's desire to sell at some future date; and (2) construction, renovation, and expansion projects when a need for such projects is identified and determined to be necessary for the efficient operation of the Social Security Administration. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1997 (D97-7A).

[FR Doc. 98–3420 Filed 2–10–98; 8:45 am]
BILLING CODE 3110–01–C

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Notification of Items Added to Meeting Agenda

DATE OF MEETING: February 2, 1998.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 63 FR 3362, January 22, 1998.

CHANGE: At its meeting on February 2, 1998, the Board of Governors of the United States Postal Service voted unanimously to add an item to the agenda of its closed meeting held on that date: Uniform Program.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 98–3508 Filed 2–6–98; 4:08 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Extension:

Rules 8b–1 to 8b–32, SEC File No. 270–135, OMB Control No. 3235–0176

Rule 604; Rule 605; and Form 1–E, SEC File No. 270–221, OMB Control No. 3235–0232

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rules under section 8(b) of the Investment Company Act of 1940.

Rules 8b–1 to 8b–32 under the Investment Company Act of 1940 (the Act), [17 CFR 270.8b–1 to 8b–32], are the procedural rules an investment company must follow when preparing and filing a registration statement. These rules were adopted to standardize the mechanics of registration under the Act and to provide more specific guidance for persons registering under the Act than the information contained in the statute. For the most part, these procedural rules do not require the disclosure of information. Two of the rules, however, require limited disclosure of information.[1] The information required by the rules is necessary to ensure that investors have clear and complete information upon which to base an investment decision. The Commission uses the information that investment companies provide on registration statements in its regulatory, disclosure review, inspection and policy making roles. The respondents to the collection of information are investment companies filing registration statements under the Act.

The Commission does not estimate separately the total annual reporting and recordkeeping burden associated with rules 8b–1 to 8b–32 because the burden associated with these rules are included in the burden estimates the Commission submits for the investment company registration statement forms (*e.g.*, Form N–1A, Form N–2, Form N–3, and Form N–4). For example, a mutual fund that prepares a registration statement on Form N–1A must comply with the rules under section 8(b), including rules on riders, amendments, the form of the registration statement, and the number of copies to be submitted. Because the fund only incurs a burden from the section 8(b) rules when preparing a registration statement, it would be impractical to measure the compliance burden of these rules separately. The Commission believes that including the burden of the section 8(b) rules with the burden estimates for the investment company registration statement forms provides a more accurate and complete estimate of the total burdens associated with the registration process.

Rule 604—Filing of Notification on Form 1–E.

Rule 604 of Regulation E [17 CFR 230.604] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act'') requires a small business investment company (''SBIC'') or a business development company (''BDC'') claiming an exemption from registering its securities under the Securities Act to file a notification with the Commission on Form 1–E.

[1] Rule 8b–3, 17 CFR 270.8b–3, provides that whenever a registration form requires the title of securities to be stated, the registrant must indicate the type and general character of the securities to be issued. Rule 8b–22, 17 CFR 270.8b–22, provides that if the existence of control is open to reasonable doubt, the registrant may disclaim the existence of control, but it must state the material facts pertinent to the possible existence of control.

Rule 605—Filing and Use of the Offering Circular.

Rule 605 of Regulation E [17 CFR 230.605] requires an SBIC or BDC claiming an exemption from registering its securities under the Securities Act to file an offering circular with the Commission that must also be provided to persons to whom an offer is made.

Form 1–E—Notification Under Regulation E

Form 1–E is the form that an SBIC or BDC uses to notify the Commission that it is claiming an exemption under Regulation E from registering its securities under the Securities Act. Form 1–E requires an issuer to provide the names and addresses of the issuer, its affiliates, directors, officers, and counsel; a description of events which would make the exemption unavailable; the jurisdiction in which the issuer intends to offer its securities; information about unregistered securities issued or sold by the issuer within one year before filing the notification on Form 1–E; information as to whether the issuer is presently offering or contemplating offering any other securities; and exhibits, including copies of the offering circular and any underwriting contracts.

The Commission uses the information provided in the notification on Form 1–E and the offering circular to determine whether an offering qualifies for the exemption under Regulation E. Each year approximately one issuer files a notification on Form 1–E and an offering circular. The Commission estimates that preparing Form 1–E and an offering circular require an issuer to spend approximately 100 staff hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Written 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 of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted

in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: January 29, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3369 Filed 2–10–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 23020; 812–10910]

CypressTree Asset Management Corporation, Inc., CypressTree Senior Floating Rate Fund, Inc., CypressTree Investment Management Company, and CypressTree Fund Distributors, Inc.; Notice of Application

February 4, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'')

SUMMARY OF APPLICATION: Applicants request an order under sections 6(c) and 23(c) of the Act for an exemption from certain provisions of rule 23c–3 to permit a registered closed-end investment company to make repurchase offers on a monthly basis.

FILING DATES: The application was filed on December 23, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

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 March 2, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: 125 High Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Nadya B. Roytblat, Assistant Director, 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 is available for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

APPLICANTS: CypressTree Asset Management Corporation, Inc. (''CAM''), CypressTree Senior Floating Rate Fund, Inc. (the ''Fund''), CypressTree investment Management Company (''CypressTree''), and CyrpressTree Funds Distributors, Inc. (''Distributors'').

Applicants' Representations

1. The Fund is a closed-end management investment company registered under the Act and organized as a Maryland corporation. CAM, an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''), will serve as investment adviser to the Fund. CAM will enter into a subadvisory agreement with CypressTree, an investment adviser registered under the Advisers Act, pursuant to which CypressTree will select the investments made by the Fund. Distributors, a broker-dealer registered under the Securities Exchange Act of 1934, will distribute the Fund's shares. Applicants request that the order apply to any registered closed-end management investment company for which CAM or CypressTree or any entity controlling, controlled by, or under common control with CAM or CypressTree acts as principal underwriter or investment adviser (''Future Fund'').

2. The Fund's investment objective will be to provide as high a level of current income as is consistent with the preservation of capital. The Fund will invest primarily in senior secured floating rate loans made by commercial banks, investment banks, and finance companies to commercial and industrial borrowers (''Loans''). Under normal market conditions the Fund will invest at least 80% of its total assets in Loans. Up to 20 percent of the Fund's total assets may be held in cash, invested in investment grade short-term and medium-term debt obligations, or invested in unsecured senior floating rate loans determined by CypressTree to have a credit quality at least equal to the Loans.

3. Applicants propose to organize the Fund as an ''interval fund'' as provided in rule 23c–3 under the Act. The Fund will continuously offer its shares to the public at net asset value (''NAV'') and will provide liquidity to its shareholders by offering to repurchase a portion of its shares on a periodic basis. The Fund will make offers to repurchase a portion of its common stock at one-month intervals, rather than the three, six, or twelve month intervals specified by rule 23c–3. The Fund's shares will be offered without any initial or deferred sales charges or asset-based distribution fees. Applicants may sponsor Future Funds with differing sales charge structures. The Fund's shares will not be offered or traded in the secondary market and will not be quoted or listed on any exchange.

4. The Fund will disclose in its prospectus its fundamental policy to make monthly offers to repurchase a portion of its securities at NAV. The policy will be changeable only by a majority vote of the holders of the Fund's outstanding voting securities. Under the fundamental policy, the repurchase offer amount will be determined by the Fund's board of directors (the ''Board'') prior to each repurchase offer. A majority of the Board will consist of disinterested members. Applicants agree that, as a condition to the relief requested in the application, in any one-month period, the repurchase offer amount will not exceed 10% of the Fund's outstanding shares at the time of the repurchase request deadline.

5. The Fund's prospectus will specify the monthly repurchase request deadline, which will be the last business day of every month. The prospectus will also specify the maximum number of days between each repurchase request deadline and the repurchase pricing date. The Fund's repurchase pricing date will normally be the same date as the repurchase request deadline and pricing will be determined after close of business on that date.

6. The Fund will make payment for the repurchased shares in cash on or before the repurchase payment deadline, which will be no later than five business days or seven calendar days (whichever period is shorter) after the repurchase pricing date. The Fund expects to make payment on the first business day following the repurchase pricing date. The Fund will make payment for shares repurchased in the previous month's repurchase offer at least five business days before sending notification of the next repurchase offer.

The Fund does not expect to deduct any fees from repurchase proceeds.

7. The Fund will provide shareholders with notification of each repurchase offer no less than seven days and no more than fourteen days prior to the repurchase request deadline. The notification will include all information required by rule 23c–3(b)(4). The Fund will file the notification and the Form N–23c–3 with the SEC within 3 business days after sending the notification to the Fund's shareholders.

8. The Fund will not suspend or postpone a repurchase offer except pursuant to the vote of a majority of its disinterested directors, and only under limited circumstances, as provided in rule 23c–3(b)(i). The Fund will not condition a repurchase offer upon tender of any minimum amount of shares. In addition, the Fund will comply with the pro rata and other allocation requirements of rule 23c–3(b)(5) if shareholders tender more than the repurchase offer amount. Further, the Fund will permit tenders to be withdrawn or modified at any time until the repurchase request deadline but will not permit tenders to be withdrawn or modified thereafter.

9. From the time the Fund sends its notification to shareholders of the repurchase offer until the repurchase pricing date, a percentage of the Fund's assets equal to at least 100% of the repurchase offer amount will consist of: (1) Assets, which may include Loans, that can be sold or disposed of in the ordinary course of business at approximately the price at which the Fund has valued such investment within a period equal to the period between the repurchase request deadline and the repurchase payment deadline (seven days); or (2) assets, including Loans, that mature by the next repurchase payment deadline. In the event the Fund's assets fail to comply with this requirement, the Board will cause the Fund to take such action as it deems appropriate to ensure compliance.

10. In compliance with the asset coverage requirements of section 18 of the Act, any senior security issued by the Fund will either mature by the next repurchase pricing date or provide for the Fund's ability to call or repay such indebtedness by the next repurchase pricing date as necessary to permit the Fund to complete the repurchase offer in an amount determined by the Board.

11. The Fund's Board will adopt written procedures to ensure that the Fund's assets are sufficiently liquid so that the Fund can comply with its fundamental policy on repurchases and the liquidity requirements of rule 23c–3(b)(10)(i). The Board will review the overall composition of the portfolio and make and approve such changes to the procedures as it deems necessary.

Applicants' Legal Analysis

1. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 23(c) of the Act provides in relevant part that no registered closed-end investment company shall purchase any securities of any class of which it is the issuer except: (a) on a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the SEC may permit by rules and regulations or orders for the protection of investors.

3. Rule 23c–3 under the Act permits a registered closed-end investment company to make repurchase offers of its outstanding shares at NAV to shareholders at periodic intervals pursuant to a fundamental policy of the investment company. ''Periodic interval'' is defined in rule 23c–3(a)(1) as an interval of three, six, or twelve months. An interval fund may not suspend or postpone a repurchase offer except by vote of the fund's directors/trustees, and then only under limited circumstances. Rules 23–3(b)(4) requires that notification of each repurchase offer be sent to shareholders no less than 21 days and no more than 42 days before the repurchase request deadline. Rule 23c–3(a)(3) provides that a repurchase offer amount may be between five and twenty-five percent of the amount of common stock outstanding on the repurchase request deadline.

4. Applicants request an order pursuant to sections 6(c) and 23(c) of the Act exempting them from rule 23c–3(a)(1) to permit the Fund to make monthly repurchase offers. Applicants also request an exemption from the notice provisions of rule 23c–3(b)(4) to permit the Fund to send notification of an exemption of an upcoming repurchase offer to shareholders at least seven days but no more than fourteen days in advance of the repurchase request deadline. Finally, applicants request an exemption from rule 23c–3(a)(3)'s definition of ''repurchase offer amount'' that limits repurchase offers to an aggregate of 25% of the common stock outstanding in any three-month period.

5. Applicants contend that monthly repurchase offers are in the shareholders' best interests and consistent with the policies underlying rule 23c–3. Applicants assert that monthly repurchase offers will offer investors a distinct new asset allocation alternative with a unique and beneficial risk/return profile. Applicants assert that shareholders will be better able to manage their investments and plan transactions, because if an investors decides to forego a repurchase offer, he or she will only need to wait one month for the next offer. Applicants also contend that the Fund's management will be able to better manage the Fund's Loan portfolio, because repurchase offers will become part of a routine that is expected to provide management with predictable liquidity requirements.

6. Applicants state that their proposal to make monthly repurchase offers will not be confusing to investors. Applicants propose to send notification of shareholders at least seven days, but no more than fourteen days, in advance of a repurchase request deadline. Applicants assert that, because the Fund intends to price on the repurchase request deadline and pay on the next business day, the entire procedure can be completed before the next notification is sent out to shareholders; thus avoiding any overlap. Applicants believe that these procedures will eliminate any possibility of investor confusion. Applicants also state that monthly repurchase offers will be accepted as a fundamental feature of the Fund, and the Fund's prospectus will provide a clear explanation of the repurchase program.

7. Applicants assert that maturation of the Loan markets has brought depth and enhanced liquidity to these markets. Applicants believe that both the primary and secondary markets for Loans have experienced sufficient growth in recent years that the Fund will have adequate liquidity to support monthly repurchases. Applicants state that the volume of trading in the secondary market for Loans has increased to $41 billion in 1996 from $15 billion in 1993. Applicants also state that there are 44 non-bank institutions that are active in the secondary market as compared to only three in 1989. Applicants assert that liquidity is also evidenced by the presence of approximately 14 dealers offering daily bid/ask quotes. Applicants contend that the depth and efficiency of these markets, together with the portfolio manager's experience and judgment, will enable the Fund to maintain fully liquid assets at levels that

will meet or exceed the requirements of rule 23c–3.

8. Applicants submit that for the reasons given above the requested relief is necessary and appropriate in the public interest and is consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The Fund will not make a repurchase offer pursuant to rule 23c–3(b) for a repurchase offer amount of more than 10% of its outstanding shares of common stock in any one-month period. The Fund may repurchase additional tendered shares pursuant to rule 23c–3(b)(5) only to the extent the aggregate of the percentages of additional shares so repurchased does not exceed 2% in any given three-month period.

2. Payment for repurchased shares will occur at least five business days before notification of the next repurchase offer is sent to shareholders of the Fund.

3. The Fund will maintain an investment policy that requires, under normal conditions, that at least 65 percent of the value of its total assets will be invested in Loans.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3366 Filed 2–10–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26823]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

February 5, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 2, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ohio Valley Electric Corporation [70–8527]

Ohio Valley Electric Corporation ("Ohio Valley"), P.O. Box 468, Piketon, Ohio 45661, an electric public utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its declaration filed under sections 6(a) and 7 of the Act and rule 54 under the Act.

By orders dated December 28, 1994 and December 12, 1996 (HCAR Nos. 26203 and 26624) ("Existing Authorization"), Ohio Valley was authorized to incur short-term debt through the issuance and sale of notes ("Notes") to banks in an aggregate amount not to exceed $25 million outstanding at any one time, from time to time through December 31, 2001, provided that no Notes shall mature later than June 30, 2002.

Ohio Valley now proposes that the Existing Authorization be increased to an aggregate amount not to exceed $50 million outstanding at any one time.

The proceeds of the short-term debt incurred by Ohio Valley will be added to its general funds and used to pay its general obligations and for other corporate purposes.

Entergy Louisiana, Inc. [70–9141]

Entergy Louisiana, Inc. ("ELI"), 639 Loyola Avenue, New Orleans, Louisiana 70113, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 under the Act.

ELI proposes to issue and sell up to a combined aggregate principal amount of $600 million of first mortgage bonds ("Bonds") and /or one or more series of ELI's debentures under one or more debenture indentures or subordinated debenture indentures ("Debentures") through December 31, 2002 ("Authorization Period"). Each series of Bonds or Debentures will be sold either by competitive bidding, negotiated public offering or private placement. The price, interest rate and maturity date will all be determined at the time of sale, or upon execution of the agreement to sell.[1] Each series of Bonds or Debentures will mature not later than forty years (Bonds) or fifty years (Debentures) from the date of issuance. One or more series of Bonds or Debentures may include provisions for redemption or retirement prior to maturity, including restrictions on optional redemption for a given number of years. In addition, one or more series of Bonds or Debentures may include provisions for the mandatory retirement of some or all of the series prior to maturity.[2] Debentures issued under a

[1] The price, exclusive of accrued interest, to be paid to ELI for each series of Bonds or Debentures sold at competitive bidding will be within a range (to be specified by ELI to prospective purchasers) of 95% to 105% of the principal amount of the series.

No series of Bonds or Debentures will be issued at rates in excess of the lower of 15% per annum or those rates generally obtainable at the time of pricing for sales of mortgage bonds or debentures (as the case may be) having the same or reasonably similar maturities, issued by companies of the same or reasonably comparable credit quality and having reasonably similar terms, conditions and features.

As to series of Bonds or Debentures having an adjustable interest rate, the initial interest rate will be negotiated between ELI and the purchasers of the series and will be based on the current rate for comparable bonds or debentures. Thereafter, the interest rate will be adjusted according to a pre-established formula or method of determination ("Floating Rate Bonds") or ("Floating Rate Debentures") or will be that rate which, when set, would be sufficient to remarket the Bonds or Debentures at their principal amount ("Remarketed Bonds") or ("Remarketed Debentures").

The interest rate for Floating Rate Bonds or Floating Rate Debentures after the initial interest rate period may be set as a percentage of, or a specified spread from, a benchmark rate, such as the London Interbank Offered Rate or the yield to maturity of specified United States Treasury securities, and may be established by reference to orders received in an auction procedure, and will not exceed a specified maximum rate greater than 15% per annum. The interest rate may be adjusted at established intervals or may be adjusted simultaneously with changes in the benchmark rate.

The interest rate for Remarketed Bonds or Remarketed Debentures after the initial interest rate period will not be greater than rates generally obtained at the time of remarketing of bonds or debentures having similar maturities, issued by companies of comparable credit quality and having reasonably comparable terms, and will not exceed a specified maximum rate greater than 15% per annum.

[2] The terms of Remarketed Bonds or Remarketed Debentures will provide that holders have the right to tender or are required to tender their Bonds or Debentures and have them purchased at a price equal to the principal amount plus accrued and unpaid interest on specified dates. A tender agent

Continued

subordinated debenture indenture would be expressly subordinated to senior indebtedness of ELI, and may also provide that payments of interest may be deferred, without creating a default, for specified periods, so long as no dividends are being paid on, or certain actions are being taken with respect to the retirement of, ELI's common or preferred stock during the deferral period.

ELI further proposes to issue and sell one or more new series of its preferred stock of either $25 par value (''$25 Preferred'') or $100 par value (''$100 Preferred'') (collectively, the ''Preferred'') either by competitive bidding, negotiated public offering or private placement during the Authorization Period. The aggregate amount of Preferred to be issued, when combined with the Entity Interests described below, will not exceed $260 million. The price, exclusive of accumulated dividends, for each series of Preferred will be determined at the time of sale and will not be less than par on a per share basis. With respect to any series of Preferred to be sold at competitive bidding the price to be paid will not be less than $25 nor more than $25.70 per share for $25 Preferred and not less than $100 nor more than $102.75 per share for $100 Preferred. The terms of one or more series of the preferred may include redemption and/or sinking fund provisions.

ELI proposes to organize either a special purpose limited partnership or a statutory business trust (''Issuing Entity'') for the sole purpose of issuing Entity interests (''Entity Interests'').[3] ELI will directly or indirectly make an equity contribution to the Issuing Entity at the time the Entity Interests are issued and thereby directly or indirectly acquire all of the general partnership interests (in the case of a partnership) or all of the voting interests (in the case of a business trust) in the Issuing Entity. ELI's equity contribution to the Issuing Entity will at all times be at least 1% (in the case of a limited partnership) or at least 3% (in the case of a business trust) of the aggregate equity contributions by all security holders to the Issuing Entity.[4]

ELI proposes to issue one or more series of subordinated debentures to the Issuing Entity under a subordinated debenture indenture (''Entity Subordinated Debentures''). Each series of Entity Subordinated Debentures will mature at a time from their date of issuance as ELI may determine at the time of their issuance, but not more than fifty years.[5] Each series of Entity Interests and corresponding series of Entity Subordinated Debentures will be sold at a price, and will be entitled to receive distributions or interest payments on a periodic basis, that will have been determined at the time of sale.[6] One or more of Entity Interests and Entity Subordinated Debentures may include provisions for the mandatory retirement of some or all of the series prior to maturity. The Entity Interests will be subject to redemption, in whole or part after a specified date, but not later than five years after the date of issuance, at the option of the Issuing Entity, with ELI's consent, at a price equal to their stated liquidation preference plus any accrued and unpaid distributions.

ELI also proposes to enter into a guaranty (''Guaranty'') under which guarantee the payment of distributions, if and to the extent that the Issuing Entity has legally available funds for this purpose, liquidation payments and certain ''gross up'' amounts to Equity Interests holders. The Entity Subordinated Debentures and the Guaranty will be expressly subordinated to the senior indebtedness of ELI.[7]

ELI proposes to use the net proceeds derived from the issuance and sale of Bonds, Debentures, Preferred and/or Entity Interests for general corporate purposes, including, but not limited to, the conduct of its business as an electric utility, the repayment of outstanding securities when due and/or the possible redemption, acquisition, or refunding of certain outstanding securities prior to their maturity date.[8]

ELI also proposes through the Authorization Period to enter into arrangements to finance on a tax-exempt basis certain solid waste, sewage disposal and/or pollution control facilities (''Facilities''), and to enter into leases, subleases, installment sale agreements, refunding agreements or other agreements supplements or amendments (''Agreements'') with one or more issuing, governmental authorities (''Issuer''), under which the Issuer may issue one or more series of tax-exempt revenue bonds (''Tax-Exempt Bonds'') up to an aggregate principal amount of $420 million. The net proceeds form the sale of Tax-Exempt Bonds will be deposited by the Issuer with the trustee (''Trustee'') under one or more indentures (''Indenture''). The Trustee will apply the proceeds to reimburse ELI for, or to finance or refinance on a tax-exempt basis, the costs of the acquisition, construction, installation or equipping of the Facilities.

Under the Agreements, ELI will pay the principal or redemption price of, premium, if any, and the interest on Tax-Exempt Bonds as the same become due and payable. Under the Agreement, ELI will also be obligated to pay certain fees incurred in the transactions.

The Agreements and the Indenture may provide for either a fixed interest rate or an adjustable interest rate for

(''Tender Agent'') may be appointed to facilitate the tender of any Bonds or Debentures by holders. ELI would be obligated to pay amounts equal to the amounts to be paid to the Tender Agent or remarketing agent appointed to reoffer the tendered Bonds or Debentures for the purchase of Remarketed Bonds or Remarketed Debentures.

[3] In the case of a limited partnership, ELI will either (a) act as the general partner of the Issuing Entity or (b) organize a special purpose, wholly owned corporation for the sole purpose of acting as the general partner of the Issuing Entity.

In the case of a business trust, the business and affairs of the trust will be conducted by one or more trustees. Prior to a default, ELI would, as a result of its ownership of all the voting interests in the Issuing Entity, be entitled to appoint, remove or replace the trustee(s).

[4] The price, exclusive of accrued distributions, to be paid to the Issuing Entity for each series of Entity Interests to be sold at competitive bidding will be within a range from 95% to 105% of the liquidation amount of the series.

[5] Prior to maturity, ELI will pay interest only on the Entity Subordinated Debentures, at either a fixed or adjustable rate as set forth in the Entity subordinated debenture indenture. The distribution rates, payment dates, redemption, maturity, and other terms applicable to each series of Entity Interests will be substantially identical to the interest rates, payment dates, redemption, maturity, and other terms applicable to the Entity Subordinated Debentures, and will be determined by ELI at the time of issuance.

The interest paid by ELI on the Entity Subordinated Debentures will be the only source of income for the Issuing Entity and will be used by the Issuing Entity to pay monthly or quarterly distributions on the Entity Interests.

ELI anticipates that its interest payments on the Entity Subordinated Debentures will be deductible for federal and state income tax purposes and that the Issuing Entity will be treated as either a partnership or a trust for federal income tax purposes. Consequently, holders of Entity Interests will be deemed to have received interest income rather than dividends, and will not be entitled to any ''dividends received deduction'' under the Internal Revenue Code.

[6] The interest rates for the Entity Subordinated Debentures will be determined according to the same terms and conditions described in footnote 2 above for Bonds and Debentures.

[7] Because the Entity Interests will be supported by ELI's Entity Subordinated Debentures and Guaranty (if issued), and the distributions to holders of Entity Interests will be paid out of the interest payments on the Entity Subordinated Debentures or under the Guaranty, the Entity partnership agreement or declaration of trust will not include any interest or distribution coverage or capitalization ratio restrictions on the ability to issue and sell additional Entity Interests.

[8] ELI states that the proceeds received from the issuance and sale of the Bonds, Debentures, Entity Interests, Preferred and Tax-Exempt Bonds (defined below) will not be used to invest directly or indirectly in exempt wholesale generators or foreign utility companies, as defined in sections 32 and 33 of the Act.

each series of the Tax-Exempt Bonds.[9] Each series may be subject to optional and mandatory redemption and/or mandatory cash sinking fund under which stated portions of the series would be retired at stated times.[10]

In order to obtain a more favorable rating and thereby improve the marketability of the Tax-Exempt Bonds, ELI may (1) arrange for a letter of credit from a bank in favor of the Trustee;[11] (2) provide an insurance policy for the payment of the principal of and/or interest and/or premium on one or more series of Tax-Exempt Bonds; and/or (3) obtain authentication of one or more new series of first mortgage Bonds (''Collateral Bonds'') to be issued and delivered to the Trustee and/or the Bank to evidence and secure ELI's obligations under the Agreements and/or the Reimbursement Agreement, respectively.[12] The maximum aggregate principal amount of Collateral Bonds would be $455 million, which would be in addition to the $600 million aggregate limitation on the Bonds and Debentures.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3421 Filed 2–10–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39618; File No. SR–CBOE–98–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Exchange Fees for Equity Options

February 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on January 16, 1998, the Chicago Board Options Exchange, Inc. (''CBOE''or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to change its Order Book Official (''book'') rate schedule for equity options.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

The purpose of the proposed rule change is to change the book fee schedule applicable to equity options. The Exchange is not changing the book fees for index options at this time. The book fees are billed at the end of each month and so this change will be reflected in the bills for all January transactions. Although the change is being applied retroactively, the amount of time for which the change will be applied retroactively is minimal. It should be noted that the Exchange's Financial Planning Committee and the Floor Directors Committee endorsed this proposal and sent it to the Board for approval prior to the end of 1997 and prior to the time by which the new change was to be applied. These fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22.

Under the new schedule, equity option book execution services will be charged a flat rate of $0.45 per contract. The previous per contract rate schedule for equity options (and the current index option schedule) charged various rates for book executions depending on the premium and the order size, as follows:

Premium [3]	First ten contracts	Eleven and above
Accommodation liquidations and cabinet trades	$0.10	$0.10
Under ½	0.35	0.28
½–1	0.525	0.455
1–2	0.63	0.525
2–4	0.77	0.63
4–8	1.05	0.91
8–14	1.40	1.05
14–20	1.75	1.295

[9] No series of Tax-Exempt Bonds would be sold if the fixed interest rate or initial adjustable interest rate would exceed market rates generally obtainable at the time of pricing for sales of tax-exempt bonds having a reasonably similar maturity, issued for the benefit of companies of a reasonably comparable credit quality and having reasonably similar terms, conditions and features.

For series having adjustable interest rates, the initial interest rate will be negotiated between ELI and the purchasers of such series and will be based on the current tax-exempt market rates for comparable bonds having a maturity comparable to the length of the initial rate period. Thereafter, the interest rate would be a rate which, when set, would be sufficient to remarket the Tax-Exempt Bonds at a price equal to their principal amount, but would not exceed the lower of 13% per annum or rates generally obtainable at the time of remarketing of tax-exempt bonds having the same or reasonably similar maturities, issued for the benefit of companies of reasonably comparable credit quality and having the same or reasonably similar terms.

[10] The prices, rights or requirements, and fees for the tender of Tax-Exempt Bonds will be determined in a manner identical to those described in footnote 2 for Bonds and Debentures.

[11] In connection with the letter of credit, ELI may enter into a reimbursement agreement (''Reimbursement Agreement'') under which ELI would agree to reimburse the Bank for amounts drawn under the letter of credit and to pay commitment and/or letters of credit fees.

[12] Each series of Collateral Bonds that bear interest would do so at a fixed interest rate or initial adjustable rate that would not exceed 15%.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Premium [3]	First ten contracts	Eleven and above
20 and above	2.10	1.61

As with the previous schedule, the charge for cabinet trades/accommodation liquidations, as described in CBOE Rules 6.54 and 21.15, will continue to be $0.10 per contract. In addition, as in the previous schedule, no execution fee will be assessed market orders sent to the book prior to the opening and executed during opening rotation. The new fee schedule should reduce the overall Order Book Official fees (''book fees'') paid by all Exchange members. The Exchange believes that the reduction in the book fees will allow the Exchange to compete more effectively for transactions in equity options.

The Proposed rule change is consistent with Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4) of the Act [5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and subparagraph (e)(2) of rule 19b–4 [7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 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 CBOE. All submissions should refer to File No. SR–CBOE–98–01 and should be submitted by March 4, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3368 Filed 2–10–98; 8:45 am]

BILLING CODE 8010–01–M

[3] ''Premium'' equals the option price in dollars, calculated on a per-share basis for equity option contracts, and calculated on a per-unit basis for index option contracts. The ranges set forth include their lower bounds.

For options on the Standard & Poor's 100 Stock Index (OEX), there is no charge for ''market'' and ''limit'' orders placed with the Order Book Official prior to the opening and executed during opening rotation. For other options, this rule applies to ''market orders'' but not ''limit orders.''

Accommodation liquidations and cabinet trades are off-market trades at a price of $1 per option contract.

The definitions were clarified during a telephone conversation between Timothy Thompson, Senior Attorney, CBOE, and Joshua Kans, Attorney, Division of Market Regulation, Commission, January 22, 1998.

[4] 15 U.S.C. 78f.

[5] U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39615; File No. SR–CHX–97–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by The Chicago Stock Exchange, Incorporated Relating to Oversized MAX Orders

February 3, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 9, 1997, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change. On January 9, 1998, the Exchange submitted to the Commission Amendment No. 1 to the proposal. The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 37(b)(1) and proposes to add interpretation and policy .06 thereunder relating to the entry and acceptance of oversized orders in the Exchange's Midwest Automated Execution System (''MAX System'').[2] Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

Article XX Rule 37

(b)(1) Size. The MAX System has two size parameters which must be designated by the specialist on a stock-by-stock basis. The first parameter, the auto-execution threshold, must be set at 1099 shares (the default size) or greater for Dual Trading System issues. The second parameter, the auto-acceptance threshold, must be set at 2099 shares (the system default) or greater for Dual

[1] 15 U.S.C. § 78s(b)(1).

[2] The MAX System provides an automated delivery and, in certain cases, execution facility for orders that are eligible for execution under the Exchange's BEST Rule, Art. XX, Rule 37(a), and certain other orders. *See* CHX Manual, Art. XX, Rule 37(b).

Trading System issues. In NASDAQ/NM Securities, the auto-execution and auto-acceptance parameters must be set at 1000 shares or greater. In no event may the auto-acceptance threshold be less than the auto-execution threshold. If the order sending firm sends an agency market order through MAX that is greater than the Specialist's auto-acceptance threshold, a Specialist may cancel the order within [three minutes] *one minute* of its being entered into MAX. If not canceled by the Specialist, the order will be designated as an open order. If the order sending firm sends an agency market order through MAX that is less than the auto-acceptance threshold but greater than the auto-execution threshold, the order will not be available for automatic execution but will be designated in the open order book. A specialist may manually execute any portion of such order and the difference shall remain as an open order. If the order sending firm sends an agency market order through MAX that is less than or equal to the auto-execution threshold, such order will be automatically executed in accordance with paragraph (b)(6) and (7) of this Rule.

*** * * Interpretations and Policies**

.06 Oversized MAX Orders.

As stated in paragraph (b)(1) of this Rule, if an agency order is sent through MAX that is greater than the specialist's auto-acceptance threshold, the specialist shall follow the procedures set out below in a timely manner, but in no event great than one minute, until the order has either been definitively accepted or canceled:

1. If the oversized order is a limit order and the limit price is equal to or better than the specialist's quote, the order must be immediately reflected in the specialist's quote in accordance with Rule 7 of this Article XX.

2. The oversized order must receive post protection until its final status is determined.

3. A specialist must notify the order sending firm's MAX floor broker representative if the specialist determines to cancel the order.

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

As described more fully below, the purpose of the proposed rule change is to amend CHX rules relating to the entry and acceptance of oversized orders received through the MAX System. Under the Exchange's BEST Rule, Exchange specialists are required to guarantee executions of all agency [3] market and limit orders for Dual Trading System issues [4] from 100 shares up to and including 2099 shares. Subject to the requirements of the short sale rule, market orders must be executed on the basis of the Intermarket Trading System's (''ITS'') best bid or offer (''BBO''). Limit orders must be executed at their limit price or better when: (1) The ITS BBO at the limit price has been exhausted in the primary market; (2) there has been a price penetration of the limit in the primary market (generally known as a trade-through of a CHX limit order); or (3) the issue is trading at the limit price on the primary market unless it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related to, or other criteria for, requiring an execution.

As stated above, the Exchange's MAX System provides for the automatic execution of orders that are eligible for execution under the Exchange's BEST Rule and certain other orders.[5] The MAX System has two size parameters which must be designated by the specialist on a stock-by-stock basis. For Dual Trading System issues, the specialist must set the auto-execution threshold at 1099 shares or greater and the auto-acceptance threshold at 2099 shares or greater. In no event may the auto-acceptance threshold be less than the auto-execution threshold. If the order-entry firm sends an order through MAX that is less than or equal to the auto-execution threshold, the order is executed automatically, unless an exception applies. If the order-entry firm sends an order through MAX that is less than the auto-acceptance threshold but greater than the auto-execution threshold, the order is not available for automatic execution but is designated in the open order book. A specialist may manually execute any portion of the order; the difference must remain as an open order. Under the current MAX rules, if the order-entry firm sends an order through the MAX System that is greater than the specialist's auto-acceptance threshold, a specialist may cancel the order within three minutes of it being entered into MAX. If not canceled by the specialist, the order is designated as an open order.[6]

The Exchange proposes to change the way that these oversized orders are handled. First, the Exchange proposes to amend Rule 37(b)(1) of Article XX to change the amount of time in which the specialist can cancel the oversized order. Rather than the current three minute window, the Exchange proposes to reduce this time period to one minute. If the specialist has not canceled the order in the one minute period, the order will be designated as an open order.

Second, the Exchange proposes to add interpretation and policy .06 to Rule 37 to specifically describe how oversized orders are to be handled during the one minute period in which the specialist can cancel the order. The interpretation will provide that if the oversized order is an agency limit order, the order must immediately be reflected in the specialist's quote in accordance with CHX rules.[7] Additionally, during the one minute window, the order must receive post protection. This means that while the BEST Rule will not apply

[3] The term ''agency order'' means an order for the account of a customer, but does not include professional orders as defined in CHX, Art. XXX, Rule 2, interpretation and policy .04. That Rule defines a ''professional order'' as any order for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. *Id.*

[4] Dual Trading System Issues are issues that are traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the New York Stock Exchange or American Stock Exchange.

[5] A MAX order that fits under the BEST parameters must be executed pursuant to BEST Rules via the MAX system. If the order is outside the BEST parameters, the BEST Rules do not apply, but MAX system handling rules do apply.

[6] Under current rules, if an oversized market or limit order is received by the specialist, he must either reject the order immediately or immediately display it in accordance with CHX rules and the Commission's Order Execution Rules (Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996)). If the order is displayed, the specialist must check with the order entry broker to determine the validity of the oversized order. During the three minute period, the specialist can cancel the order and return it to the order entry firm, but until it is canceled the displayed order is eligible for execution.

[7] Article XX, Rule 7 of the CHX rules requires every limit order that is priced at or better than the specialist's quote to be included in the specialist's quote, subject to certain exceptions.

during this period, the specialist must allow the order to interact with other orders received by the specialist at the post, using the same priority and precedence rules that apply to other orders received at the post.

Finally, during the one minute window, the specialist must notify the order sending firm's MAX floor broker representative if the specialist determines to cancel the order. The reduction of the three minute window to one minute is appropriate because it will reduce the time period in which the order sending firm will be uncertain as to the ultimate status of the order. The imposition of specific duties on the specialist during the one minute window is appropriate in order to both make sure that the order is not disadvantaged during the one minute period and to give the specialist an opportunity to verify with the MAX floor broker representative that the order is accurate and correct.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

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 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–32 and should be submitted by March 4, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3370 Filed 2–10–98; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39623; File No. SR–DCC–97–10]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing of Proposed Rule Change Relating to the Clearing of Repurchase Agreement Instrument Transactions

February 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 31, 1997. Delta Clearing Corp. (''DCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will revise DCC's rules to authorize DCC to clear and to settle repurchase agreement instrument transactions (''RAIT'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC 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. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A RAIT is a transaction pursuant to which the counterparties agree to pay each other interest on an agreed upon amount (''notional amount'')[3] for the agreed term of the RAIT. One counterparty (''selling member'') will pay interest that is based on the market rate of interest for a repurchase agreement (''repo'') with treasury securities as the underlying collateral and that is adjusted on a daily basis throughout the term of the transaction (''floating rate''). The other counterparty (''purchasing member'') will pay interest based on a rate of interest that remains constant throughout the term of the transaction (''fixed rate''). This proposed rule change will permit DCC to clear and to settle RAITs.

1. Structure of the Transaction

The parties will negotiate between themselves: (1) The notional amount, (2) the type of repo to be referenced for the floating rate, (3) the fixed rate, (4) the date the RAIT will start (''commencement date''), (5) the date the RAIT will end (''expiration date''), and (6) any premium that may be paid to one counterparty as consideration for entering into the transaction.

[2] The Commission has modified the text of the summaries prepared by DCC.

[3] The notional amount must be $1 million or a multiple thereof. The notional amount is used solely as reference and is not exchanged between the parties.

On the trade date,[4] the parties will report the agreed upon transaction terms to DCC either directly or through a broker authorized by DCC.[5]

The parties' payment obligations will begin on the commencement date and will end on the day before the expiration date. The commencement date may be prior to or after the trade date. However, RAITs with a commencement date which is prior to the trade date will only be permitted to allow one party to enter into a RAIT with a new counterparty to close out its existing RAIT position.[6] Any premium will be paid on the later of the first business day following the commencement date or the first business day following the trade date.[7]

The expiration date (also referred to as the settlement sum payment date) may not be earlier than the later of the second business day following the trade date or the second business day following the commencement date.[8] In addition, the expiration date may not be later than the earlier of the first anniversary of the trade date or the first anniversary of the commencement date.

Prior to 8:00 a.m. on the expiration date, DCC will notify each member of any amount required to be paid by or to such member with respect to RAITs expiring on such date (''settlement sum'').[9] This information will be included on the daily RAIT activity reports sent to members. Members will be required to make any payment indicated on the daily reports prior to the settlement time on the expiration date.[10]

The failure of a member to pay any premium or any settlement sum will constitute a violation of the procedures. The defaulting member will be suspended in accordance with Article 4 of DCC's procedures (subject to deferral for up to two hours) and may be sanctioned in accordance with Article 5.

[4] Trade date will be defined as the date on which members or their broker report a RAIT to DCC.

[5] Section 3 of this notice contains a description of the trade reporting requirements.

[6] Such transaction is referred to as a closing transaction and is discussed below in Section 4 of this notice.

[7] Premium payments must be made to DCC by the later of 11:00 a.m. or the opening of FedWire and will be paid by DCC six hours later. Members' obligations to pay premiums will be netted with their right to receive premiums.

[8] This time period will give DCC an opportunity to collect margin on all RAITs on the day after the RAIT is accepted by DCC for clearance.

[9] Section 2 of this notice sets forth the formula that will be used to determine the settlement sum.

[10] Settlement time is defined as the later of 11:00 a.m. or the opening of FedWire.

2. Calculation of Payment

The members must select as the floating rate one of the five special collateral rates or the general collateral rate. The special collateral rates will equal the rate of interest for repos in which the treasury securities underlying such agreements are the most recently issued treasury security with an original maturity of two years, three years, five years, ten years, or thirty years. The general collateral rate will be the rate of interest for repos in which the treasury securities underlying such agreements are any securities other than the most recently issued treasury securities with an original maturity of two, three, five, ten, or thirty years.[11]

Each special collateral rate and the general collateral rate will be determined by DCC at the close of business on each business day upon a reputable pricing source selected by DCC.[12] DCC will then multiply the applicable floating rate by the notional amount and divide by 360 to determine the floating rate amount. Any daily floating rate amount determined for a business day will apply to any following nonbusiness day.[13]

The fixed rate will be a fixed percentage carried out to three decimal points. As a result, the fixed rate amount will remain constant each day during the term of a transaction. The daily fixed rate amount will be obtained by multiplying the fixed rate by the notional amount and dividing that amount by 360.

At the end of a RAIT, DCC will calculate the sum of the daily floating rate amounts and the sum of the daily fixed rate amounts in each case calculated from and including the commencement date through and excluding the expiration date. The difference between these amounts is the settlement sum. If the sum of the daily floating rate amount is in excess of the sum of the daily fixed rate amount, the selling member will be required to pay the settlement sum to DCC for payment to the purchasing member. If the sum of the daily fixed rate amounts is in excess of the sum of the daily floating rate amounts, the purchasing member will be required to pay the settlement sum to DCC for payment to the selling member.

3. *Trade Reporting and Acceptance*

The trade reporting procedure for RAITs will be similar to the trade reporting procedures for option transactions cleared by DCC.[14] The transactions may be reported to DCC by the member counterparties or by the broker for the transaction. Members will be required to report RAITs to DCC on the date upon which the members agree to the trades. RAITs made between 9:00 a.m. and 12:00 p.m. on any business day will have to be reported to DCC by telephone prior to 12:30 p.m. of that business day.[15] RAITS agreed to between 12:00 noon and 5:00 p.m. on any business day will have to be reported to DCC by telephone prior to 5:30 p.m. of that business day. Members or their broker will have to submit written trade reports for all trades by 5:30 p.m. of that business day.

Both the verbal and written trade report for each transaction will need to report (a) The identities of the purchasing member and the selling member, (b) the trade date, (c) the commencement date, (d) whether any party is required to pay a premium and if so the party required to pay such premium and the amount, (e) the notional amount, (f) the fixed rate, (g) the floating rate, (h) the expiration date, (i) whether a selling or purchasing transaction, (j) whether an opening or closing transaction,[16] and (k) such other information as may be prescribed.[17]

DCC will orally confirm that submitted trade reports contain the required information and that the parties agreed as to the terms of the

[11] Participants in the treasury repo market finance other treasury securities at a rate (*i.e.,* the general collateral rate) which does not otherwise distinguish the maturity date of the collateral underlying such treasury repos. For example, market participants finance a treasury security with a remaining term to maturity of 8.5 years and a treasury security with a remaining term to maturity of 1.5 years at the same overnight repo rate unless either of these treasury securities is the most recently issued treasury security of the applicable maturity in which event participants would finance that treasury security at the applicable special collateral rate for newly-issued treasury securities of that maturity.

[12] Prior to the commencement of clearing RAITs, DCC will notify its members of the pricing source to be used. (DCC initially intends to contract with GovPX, Inc. [''GovPX''] as its pricing source for determining the special and general collateral rates.) DCC will also notify members of any change in the pricing source. Any change in DCC's pricing source will not be applicable to RAITs entered into based upon a previous pricing source unless otherwise agreed to by the members to any such transaction.

[13] For example, the daily floating rate amount calculated for each Friday during the term of the transaction also will apply for the immediately following weekend days.

[14] Trade reporting for options transactions is described in Article 23 of DCC's procedures.

[15] All references to time are Eastern Time (''ET'').

[16] An opening transaction creates or increases a member's short or long position. A closing transaction decreases a member's short or long position.

[17] Records maintained by members with respect to RAITs will need to show the trade date, any premium, the party required to pay the premium, the notional amount, the fixed rate, the floating rate, the expiration date, and whether an opening or closing transaction.

transaction. As with option and repo transactions, DCC may reject a RAIT for various reasons, including if the RAIT causes a member to exceed its exposure limit established by DCC.[18] If DCC rejects a RAIT for any reason, it will promptly notify the members by telephone. If DCC rejects a RAIT because the members' trade reports do not match, the members are required to cooperate with DCC to reconcile any differences. When DCC accepts a RAIT for clearance, DCC will enter into matching transactions with each member so that DCC will act as the counterparty to the purchasing and selling members with respect to their rights and obligations under the RAIT.

4. Netting

A long position with respect to RAITs will be defined as the aggregate rights and obligations of a member as the purchaser of one or more RAITs. A short position with respect to RAITs will be defined as the aggregate rights and obligations of a member as the seller of one or more RAITs. A member's long position or short position will be determined by reference to the applicable notional amount.[19]

Transactions entered into by a member with the same commencement date, floating rate, fixed rate, and expiration date will be defined in the procedures as being part of the same ''series of instruments.'' To the extent that a member is the seller of one RAIT and the purchaser of another RAIT in the same series of instruments, such member's long and short positions in such RAITs will be netted.[20]

If a member wants to close out an existing position, it must enter into a RAIT that has the same commencement date as that existing position (*i.e.*, a date that is prior to the trade date). If the RAIT is the same series of instruments as the earlier RAIT and the member's position is on the opposite side (*e.g.*, the member was the selling member and is now the purchasing member), the new RAIT will be netted against the old RAIT. If the notional amount of the two RAITs is the same, the member will no longer have a position with DCC in this series of instruments. Such a transaction will be referred to as a closing transaction.

5. Margin

At present, DCC has established exposure limits for each member.[21] These exposure limits apply to exposure for option transactions and term repos on an aggregate basis. DCC also calculates a member's margin requirements for options transactions and term repos on an aggregate basis,[22] and members are required to maintain such margin with DCC's clearing bank in the form required by DCC.[23]

Under the proposed rule, a member's exposure for options transactions, term repos, and RAITs will be determined by aggregating a member's exposure with respect to each transaction type. The member's margin requirement will be reduced by a net positive position with respect to a transaction type and will be increased by a net negative position with respect to a transaction type.

Under the proposed rule change, margin provisions now applicable to options and repo positions will become applicable to RAIT positions. For example, DCC will have the right to collect intraday margin if DCC determines such action is appropriate to reflect the change of the value of a member's positions in RAITs during the day. In addition, members will be able to borrow from DCC up to 35% of their net positive exposure, if any, aggregating all their transactions in DCC's clearing system.[24]

Margin will be collected on a daily basis prior to the settlement time on each business day. Margin for RAITs will be collected for the first time on the first business day following the trade date. This is true even in the case of transactions with a future commencement date (''forward-start'') where margin will be collected prior to the commencement date based on mark-to-market and performance margin exposure. During this period prior to the commencement date, margin will also be collected to cover any premium payments which may be required to be made on the premium settlement date.

A member's margin requirement with respect to RAITs will be the sum of accrual margin, mark-to-market margin, and performance margin.[25] All payment obligations of accrual margin, mark-to-market margin, and performance margin will be discounted at the then prevailing general collateral rate to calculate the member's margin requirement.[26]

a. *Accrual Margin.* Accrual margin will take into account the positive or negative interest amounts accrued with respect to a RAIT based upon the daily fixed and floating rate amounts through the date on which margin is calculated discounted at the current general collateral rate. In the case of a forward-start RAIT, accrual margin will not be applied during the period between the trade date and the commencement date.

b. *Mark-to-Market.* Mark-to-market margin involves a mark-to-market valuation of a member's RAIT positions based upon a comparison of the daily fixed rate amount for the transaction and the current interest rates on comparable repos.[27] The calculation

[18] Note 21 contains a definition of exposure limit.

[19] For example, if a member is the purchaser of a RAIT with a notional amount of $3,000,000, the member will have a long position in that RAIT for a notional amount of $3,000,000. Similarly, if a member is the seller of a RAIT with a notional amount of $2,000,000, the member will have a short position in that RAIT for a notional amount of $2,000,000.

[20] For example, if the two transactions described in note 19 involved the same commencement date, floating rate, fixed rate, and expiration date and were entered into by the same member, the members's long and short positions in those RAITs would be netted and the member would have a net long position of $1,000,000 in that series of instruments.

[21] Exposure limit currently is defined as the limit prescribed for each member on the aggregate incremental margin due to DCC for that day that the member may incur or carry in respect of its short position in options, the settlement of exercised options, and its positions in repos.

[22] Overnight repos are subject to separate margin requirements. Section 2203 of DCC's procedures.

[23] Provisions relating to margin are set forth in Article 22 of DCC's procedures.

[24] To the extent that members with negative exposures to DCC have not made required margin payments to DCC, DCC will not permit members with positive exposure to borrow against their positive exposures.

[25] Accrual margin, mark-to-market margin, and performance margin are explained later in this notice.

[26] DCC believes that discounting is appropriate in order to reflect the current value of the payment obligation. DCC believes the general collateral rate accurately reflects the time value of money under circumstances in which the payment obligations are linked to and secured by treasury securities and that discounting by another interest rate such as the overnight rate on federal funds or the London interbank offered rate (''LIBOR'') would result in too steep a discount to the future payment obligation thus leaving DCC unnecessarily exposed to a member.

[27] DCC intends to solicit members with respect to selecting comparable repos for each of the six indexes. During the course of each business day, the marketplace establishes the applicable interest rates for repos for each of the six indices based upon the number of days from the current business day to the prospective expiration date for each such repo agreement. The number of days between the current business day and prospective expiration date are quoted in standard units of time starting with weekly increments for the most immediate prospective expiration dates and eventually quoted in months for the most distant expiration date structures. For example, market participants will quote fixed rates for repos for each of the following time units: one week, two weeks, three weeks, one month, two months, and three months through to one year, inclusive. Such term structure of interest rates are established and routinely quoted for each of the five special collateral rates and the general collateral rate. Such term structures are supplied by the market on a continuous basis. In identifying such term structures, DCC will be able to establish benchmark pricing. In the event a RAIT's remaining term to maturity falls between two quoted time units, DCC will interpolate between the two time units on a linear basis to derive the appropriate rate for the comparable term structure for such RAIT. For example, the interpolated rate for a RAIT with forty days remaining to its expiration date would be 3.44% assuming the one month rate was 3.40% and the two month rate was 3.52% [(3.52%–3.40%)

with respect to such mark-to-market value will be: (notional size) times (number of days to end of RAIT/360) times (difference between the fixed rate and current repo rate). The calculation, after discounting the resulting value at the prevailing general collateral rate through the applicable expiration date, produces the mark-to-market value for both members to a RAIT. The payor of the fixed rate will incur an obligation to deposit mark-to-market margin in the event that the comparable interest rates are less than the RAIT's fixed rate. Conversely, the floating rate payor will incur an obligation to deposit mark-to-market margin in the event that the comparable repo rates are greater than the RAIT's fixed rate. In the case of a forward-start RAIT, mark-to-market margin also will take into account the premium required to be paid or received by the member on the premium settlement date for the RAIT.[28]

c. *Performance Margin.* Performance margin will adjust a member's margin requirement based on a hypothetical three standard deviation movement adverse to the member in the fixed rates on comparable repos.[29] For each period to maturity and reference rate, DCC will determine the volatility of the rates on the comparable repos based upon the changes in such rates during the immediately preceding 100-day period. The calculation for performance margin will be (notional size) times (# of days to end of RAIT/360) times (# of basis points representing three standard deviations).

d. *Application of Margin in Event of Default.* If a DCC member becomes insolvent or otherwise defaults on a payment obligation, DCC will attempt to transfer that member's positions to other DCC members. If DCC cannot locate a third party willing to accept the transaction, DCC will be required to liquidate the transaction based upon the RAITs' values as calculated for accrual and mark-to-market margins. To the extent that DCC would be required to pay a third party to assume a RAIT or would be required to pay the nondefaulting counterparty upon the liquidation of a RAIT, DCC will pay the third party or the nondefaulting counterparty, as applicable, the equivalent of the accrual and mark-to-market margin for the RAIT.

6. Maximum Potential System Exposure (''MPSE'')

DCC is required to ensure that MPSE does not at any time exceed one-third of the coverage provided by DCC's credit enhancement facility.[30] To the extent necessary to ensure that MPSE does not exceed the prescribed limit, a member may be restricted from entering into opening transactions, may be required to reduce or eliminate existing positions through closing transactions, and may be required to pay additional margin.

With respect to RAITs, DCC will calculate MPSE by adjusting all member positions by a hypothetical adverse six standard deviation movement in the repo rates for comparable repos.[31] The standard deviation for MPSE will be determined by reference to the most volatile 100-day period from the earliest date from which repo rate information is available to DCC to the present.[32]

7. Operational Implications

DCC believes its current operating environment is sufficiently robust and appropriately configured to accommodate RAITs. DCC's current arrangements with its clearing bank with respect to the payment and the receipt of margin and premium payments and the prospective arrangements with respect to the payment of funds with respect to expired RAITs are within DCC's existing capabilities. DCC's systems will be adapted to incorporate RAIT related exposure management requirements into DCC's established mechanism regarding exposure management. Such other necessary system enhancements will be introduced as DCC consults with the user community during the RAIT development and implementation process.

DCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[33] and the rules and regulations thereunder which require that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions, to safeguard funds and securities in DCC's possession and control, and to remove impediments to and to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. DCC believes that the amendment contemplated by the proposed rule change will permit wider utilization of the clearing system by members and will provide a clearing service which addresses market needs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC 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, or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer periods: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve the proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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

(10/30) + 3.40%]. Such benchmark pricing would be equivalent to ''end of day'' pricing for outstanding RAITs with respect to calculating DCC's exposures to members and will be utilized in the margining process.

[28] On the first business day following the trade date of a forward-start RAIT, the member required to pay premium on the premium settlement date will be required to deposit margin in an amount equal to such premium obligation. Conversely, the member entitled to receive premium will have a net positive value with respect to the premium payment until the premium payment is made on the premium settlement date.

[29] Note 27 contains a description of comparable repos.

[30] MPSE represents the liability to DCC of its members' positions reduced by margin on hand or to be collected by the next day.

[31] Note 27 contains a definition of comparable repos.

[32] Pricing data for at least a five-year period for each repo rate is available from the dealer community, and DCC intends to obtain such data. DCC intends to file with the Commission a supplemental information report which will show the applicable reference periods and other relevant data for determining volatility for MPSE purposes. DCC acknowledges that the Commission's receipt of the supplemental information report in a form which is acceptable to the Commission will be a condition to the Commission's approval of this filing.

[33] 15 U.S.C. 78q–1.

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DCC. All submissions should refer to File No. SR–DCC–97–10 and should be submitted by March 4, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3367 Filed 2–10–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39620; File No. SR–NASD–97–95]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendment to the Free-Riding and Withholding Interpretation

February 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on December 23, 1997, NASD Regulation, Inc. (''NASD Regulation'') 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 NASD Regulation. 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

NASD Regulation is proposing to amend National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') Interpretative Material IM–2110–1 and Rule 2720, to revise certain aspects of the Free-Riding and Withholding Interpretation. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

IM–2110–1. ''Free-Riding and Withholding''

(a) Introduction

(1) No change.

(2) As in the case of any other interpretation issued by the [Board of Governors of the] Association, the implementation thereof is a function of the *NASD Regulation staff [District Business Conduct Committee] and the [Board of Governors] NASD Regulation Board of Directors.* Thus, the interpretation will be applied to a given factual situation by *NASD Regulation staff, subject to oversight by the Board, with staff soliciting input from* individuals active in the investment banking and securities business [who are serving on these committees or on the Board. They] *In making such interpretations, staff and the Board* will construe this interpretation to effectuate its overall purpose to assure a public distribution of securities for which there is a public demand.

* * * * *

(5) The NASD Regulation staff, upon written request, may, taking into consideration all relevant factors, provide an exemption either unconditionally or on specified terms from any or all of the provisions of this interpretation upon a determination that such exemption is consistent with the purposes of the interpretation, the protection of investors, and the public interest. A member may appeal a decision issued by NASD Regulation staff to the National Adjudicatory Council pursuant to the Code of Procedure.

* * * * *

(b) Violations of Rule 2110

(9) Sell any of the securities to any person, or to a member of the immediate family of such person, who owns or has contributed capital to a broker/dealer, other than solely a limited business broker/dealer as defined in paragraph (c) of the interpretation, or the account in which any such person has a beneficial interest, provided, however, that:

(A) The prohibition shall not apply to any person who directly or indirectly owns any class of equity securities of, or who has made a contribution of capital to, a member, and whose ownership or capital interest is passive and is less than 10% of the equity or capital of a member, as long as:

(i) such person purchases hot issues from a person other than the member in which it has such passive ownership and such person is not in a position by virtue of its passive ownership interest to direct the allocation of hot issues, or

(ii) such member's shares are publicly traded on an exchange or Nasdaq.

(B) This prohibition shall not apply to sales to the account of any person restricted under this subparagraph established for the benefit of bona fide public customers, including an insurance company general or separate account.

(C) For purposes of this paragraph, any person with an equity ownership or capital interest in an entity that maintains an investment in a member shall be deemed to have a percentage interest of the entity in the member multiplied by the percentage interest of such person in such entity.

* * * * *

(d) Issuer-Directed Securities

[(1) This interpretation shall apply to securities which are part of a public offering nothwithstanding that some or all of those securities are specifically directed by the issuer to accounts which are included within the scope of paragraph (b)(3) through (8) above. Therefore, if a person within the scope of those subparagraphs to whom securities were directed did not have the required investment history, the member would not be permitted to sell him such securities. Also, the ''disproportionate'' and ''insubstantial'' test would apply as in all other situations. Thus, the directing of a substantial number of securities to any one person would be prohibited as would the directing of securities to such accounts in amounts which would be disproportionate as compared to sales to members of the public. If such issuer-directed securities are sold to the issuer's employees or directors or potential employees or directors resulting from an intended merger, acquisition, or other business combination, such securities may be sold without limitation as to amount and regardless of whether such employees have an investment history as required by the interpretation; provided, however, that in the case of an offering of securities for which a bona fide independent market does not exist, such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of three months following the effective date of the offering. This interpretation shall also apply to securities which are part of a public offering nothwithstanding that some of those securities are specifically directed by the issuer on a non-underwritten basis. In such cases, the managing underwriter of the offering shall be responsible for issuing compliance with this interpretation in respect to those securities.]

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[(2) Notwithstanding the above, sales of issuer-directed securities may be made to non-employee/director restricted persons without the required investment history after receiving permission from the Board of Governors. Permission will be given only if there is a demonstration of valid business reasons for such sales (such as sales to distributors and suppliers, who are in each case incidentally restricted persons), and the member seeking permission is prepared to demonstrate that the aggregate amount of securities so sold is insubstantial and not disproportionate as compared to sales to members of the public, and that the amount sold to any one of such persons is insubstantial in amount; provided, however, that such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of three months following the effective date of the offering.]

Employees or directors of an issuer, a parent of an issuer, a subsidiary of an issuer, or any other entity which controls or is controlled by an issuer, or potential employees or directors resulting from an intended merger, acquisition, or other business combination of an issuer otherwise subject to this interpretation in paragraphs (b)(2) through (9) may purchase securities that are part of a public offering that are specifically directed by the issuer to such persons; provided, however, that in the case of an offering of securities for which a bona fide independent market does not exist, such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of three months following the effective date of the offering.

* * * * *

(f) Investment Partnerships and Corporations

(1) A member may not sell a hot issue to the account of any investment partnership or corporation, domestic or foreign (except companies registered under the Investment Company Act of 1940 *or foreign investment companies as defined herein*) including but not limited to hedge funds, investment clubs, and other like accounts unless the member complies with either of the following alternatives:

* * * * *

(2) No change

(3) An employee benefits plan qualified under The Employee Retirement Income Security Act shall be deemed restricted under the Interpretation in accordance with the following provisions:

(A) Any plan sponsored by a broker/dealer is restricted;

(B) Any plan sponsored by an entity that is not involved in financial services activities is not restricted whether or not any plan participants may be restricted;

(C) Any plan sponsored by an entity that is engaged in financial services activities, including but not limited to, banks, insurance companies, investment advisors, or other money managers, is not restricted, provided that the plan permits participation by a broad class of participants and is not designed primarily for the benefit of restricted persons.

* * * * *

(l) Explanation of Terms

The following explanation of terms is provided for the assistance of members. Other words which are defined in the By-Laws and Rules shall, unless the context otherwise requires, have the meaning as defined therein.

[(1) Associated Person

A person associated with a member or any other broker/dealer, as defined in Article I of the Association's By-Laws, shall not include a person whose association with the member is limited to a passive ownership interest in the member of 10% or less, and who does not receive hot issues from the member in which he or she has the ownership interest; and that such member is not in a position to direct hot issues to such person.]

([2]*1*) Public Offering

The term public offering shall mean any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings, and all other securities distributions of any kind whatsoever except any offering made pursuant to an exemption under Section 4(l), 4(2) or 4(6) of the Securities Act of 1933, as amended. The term public offering shall exclude exempted securities as defined in Section 3(a)(12) of the Act, *and debt securities (other than debt securities convertible into common or preferred stock) or financing instrument-backed securities that are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories. The term public offering shall exclude secondary distributions by an issuer whose securities are actively-traded securities.*

([3]*2*) Immediate Family

The term immediate family shall include parents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children. In addition, the term shall include any other person who is supported, directly or indirectly, to a material extent by the member, person associated with the member or other person specified in paragraph (b)(2) above.

([4]*3*) Normal Investment Practice

Normal investment practice shall mean the history of investment of a restricted person in an account or accounts maintained by the restricted person. Usually the previous one-year period of securities activity is the basis for determining the adequacy of a restricted person's investment history. Where warranted, however, a longer or shorter period may be reviewed. It is the responsibility of the registered representative effecting the allocation, as well as the member, to demonstrate that the restricted person's investment history justifies the allocation of hot issues. Copies of customer account statements or other records maintained by the registered representative or the member may be utilized to demonstrate prior investment activity. In analyzing a restricted person's investment history the Association believes the following factors should be considered:

(A) The frequency of transactions in the account or accounts during that period of time. Relevant in this respect are the nature and size of investments.

(B) A comparison of the dollar amount of previous transactions with the dollar amount of the hot-issue purchase. If a restricted person purchases $1,000 of a hot issue and his account revealed a series of purchases and sales in $100 amounts, the $1,000 purchase would not appear to be consistent with the restricted person's normal investment practice.

(C) The practice of purchasing mainly hot issues would not constitute a normal investment practice. The Association does, however, consider as contributing to the establishment of a normal investment practice, the purchase of new issues which are not hot issues as well as secondary market transactions.

([5]*4*) Disproportionate

(A) In respect to the determination of what constitutes a disproportionate allocation, the Association uses a guideline of 10% of the member's participation in the issue, however

acquired. It should be noted, however, that the 10% factor is merely a guideline and is one of a number of factors which are considered in reaching determinations of violations of the interpretation on the basis of disproportionate allocations. These other factors include, among other things:

(i) The size of the participation;

(ii) The offering price of the issue;

(iii) The amount of securities sold to restricted accounts; and

(iv) The price of the securities in the aftermarket.

(B) It should be noted that disciplinary action has been taken against members for violations of the interpretation where the allocations made to restricted accounts were less than 10% of the member's participation. The 10% guideline is applied as to the aggregate of the allocations.

(C) Notwithstanding the above, a normal unit of trading (100 shares or 10 bonds) will in most cases not be considered a disproportionate allocation regardless of the amount of the member's participation. This means that if the aggregate number of shares of a member's participation which is allocated to restricted accounts does not exceed a normal unit of trading, such allocation will in most cases not be considered disproportionate. For example, if a member receives 500 shares of a hot issue, he may allocate 100 shares to a restricted account even though such allocation represents 20% of the member's participation. Of course, all of the remaining shares would have to be allocated to unrestricted accounts and all other provisions of the interpretation would have to be satisfied. Specifically, the allocation would have to be consistent with the normal investment practice of the account to which it was allocated and the member would not be permitted to sell to restricted persons who were totally prohibited from receiving hot issues.

([6]*5*) Insubstantiality

This requirement is separate and distinct from the requirements relating to disproportionate allocations and normal investment practice. In addition, this term applies both to the aggregate of the securities sold to restricted accounts and to each individual allocation. In other words, there could be a substantial allocation to an individual account in violation of the interpretation and yet be no violation on that ground as to the total number of shares allocated to all accounts. The determination of whether an allocation to a restricted account or accounts is substantial is based upon, among other things, the number of shares allocated and/or the dollar amount of the purchase.

(6) Foreign Investment Company

The term foreign investment company shall include any fund company organized under the laws of a foreign jurisdiction, which has provided to the member a written certification prepared by counsel admitted to practice law before the highest court of any state of the United States or such foreign jurisdiction, or by an independent certified public accountant licensed to practice in any state of the Untied States or such foreign jurisdiction, that states that:

(A) The fund has 100 or more investors;

(B) The fund is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority;

(C) No more than 5% of the fund assets are to be invested in the securities being offered, and,

(D) Any person owning more than 5% of the shares of fund is not a person described in subparagraphs (b)(1), (2), (3) or (4) of the Rule, (7) Actively-traded securities

(A) Actively-traded securities means securities that have an ADTV value of at least $1 million and are issued by an issuer whose common equity securities have a public float value of at least $150 million; provided, however, that such securities are not issued by the distribution participant or an affiliate of the distribution participant.

(B) ''ADTV'' means the worldwide average daily trading volume, during the two full calendar months immediately preceding, or any 60 consecutive calendar days ending within the 10 calendar days preceding, the filing of the registration statement, or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to Securities Act Rule 415, two full calendar months immediately preceding, or any consecutive 60 calendar days ending within the 10 calendar days preceding, the determination of the offering price.

* * * * *

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

[(m) Sales to Employees—No Limitations

Notwithstanding the provisions of IM–2110–1, ''Free-Riding and Withholding,'' a members may sell securities issued by a member, a parent of a member, an entity which who owns a member, an entity which owns (alone or in the aggregate with any wholly-owned, non-public subsidiary) at least 51% of the outstanding voting stock of a member or by an issuer treated as a member or parent of a member under paragraph (i) hereof to the member's employees' potential employees resulting from an intended merger, acquisition, or other business combination of members resulting in one public successor corporation; persons associated with the member; and the immediate family of such employees or associated persons without limitation as to amount and regardless of whether such persons have an investment history with the member as required by IM–2110–01; provided, however, that in the case of an offering of equity securities for which a bona fide independent market does not exist, such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of five months following the effective date of the offering.]

([n]*m*) Filing Requirements; Coordination With Rule 2710

(1) Notwithstanding the provisions of Rule 2710 relating to factors to be taken into consideration in determining underwriter's compensation, the value of securities of a new corporate member succeeding to a previously established partnership or sole proprietorship member acquired by such member or person associated therewith, or created as a result of such reorganization, shall not be taken into consideration in determining such compensation.

(2) All offerings of securities included within the scope of this Rule shall be subject to the provisions of Rule 2710, and documents and filing fees relating to such offerings shall be filed with the Association pursuant to the provisions of that Rule. The responsibility for filing the required documents and fees shall be that of the member issuing securities, or, in the case of an issue of an affiliate, the managing underwriter or, if there is none, the member affiliated with the issuer.

(3) All offerings included within the scope of this Rule are required to be filed with the Association, with the appropriate documents and filing fee referred to under subparagraph (2), above, notwithstanding the fact that the offering may otherwise be expressly exempted from filing under the provisions of Rule 2710.

([o]*n*) Predominance of Rule 2720

If the provisions of this Rule are inconsistent with any other provisions

of the Association's By-Laws or Rules, or of any interpretation thereof, the provisions of this Rule shall prevail.

([p]*o*) Requests for Exemption From Rule 2720

Pursuant to the Rule 9600 Series, the Association may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member unconditionally or on specified terms from any or all of the provisions of this Rule which it deems appropriate.

([q]*p*) Violation of Rule 2720

A violation of the provisions of this Rule shall constitute a violation of Rule 2110, and possibly other Rules, especially Rules 2120 and 2310, as the circumstances of the case may indicate.

II. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filling with the Commission, NASD Regulation 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. NASD Regulation 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

(a) Purpose

(i) Overview of the Free-Riding and Withholding Interpretation. The Free-Riding and Withholding Interpretation (''Interpretation'') protects the integrity of the public offering system by ensuring that members make a bona fide public distribution at the public offering price of ''hot issue'' securities and do not withhold such securities for their own benefit or use such securities to reward other persons in the financial services business who are in a position to direct future business to the member. Improperly withholding securities or directing securities to other persons in the financial services business who can direct future business to the member leads to an impairment of public confidence in the fairness of the investment banking and securities business. The Interpretation also assures that members and participants in the securities industry do not take unfair advantage of their inside position in the industry to the detriment of public investors.

(ii) Notice to Members 97–30 (May 1997). In March 1997, the NASD Regulation Board of Directors (''Board''), acting upon recommendation from the National Business Conduct Committee (''NBCC''),[2] considered various amendments to the Interpretation. The Board submitted a series of proposed rule amendments to the membership for comment in Notice to Members 97–30 (''NTM 97–30''). The Board also decided that it would be appropriate to examine the entire Interpretation in the context of current market conditions and sought comment on whether the Interpretation could be simplified and made easier to follow.

NASD Regulation received 22 comment letters. Most of the commenters did not address every proposed rule amendment, but only selected issues. The proposed rule amendments, the comments received, and NASD Regulation's response to the comments are set forth below.

(A) Treatment of Direct and/or Indirect Owners of Broker/Dealers

In 1994, NASD Regulation amended the Interpretation's definition of ''associated person'' to exempt certain passive investors in broker/dealers.[3] NASD Regulation now proposes further amendments to the Interpretation to address two limitations from the previous amendments. First, the definition of associated person as currently provided in the Interpretation does not include non-natural persons that have an ownership interest in or have contributed capital to a broker/dealer.[4] Second, the Interpretation does not affirmatively specify any ownership levels at which a natural person becomes an associated person by reason of his ownership interest in a broker/dealer. The Interpretation only states when a natural person is *not* an associated person. In NTM 97–30, NASD Regulation staff proposed modifying the Interpretation to create a new definition of ''restricted person'' that would include natural and non-natural persons that own or contribute capital to a broker/dealer, subject to two exceptions. The first exception was for passive investors that own or have contributed 10 percent or less of the firm's equity or capital and who purchase from a member other than the member in which they maintain the ownership interest, provided that the member in which they maintain the ownership interest is not in a position to direct issues to the owner or contributor. The second exception was for persons who passively own 10 percent or less of the shares of broker/dealers that are traded on an exchange or Nasdaq.

The proposal also stated that indirect investors should be treated the same as direct investors. To determine whether an indirect investor meets the 10 percent threshold, noted above, the proposed amendment provided that the percentage of the direct investment is multiplied by the percentage interest in the investing entity. For example, an investor with a 50 percent investment in a investment partnership that in turn owns 18 percent of the equity capital of a broker/dealer would be deemed to own 9 percent of the broker/dealer for the purposes of the Interpretation.

Generally, the commenters did not object to the application of the Interpretation to non-natural persons, but were concerned that as drafted, the Interpretation would preclude purchases of hot issues by any entity that owns 10 percent or more of a broker/dealer, or any account in which such entity had a beneficial interest. The commenters stated that these problems arose primarily due to the breadth of paragraph (b)(5) of the Interpretation, which prohibits sales of hot issues to any account in which a restricted person has a beneficial interest. Several commenters stated that the proposed revisions would have the effect of prohibiting participation in hot issues by all entities within many insurance companies in which a parent company owns 10 percent or more of a broker/dealer. By way of example, one suggested that the Interpretation, as proposed, would preclude companies such as the American Insurance Group from purchasing hot issues for any account in which they have a beneficial interest.

This result was not intended when NTM 97–30 was proposed, and NASD Regulation staff has revised the amendments to address these concerns. To avoid the effects of (b)(5), the proposed amendments no longer seek to redefine the term ''restricted person.'' Rather, new paragraph (b)(9)(A) has been created which expressly prohibits sales to any person, or any account in which such person has a beneficial

[2] The name of this committee has been changed to National Adjudicatory Council, *See* Securities Exchange Act Release No. 39470 (December 19, 1997), 62 FR 67927 (December 30, 1997).

[3] Securities Exchange Act Release No. 35059 (December 7, 1994), 59 FR 64455, 64457 (December 14, 1994).

[4] *See In re Rocena Company, Ltd.*, No. C07950042, National Business Conduct Committee, 1997 NASD Discip. LEXIS 12, (NBCC January 8, 1997) (holding that a non-natural person is not considered an associated person for purposes of the Interpretation).

interest, who owns or has contributed capital to a broker/dealer, other than a limited purpose broker/dealer, with broad exceptions for passive ownership interests less than 10 percent. These provisions are consistent with the proposal in NTM 97–30. New paragraph (b)(9)(B) has been created to respond to the concerns of several commenters that the amendments proposed in NTM 97–30 would prohibit sales of hot issues to all entities within many insurance companies that own a broker/dealer. Paragraph (b)(9)(B) exempts sales of hot issues to any account established for the benefit of bona fide public customers of a person restricted pursuant to this subparagraph. The exception expressly notes that such accounts would include, but are not limited to, an insurance company's general or separate accounts. Lastly, new paragraph (b)(9)(C) retains the indirect ownership provisions proposed in NTM 97–30.

Commenters also stated that the amendments proposed in NTM 97–30 would, by virtue of paragraph (b)(5), prohibit many bank holding companies and industrial companies such as Ford and General Electric, or any account in which such companies have a beneficial interest, from purchasing hot issues because these companies have a wholly-owned broker/dealer subsidiary. NASD Regulation does not agree with the commenters that these entities should be able to purchase not issues for their proprietary accounts because passing on the benefits of hot issue purchases to shareholders is not equivalent to passing on benefits directly to bona fide public customers. Accordingly, these persons would be restricted from purchasing hot issues pursuant to proposed paragraph (b)(9). However, as discussed below in section (F), the Employment Retirement Income Security Act accounts of bank holding companies and industrial companies such as Ford and General Electric would normally be able to purchase hot issues.

Another commenter asked if the proposed definition would preclude investment partnerships that have an equity stake in a broker/dealer from purchasing hot issues. This commenter argued that such investment partnerships should be able to purchase hot issues subject to the restrictions in paragraph (g) of the Interpretation. NASD Regulation does not believe that the purposes of paragraph (g) of the Interpretation are to permit investment partnerships that own 10 percent or more of a broker/dealer to purchase hot issues. The paragraph (g) ''carve out'' methodology permits investment partnerships in which restricted persons have a beneficial interest to purchase hot issues so long as the profits from the hot issues are not allocated to any restricted persons. An investment partnership that is not otherwise restricted and accepts an investment from a person that is restricted pursuant to paragraph (b)(9) would be able to purchase hot issues as long as hot issue profits are segregated from the restricted person pursuant to the criteria of paragraph (g).

The Securities Industry Association (''SIA'') did not object to the proposed definition of ''restricted person,'' but instead suggested that NASD Regulation use the existing definition of the term ''affiliate'' from Rule 2720(b)(1). The SIA favored using the definition of ''affiliate'' because it established a rebuttable presumption of control. Another commenter noted that the term ''restricted person was already used throughout the Interpretation and redefining it would cause confusion. NASD Regulation does not believe that a rebuttable presumption would be a useful concept in the context of the Interpretation. However, NASD Regulation appreciates that redefining the term ''restricted person'' as originally proposed may create confusion and has removed that term from the current proposal.

Finally, one commenter argued that the Interpretation should be modified to provide exemptions for passive investors who contribute 10 percent or less of a broker/dealer's capital, but did not see any ''constructive purpose'' in holding investors in privately held firms to a different and ''tougher'' standard than investors in publicly traded firms. NASD Regulation believes as a general matter that publicly traded firms are less susceptible to influence by passive owners or investors than private firms and, thus, an exemption for such firms is appropriate. Passive owners or investors in private firms can purchase hot issues as long as they meet the criteria in paragraph (b)(9)(A)(i).

(B) Rated Investment Grade Debt

Currently, debt offerings are included in the definition of ''public offering'' in the Interpretation. In NTM 97–30, NASD Regulation proposed excluding rated investment grade debt offerings from the Interpretation on the ground that such offerings do not raise the same issues as equity offerings inasmuch as the price for a particular debt security generally fluctuates based on interest rate movements rather than demand factors. Based upon this rationale, NASD Regulation staff proposed an exception for ''non-convertible debt securities rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.''

This proposal was enthusiastically supported by many of the commenters. Many commenters, however, urged NASD Regulation to go further. One commenter stated that all debt offerings should be excluded. The SIA and PSA The Bond Market Trade Association (''PSA'') agreed with the proposal but argued that NASD Regulation should adopt a ''functional'' standard that would exempt all ''investment grade securities that trade primarily on the basis of yield and credit quality.'' NASD Regulation staff does not support a ''functional'' standard because it provides less clarity than the current proposal and would be difficult to administer. The SIA and PSA also both argued that certain convertible securities may be converted into a security other than common stock and that such convertible securities should be exempt from the Interpretation. Other commenters proposed modifying the exclusion to also include financing instrument-backed securities and various forms of convertible securities. NASD Regulation proposes modifying the exclusion for debt securities to include financing instrument-backed securities and convertible debt securities as long as they are not convertible into common or preferred stock. Although these revisions are likely to affect only a few persons, they appear consistent with the rationale for excluding rated investment grade debt.

(C) Exemptive Authority Under the Interpretation

Presently, there is no provision in the Interpretation to allow for the NBCC, the Board, or NASD Regulation staff to grant general exemptive relief. In the past, the NBCC, relying on the NASD By-Law's grant of authority to the Board and its Committees, has provided exemptions in certain unique circumstances. NASD Rule 9600 delegates exemptive authority in the Interpretation to the Office of General Counsel. The Interpretation currently provides for exemptive relief solely in cases involving sales of issuer-directed securities to non-employee/director restricted persons pursuant to paragraph (d)(2). In NTM 97–30, NASD Regulation stated that it believed that it was important to provide express authority to grant exemptions in individual cases, and proposed amendments accordingly. These amendments grant NASD Regulation staff the authority to provide exemptions, subject to oversight by the Board. The proposed amendments also provide that persons may appeal

decisions of NASD Regulation staff to the NBCC.

All of the comments received on this issue expressed support for this proposal. The text of the proposed amendment has been modified for consistency with Rule 9610 and to reflect the renaming of the National Business Conduct Committee to the National Adjudicatory Council.

(D) Foreign Mutual Funds

Purchases of shares of investment companies registered under the Investment Company Act of 1940 are exempt from the Interpretation based upon the rationale that the interest of any one restricted person in an investment company ordinarily is de minimis and because ownership of investment company shares generally is subject to frequent turnover, determining compliance with the Interpretation would be extremely difficult.

NASD Regulation proposed in NTM 97–30 to extend this rationale to the purchase of shares of foreign investment companies. In particular, NASD Regulation proposed exempting sales of hot issues to a foreign investment company if such foreign investment company provides written certification from a U.S. attorney or accountant stating that: (1) The fund has 100 or more shareholders; (2) the fund is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; (3) no more than 5 percent of the fund's securities assets are invested in the securities being offered, and; (4) any person owning more than 5 percent of the shares of the fund is not a restricted person as defined in subparagraphs (b)(1) through (b)(4) of the Interpretation. These amendments seek to create roughly equivalent standards between U.S. and foreign investment companies.

All of the comments received on this issue strongly supported an exemption from the Interpretation for foreign investment companies. The commenters, however, did not necessarily agree with the proposed attestation procedures. Many of the commenters stated that the requirement for a member to provide a written certification would impose a substantial administrative burden and cost. The SIA took the position that attestation should not be required at all. A few commenters stated that if written certification is to be required, then a foreign attorney or accountant should be able to make such certification because many foreign investment companies may be reluctant to hire U.S. counsel or accountants. NASD Regulation agrees that foreign attorneys and accountants should be able to make the required attestations and has modified the proposed amendments accordingly.

A number of comment letters also suggested that rather than obtaining a written certification from the foreign investment company each time before a member permits it to purchase in an initial public offering that may become a hot issue, the NASD should develop a centralized electronic repository containing certifications that would be accessible to members. NASD Regulation preliminarily supports such an idea but believes that it raises a number of issues that deserve consideration, including who would operate the repository. NASD Regulation proposes communicating to the private sector its willingness to consider applications by firms interested in maintaining a centralized repository of foreign investment companies as well as any investment partnerships or corporations that qualify to purchase hot issues pursuant to paragraph (f) of the Interpretation. NASD Regulation also may consider operating the system itself. The operator of such a central repository must be concerned with maintaining accurate and current information, since the participants in these investment vehicles and their status under the Interpretation is likely to change from time to time. NASD Regulation agrees that a centralized repository may be an efficient and effective method of maintaining certifications, but believes that investment companies should be permitted to purchase hot issues subject to the verification procedures outlined in NTM 97–30, as modified above, while NASD Regulation considers the implementation of a centralized repository.

(E) Secondary Offerings

Primary and secondary distributions of securities are currently included in the definition of ''public offering'' under the Interpretation. In NTM 97–30, NASD Regulation proposed maintaining secondary offerings subject to the Interpretation based upon statistical evidence that approximately 33 percent of secondary offerings trade at a premium, even though such premium is generally small.

A number of commenters did not believe that the Interpretation should apply to secondary offerings. Generally, these commenters noted that secondary offerings rarely trade at a premium to the market and even then, the premium often is very small. One commenter suggested an exemption for secondary equity offerings of widely-held issuers with established secondary markets provided that such secondary offerings are not priced at a significant discount to the current market. This commenter also urged NASD Regulation to adopt changes that were consistent with the SEC's new Regulation M. Similarly, the SIA stated that the Interpretation should not apply to any secondary offerings and in the alternative, that NASD Regulation should exempt offerings of liquid issues at appropriate thresholds.

NASD Regulation has reconsidered its earlier position and now proposes an exemption for secondary offerings similar to the Regulation M exception for actively-traded securities (which are defined as securities that have an average daily trading volume of at least $1 million and are issued by an issuer whose equity securities have a public float of at least $150 million). In light of the SEC's decision to except actively-traded securities from its trading practice rules, NASD Regulation believes that it is appropriate to exempt similarly defined securities from the Interpretation with respect to secondary offerings.

(F) Accounts for Qualified Plans Under The Employment Retirement Income Security Act (''ERISA'')

Currently, there are no provisions in the Interpretation that expressly address the status of qualified employee benefit plans under ERISA. While NASD Regulation deferred proposing any specific amendments to NTM 97–30 with respect to ERISA plans, it noted that there were two frequently asked questions: whether a qualified ERISA plan is considered an investment partnership or corporation under paragraph (f) of the Interpretation; and, if so, whether the ''carve out'' mechanism described in paragraph (g) could permit sales to be made to qualified ERISA accounts. NASD Regulation stated in NTM 97–30 that it believes as a general rule that a qualified ERISA plan should not be deemed an ''investment partnership or corporation'' and should not be considered a ''restrict account.'' NASD Regulation added that the NBCC has suggested the following methodology to determine under what circumstances a qualified ERISA plan would be deemed restricted:

(i) Any plan sponsor that is not involved in financial services activities would not be considered restricted even though some plan participants may be restricted.

(ii) Any plan sponsored by a broker/dealer would be deemed per se restricted.

(iii) All other financial services plans, including those involving banks,

insurance companies, investment advisors, or other money managers, would be exempt unless they had been created to circumvent the purposes of the Interpretation, including where a financial services plan had only restricted persons as beneficiaries.

NASD Regulation received only one comment on ERISA plans. The SIA stated that an ERISA plan sponsored by a broker/dealer should be restricted only with respect to the plan's transactions with such broker/dealer. NASD Regulation believes that the SIA's proposal is inconsistent with the purposes of the Interpretation and has declined to make the modification. However, NASD Regulation believes that it would be helpful to clarify the status of accounts for qualified plans under ERISA and is proposing to include the NBCC interpretation as part of IM–2110–1, with minor stylistic modifications.

(G) Issuer-Directed Share Exemption

Paragraph (d) of the Interpretation contains provisions relating to issuer-directed securities plans. In 1994, paragraph (d) was amended to allow members to allocate hot issues to restricted persons who also were employees of the issuer, without having to receive prior approval of the NBCC, NASD Regulation believes that issuer-directed securities programs are a valuable tool in employee development and retention, and are not likely to pose the risk of members using these securities to reward other persons who are in a position to direct future business to the member. In NTM 97–30, NASD Regulation stated that persons have requested that the language of paragraph (d) be modified to clarify that the exemption is available to employees of the issuer who are materially supported by a restricted person and both employee and non-employee directors. Several commenters also welcomed clarification to the issuer-directed securities exception provisions more generally. Based upon the comments received and its own initiative to clarify and streamline the issuer-directed securities provisions more generally, NASD Regulation proposes modifying paragraph (d) of the Interpretation to permit persons associated with a member and their immediate family members to purchase hot issues. The proposed amendments would apply the issuer-directed share exemption to persons subject to the Interpretation in paragraphs (2)–(9), instead of paragraphs (3)–(9) as currently written. NASD Regulation believes that this is consistent with the purposes of the issuer-directed exemption. In addition, by expanding the scope of restricted persons that can purchase hot issues under proposed paragraph (d) to include persons restricted under paragraph (b)(2), NASD Regulation is incorporating the exemption for issuer directed offerings of NASD members currently found at Rule 2720(m), which pertains to conflicts of interest in connection with the distribution of securities of members and affiliates.

The proposed amendments to the issuer-directed provisions also would clarify that exemptions apply to employees and directors of a parent or subsidiary of the issuer, consistent with NASD Regulation's past practice. Specifically, the proposed amendments exempt ''a parent of an issuer, a subsidiary of an issuer, or any other entity which controls or is controlled by an issuer.'' While no specific percentage is mentioned to establish a control relationship, NASD Regulation believes that a guideline of 50 percent should be used and is consistent with provisions of former Rule 2720(m). Employees and directors of sister corporations to the issuer would not be subject to an exemption for issuer-directed securities, but could request exemptive relief under paragraph (a)(5), which as noted above, provides NASD Regulation with exemptive authority. Further, the proposed amendments would shorten the lock-up period for persons formerly covered under Rule 2720(m) from five months to three months for consistency and simplicity. The five month lock-up period specified in Rule 2720(m) is an historical anomaly (pertaining to taxation issues) and the purposes of the Interpretation would not be frustrated if the lock-up period for all persons was three months. NASD Regulation has observed substantial confusion concerning the application of the Interpretation to issuer directed offerings and believes that these revisions will assist members with their compliance responsibilities.

In addition, because of the proposal to grant plenary exemptive authority to NASD Regulation as noted above in item (c), there is no longer any need for paragraph (d)(2), which grants to the Board of Governors limited authority to exempt sales of issuer-directed securities to non-employee/director restricted persons. Accordingly, this paragraph has been deleted.

(H) General Comments

A few of the commenters addressed NASD Regulation's broad question whether ''the Interpretation could be simplified and made easier to follow.'' These commenters generally believed that more should be done to streamline the Interpretation. The SIA stated the Interpretation has been ''pulled and stretched'' beyond its original purpose and now has become a set of provisions that try to address a host of abuses relating to possible conflicts of interest and self-dealing in the offering process. The SIA believed that many of these other issues are already addressed by interpretations of what constitutes ''just and equitable principles of trade,'' or elsewhere in the securities laws. Another commenter stated this was the second major review of the Interpretation in the last three years and that the changes adopted three years ago as well as those proposed in NTM 97–30 represent only minor adjustments to an ''overly complex and burdensome rule.'' Both commenters stated that compliance with the Interpretation was time-consuming and costly.

NASD Regulation agrees that the Interpretation is overly complex in many respects. NASD Regulation is committed to a wholesale modification of the Interpretation following these proposed rule changes. NASD Regulation believes that the exemption for certain debt and secondary offerings and the modifications to the issuer directed share provisions provide greater clarity to the Interpretation and will reduce the burdens of compliance for many members. NASD Regulation plans to continue its review of the entire Interpretation to consider other ways in which it may be simplified. NASD Regulation has communicated this goal to members of the industry and plans to begin working on broad reform once the current amendments are in place.

(I) Miscellaneous

In NTM 97–30, NASD Regulation requested comment on several other issues for which it did not suggest any proposed amendments to the Interpretation. These topics were non-member broker/dealers and their associated persons, de minimis exemption, limited purpose broker/dealers, and member verification of conduit for undisclosed principal. NASD Regulation will consider the comments received on these issues as it begins broad reform of the Interpretation.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15a(b)(6) of the Act,[5] in that it will promote just and equitable principles of trade, prevent fraudulent and manipulative acts and

[5] 15 U.S.C. 78*o*–3.

practices, and protect investors and the public interest, by facilitating the bona fide distribution of hot issue securities to the public, and protecting against the receipt of hot issues by persons in the financial services business who are in a position to direct future business to the member, or who have an unfair advantage due to their inside position in the industry. Further, NASD Regulation believes that the proposed changes and clarifications to the Interpretation are consistent with Section 15A(b)(9) in that they alleviate certain inequities caused by the Interpretation, which imposed burdens on competition not necessary or appropriate in furtherance of the purposes of the Act.

(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

The proposed rule change was published for comment in NASD Notice to Members 97–30 (May 1997). Twenty-two comments were received in response to the notice. The position of the commenters and their specific comments are discussed above in section II(A).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. 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 SR–NASD–97–95 and should be submitted by March 4, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3372 Filed 2–10–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39619; File No. SR–PHLX–98–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Concerning Notice to Persons Who are the Subject of a Report to the Exchange Business Conduct Committee

February 3, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4[2] thereunder, notice is hereby given that on February 3, 1998, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 PHLX proposes to amend Exchange Rule 960.2 to adopt new subsection (e), Notice and Statement, to codify the Exchange's practice of notifying persons who are the subject of an investigative report, which will be reviewed by the Business Conduct Committee, and to give those persons the opportunity to submit a written statement to the Business Conduct Committee prior to the Business Conduct Committee's review of the investigative report. The text of the proposed rule change is below. Brackets represent deletions; italicizing represents additions.

Complaint and Investigation

Investigation and Authorization of Complaint

Rule 960.2 (a)–(d) No change.

(e) Notice and Statement. Prior to submitting its report, the staff shall notify the person(s) who is (are) the subject of the report (''Subject'') of the general nature of the allegations and of the specific provisions of the Exchange Act, rules and regulations promulgated thereunder, or constitutional provisions, by-laws or rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. The staff shall also inform the Subject that the report will be reviewed by the Committee. The Subject may then submit a written statement to the Committee concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, he shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or his agents.

[(e)] *(f)* Determination to Initiate Charges.

No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In April of this year, the Exchange's Board of Governors adopted the recommendation of the Governance

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b-4 (1997).

Committee appointed by the Board of Governors to codify the Exchange's practice of using ''Wells'' letters with respect to the Business Conduct Committee process. Prior to submitting any investigative report to the Business Conduct Committee, in which the staff of the Exchange is recommending that there is a reasonable basis to believe that a violation within the disciplinary jurisdiction of the Exchange has occurred, the staff will notify the person who is the subject of the report of the general nature of the allegations and the specific rule or by-law that appears to have been violated. The staff will also inform the subject that the report will be reviewed by the Business Conduct Committee and that the subject may submit a written statement to the Business Conduct Committee concerning why he believes that no disciplinary action should be taken. This practice is often referred to as a ''Wells'' submission and is used by the Commission in its enforcement program. The Exchange has always adhered to this practice and is now merely codifying it as an Exchange rule.[3] Although no time frame is specified within the rule, a reasonable amount of time depending on the circumstances of the matter is afforded the subject and the deadline for submission is always included in the notice to the subject.

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(7), in that it provides a fair procedure for the disciplining of members and persons associated with members because it codifies an existing practice which affords rights to members and associated persons of notice and opportunity to comment prior to the staff submitting a report to the Business Conduct Committee which may result in enforcement proceedings against such member or associated person.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate 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 either solicited or received.

[3] *See* Rule 17.2(d) of the Chicago Board Options Exchange (''CBOE'') which is similar to this rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from February 3, 1998, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[4]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the PHLX's principal offices. All submissions should refer to File No. SR–PHLX–98–01 and should be submitted by March 4, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3371 Filed 2–10–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 240.19b–4(e)(6)(1997).

[5] 17 CFR 200.30–3(a)(12)(1997).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; New Systems of Records

AGENCY: Social Security Administration (SSA).

ACTION: Notification of two proposed new systems of records.

SUMMARY: In accordance with the Privacy Act of 1974 as amended (5 U.S.C. 552a(e)(4) and (11)), we are notifying the public of our intent to establish two new systems of records. The proposed systems are entitled:

- Vocational Rehabilitation; State Vocational Rehabilitation Agency Information (VR SVRA) File; and
- Vocational Rehabilitation; SSA Disability Beneficiaries/Recipients Eligible for Re-referral to an Alternate Vocational Rehabilitation Service Provider (VR Re-referral) File.

For convenience we will refer to the first system as the ''VR SVRA File'' and the second system as the ''VR Re-referral File.''

We are also proposing to establish routine uses of the information to be maintained in these systems. The proposed systems and the proposed routine uses are discussed below in the **SUPPLEMENTARY INFORMATION** section.

We invite public comments on this publication.

DATES: We filed a report of the proposed systems of records with the Chairman, Senate Committee on Governmental Affairs, the Chairman, House Committee on Government Reform and Oversight, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 29, 1997. The proposed systems, including the proposed routine uses will become effective on March 23, 1998, unless we receive comments on or before that date which would warrant preventing the proposed systems from taking effect.

ADDRESSES: Interested individuals may comment on this proposal by writing to the SSA Privacy Officer, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235; comments may be faxed to (410) 966–0869. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mrs. Stephanie J. Green, Social Insurance Specialist, Office of Disclosure Policy, Social Security Administration, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 410–965–4561.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Proposed Systems of Records

A. General

Sections 222(d)(2) and 1615(a) of the Social Security Act (the Act) authorize the Commissioner of Social Security to arrange with alternate participants to provide vocational rehabilitation (VR) services to certain disabled Social Security beneficiaries and certain disabled or blind Supplemental Security Income (SSI) recipients when a State VR agency (SVRA) is unable or unwilling to provide such services. The Act authorizes SSA to pay the providers of services for the reasonable and necessary costs of the services in certain specified situations including where the furnishing of the services results in the performance of substantial gainful activity for a continuous period of 9 months.

The law and regulations provide for SSA to:

- Arrange for an alternate source of VR services when the SVRA is unable or unwilling to serve an SSA-referred title II or title XVI beneficiary/recipient who is disabled or blind.
- Select only alternate participants that meet the following basic qualifications:

—Are licensed, certified, accredited or registered, as appropriate, to provide VR services in the State in which they provide services, and

—Have a plan similar to the SVRA's which meets the requirements of title I of the Rehabilitation Act of 1973.

- Review the standards for the provision of VR services by alternate participants.
- First refer a Social Security disability beneficiary or SSI recipient who is disabled or blind to the SVRA for services.
- Identify all such SSA-referred beneficiaries/recipients who are not served by an SVRA.
- At its option to re-refer to an alternate participant (i.e., an alternate provider of VR services) if the SVRA is unable or unwilling to provide services to an individual initially referred by SSA.

The two proposed new systems of records will enable SSA to maintain records that will assist the Agency in administering the rehabilitation provisions of the Act.

B. VR SVRA File

The VR SVRA File will maintain information about the following categories of individuals:

(a) Newly awarded title II disability beneficiaries referred by SSA to the SVRA for VR services;

(b) Current title II disability beneficiaries who recently had a continuing disability review (CDR) and still are considered disabled, and were referred by SSA to the SVRA;

(c) Newly awarded title XVI recipients who are disabled or blind, who are referred by SSA to the SVRA for VR services; and

(d) Current title XVI recipients who are disabled or blind, who recently had a CDR and still are considered disabled or blind, and were referred by SSA to the SVRA.

(See the ''Categories of records'' section of the VR SVRA notice below for a complete description of the records that SSA will maintain about these individuals.)

The VR SVRA system will enable SSA to:

- Verify that disability beneficiaries and recipients who are disabled or blind are referred to the SVRA by SSA and are accepted for VR services;
- Conduct statistical studies; and
- Provide management information on VR referrals.

C. VR Re-referral File

The VR Re-referral File will maintain information about the same categories of individuals as the VR SVRA file, but only when the individuals are not accepted for VR services by the SVRA.

The VR Re-referral File will enable SSA to:

- Provide approved alternate participants with disability beneficiaries and recipients who are disabled or blind and who are eligible for VR services;
- Conduct statistical studies;
- Provide management information on VR re-referrals; and
- Identify the approved alternate participant who is providing the VR services.

(See the ''Categories of records'' section of the VR Re-referral File below for a complete description of the records that SSA will maintain about these individuals.)

II. Collection of Data for the Systems

Records in the VR SVRA and VR Re-referral File systems of records are obtained from information collected by the State disability determination services when adjudicating claims for disability and blindness, from SVRA responses, and from existing SSA systems of records (e.g. the Claims Folders system).

III. Proposed Routine Use Disclosures of Data in the Systems

We are proposing to establish the following routine use disclosures of the information that will be maintained in the VR SVRA and VR Re-referral File systems:

1. Information may be disclosed to State or private alternate providers having an approved business arrangement with SSA to perform vocational rehabilitation services for SSA disability beneficiaries and recipients who are disabled or blind.

This proposed routine use would permit us to disclose information from the proposed systems for the purpose of assisting beneficiaries/recipients to participate in vocational rehabilitation. Information in the VR Re-referral File system also will be used to identify the alternate provider of record for successful rehabilitation of a disability beneficiary/recipient.

2. Information may be disclosed to contractors and other Federal agencies, as necessary, to assist SSA in the efficient administration of its programs.

We contemplate disclosing information under this proposed routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to these systems of records. In administering our programs, we often find that it is more efficient to use an outside contractor to carry out some of our functions. This proposed routine use will allow us to disclose information from the systems under such circumstances. Contractors, or other Federal agencies, will, under agreements with SSA, be required to safeguard information disclosed to them consistent with the requirements of the Privacy Act.

3. Information may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the subject of the record.

We contemplate disclosing information under this proposed routine use only in situations in which the individual asks his/her Member of Congress to intercede in an SSA matter on his/her behalf. Information will be disclosed from the proposed systems only when the Member of Congress inquires and presents evidence that he/she is acting on behalf of the individual whose record is requested.

4. Information may be disclosed to the Department of Justice (DOJ), a court, or other tribunal, or another party before such tribunal, when:

(1) SSA, or any component thereof; or

(2) Any SSA employee in his/her official capacity; or

(3) Any SSA employee in his/her individual capacity when DOJ (or SSA, when it is authorized to do so) has agreed to represent the employee; or

(4) The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal, or the other party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case SSA determines that such disclosure is compatible with the purposes for which the records were collected.

This proposed routine use would permit us to disclose information from the proposed systems when an SSA component and/or employee is involved in litigation involving information in the proposed systems. The routine use would also permit disclosure when SSA brings suit or when another party brings suit and SSA has an interest in the litigation.

5. Information may be disclosed to the Office of the President for responding to an individual who is the subject of the record pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We contemplate disclosing information under this routine use only in situations in which the individual who is the subject of the record or someone else on the individual's behalf asks the President to intercede in an SSA matter pertaining to the individual. Information may be disclosed from the proposed systems when the Office of the President inquires and presents evidence that it is acting on behalf of the individual whose record is requested.

6. Information may be disclosed to student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

Under certain Federal statutes, SSA is authorized to use the services of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs are: 5 U.S.C. 3111 regarding student volunteers; and 42 U.S.C. 2753 regarding the College Work Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals and they need access to information in these systems to perform their assigned duties.

7. Nontax return information, the disclosure of which is not expressly restricted by Federal law, may be disclosed to the General Services Administration and the National Archives and Records Administration under 44 U.S.C. 2904 and 2906 for the use of those agencies in conducting records management studies.

The Administrator of the General Services Administration (GSA) and the Archivist of the National Archives and Records Administration (NARA) are charged by 44 U.S.C. 2904 with promulgating standards, procedures, and guidelines regarding records management and conducting records management studies. Section 2906 of that law, also amended by the NARA Act of 1984, provides that GSA and NARA are to have access to Federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to these proposed systems of records. In such instances, the routine use will facilitate disclosure.

IV. Compatibility of the Proposed Routine Uses

Both the Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and our disclosure regulations (20 CFR part 401) permit us to disclose information under a routine use for a purpose which is compatible with the purposes for which we collected the information. Section 401.150(c) of our regulations permits us to disclose information under a routine use to administer our programs. Section 401.120 of our regulations provides that we will disclose information when a law specifically requires the disclosure.

The proposed routine uses numbered 1, 2, 3, 4, 5 and 6, described above, will facilitate SSA's administration of its programs. Routine use number 7 will allow GSA or NARA to inspect our records, as required by 44 U.S.C. 2904 and 2906, when those agencies conduct records management studies. Thus, all of the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

V. Safeguards

We will employ a number of security measures to minimize the risk of unauthorized access to or disclosure of personal data in these proposed systems. These measures include the use of access codes to enter the computer system which will maintain the data, and storage of the computerized records in secured areas which are accessible only to employees who require the information in performing their official duties. All individuals who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in the systems.

Any business arrangement which SSA may sign with an alternate participant to access the information in the VR Re-referral file will stipulate that (a) the alternate participant must establish safeguards to protect the personal information temporarily in its custody, in accordance with the Privacy Act requirements; (b) the alternate participant may use the information only as necessary in fulfilling the business arrangement and (c) the alternate participant would be subject to criminal penalties for violations of the Privacy Act.

VI. Effect of the Proposed Systems of Records on the Privacy of Individuals

As discussed above, a number of security measures will be used to minimize the risk of unauthorized access to or disclosure of personal data. Thus, we do not anticipate that the proposed systems will have any unwarranted effect on the privacy of individuals.

Dated: December 29, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

05–007

SYSTEM NAME:

Vocational Rehabilitation; State Vocational Rehabilitation Agency Information (VR SVRA) File, SSA/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems 6401 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Newly awarded title II disability beneficiaries referred by SSA to the SVRA for VR services.

(b) Current title II disability beneficiaries who recently had a continuing disability review (CDR) and still are considered disabled, and were referred by SSA to the SVRA.

(c) Newly awarded title XVI recipients who are disabled or blind and who are referred by SSA to the SVRA for VR services.

(d) Current title XVI recipients who are disabled or blind who recently had a CDR and still are considered disabled or blind, and were referred by SSA to the SVRA.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following information about each beneficiary/recipient:

- Name;
- Beneficiary's or recipient's own account number (BOAN);
- Claim account number (CAN);
- Prior incorrect account number—in the event either SSA or the SVRA provides an incorrect account number, it will be retained for reference only;
- Date of birth;
- SVRA;
- Referral source—identifies source of the record (new awards or CDR continuances);
- Date decision due—date ending the fourth month after the month of referral when SVRA decision is due;
- District office;
- Action—identifies SSA-referred beneficiaries or recipients accepted by SVRA for VR services or placed in extended evaluation status;
- Date of extended evaluation—date the SVRA placed the beneficiary or recipient in extended evaluation;
- Date of final decision—date the SVRA accepted the beneficiary or recipient for services, or if in extended evaluation, date resolving extended evaluation;
- Date SSA notified—date SSA informed of SVRA decision;
- Control—identifies records the SVRA added to or deleted from their reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Secs. 222, 223, 225, 1611, 1615, 1631 and 1633 of the Social Security Act (42 U.S.C. 422, 423, 425, 1382, 1382d, 1383, and 1383b); the Federal Records Act of 1950 (Pub. L. 81–754, 64 Stat. 583), as amended.

PURPOSE:

Information in this system of records is used for the following purposes:

- To verify that disability beneficiaries and recipients who are disabled or blind are referred to the SVRA by SSA and accepted for VR services;
- To conduct statistical studies; and
- To provide management information on VR referrals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Information may be disclosed to State or private alternate providers having an approved business arrangement with SSA to perform vocational rehabilitation services for SSA disability beneficiaries and recipients who are disabled or blind.

2. Information may be disclosed to contractors and other Federal agencies, as necessary, to assist SSA in the efficient administration of its programs.

3. Information may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the subject of the record.

4. Information may be disclosed to the Department of Justice (DOJ), a court, or other tribunal, or another party before such tribunal, when:

(1) SSA, or any component thereof; or

(2) Any SSA employee in his/her official capacity; or

(3) Any SSA employee in his/her individual capacity when DOJ (or SSA, when it is authorized to do so) has agreed to represent the employee; or

(4) The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal, or the other party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case SSA determines that such disclosure is compatible with the purpose for which the records were collected.

5. Information may be disclosed to the Office of the President for responding to an individual who is the subject of the record pursuant to an inquiry received from that individual or from a third party on his or her behalf.

6. Information may be disclosed to student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

7. Nontax return information, the disclosure of which is not expressly restricted by Federal law, may be disclosed to the General Services Administration and the National Archives and Records Administration under 44 U.S.C. 2904 and 2906 for the use of those agencies in conducting records management studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

SSA records may be stored in various forms including magnetic media (e.g., magnetic tape and disc), microfilm, or paper.

RETRIEVABILITY:

Data will be retrieved from the system by the individual's SSN and/or by name.

SAFEGUARDS:

Security measures include the use of access codes to enter the computer system which will maintain the data, and storage of the computerized records in secured areas which are accessible only to employees who require the information in performing their official duties. SSA personnel who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system.

Access to information in this system of records will be restricted to authorized SSA personnel and alternate participants. Any business arrangement that SSA may enter into with an alternate participant to access the information in this system will stipulate (a) the alternate participant must establish safeguards to protect the personal information temporarily in its custody, in accordance with the Privacy Act requirements; (b) the alternate participant may use the information only as necessary in fulfilling the business arrangement; and (c) the alternate participant would be subject to criminal penalties for violations of the Privacy Act.

RETENTION AND DISPOSAL:

SSA retains records for one year when they concern: (1) Documents returned to an individual, (2) denials of requests for confidential information, (3) release of confidential information to an authorized third party, and (4) undeliverable material. SSA retains records for four years when they concern information and evidence pertaining to coverage, wage, and self-employment determinations or when it affects future claims development, especially coverage, wage, and self-employment determinations. Information is erased or otherwise destroyed after the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system of records contains a record pertaining to him/her by providing his/her name, signature, and SSN to the address shown above under ''Systems

manager and address'' and by referring to the system. (Furnishing the SSN is voluntary, but it will enable an easier and faster search for an individual's record.) If the SSN is not known, the individual should provide name, signature, date and place of birth, sex, mother's birth name, and father's name, and evidence of identity. An individual requesting notification of records in person need furnish only an identification document he/she would normally carry on his/her person (e.g., driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, SSN, and date of birth in order to establish identity, plus any additional information which may be requested.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably identify the record contents they are seeking.

CONTESTING RECORD PROCEDURE:

Same as notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification.

RECORD SOURCE CATEGORIES:

Records in this system of records are obtained from information collected by the State disability determination services when adjudicating claims for Social Security or Supplemental Security Income benefits based on disability and blindness, from SVRA responses, and from existing SSA systems of records (e.g. the Claims Folders system).

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

05–008

SYSTEM NAME:

Vocational Rehabilitation; SSA Disability Beneficiaries/Recipients Eligible for Re-referral to an Alternate Vocational Rehabilitation Service Provider (VR Re-referral) File, SSA/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Newly awarded title II disability beneficiaries referred by SSA to the State Vocational Rehabilitation Agency (SVRA) for VR services, but not accepted for VR services by the SVRA.

(b) Current title II disability beneficiaries who recently had a continuing disability review (CDR) and still are considered disabled and who were referred by SSA to the SVRA but were not accepted for VR services by the SVRA.

(c) Newly awarded title XVI recipients who are disabled or blind and who are referred by SSA to the SVRA for VR services but not accepted for VR services by the SVRA.

(d) Current title XVI recipients who are disabled or blind who recently had a CDR and still are considered disabled or blind and who were referred by SSA to the SVRA, but were not accepted for VR services by the SVRA.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following information about each beneficiary/recipient:

- Name;
- Social security number (SSN);
- Date of birth;
- Address;
- Telephone number (if available);
- Alternate participant service categories;
- Date first available for alternate participant selection;
- Name of representative payee (where applicable).

AUTHORITY FOR MAINTENANCE OF THESE SYSTEMS:

Secs. 222, 223, 225, 1611, 1615, 1631 and 1633 of the Social Security Act (42 U.S.C. 422, 423, 425, 1382, 1382d, 1383 and 1383b); the Federal Records Act of 1950 (Pub. L. 81–754, 64 Stat. 583), as amended.

PURPOSE:

Information in this system of records is used for the following purposes:

- To provide approved alternate participants with disability beneficiaries and recipients who are disabled or blind and who are eligible for VR services;
- To conduct statistical studies;
- To provide management information on VR re-referrals;
- To identify the approved alternate participant who is providing the VR services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Information may be disclosed to State or private alternate providers having an approved business arrangement with SSA to perform vocational rehabilitation services for SSA disability beneficiaries and recipients who are disabled or blind.

2. Information may be disclosed to contractors and other Federal agencies, as necessary, to assist SSA in the efficient administration of its programs.

3. Information may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the subject of the record.

4. Information may be disclosed to the Department of Justice (DOJ), a court, or other tribunal, or another party before such tribunal, when:

(1) SSA, or any component thereof; or

(2) any SSA employee in his/her official capacity; or

(3) any SSA employee in his/her individual capacity when DOJ (or SSA, when it is authorized to do so) has agreed to represent the employee; or

(4) the United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal, or the other party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case SSA determines that such disclosure is compatible with the purpose for which the records were collected.

5. Information may be disclosed to the Office of the President for responding to an individual who is the subject of the record pursuant to an inquiry received from that individual or from a third party on his or her behalf.

6. Information may be disclosed to student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

7. Nontax return information, the disclosure of which is not expressly restricted by Federal law, may be disclosed to the General Services Administration and the National Archives and Records Administration under 44 U.S.C. 2904 and 2906 for the use of those agencies in conducting records management studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

SSA records may be stored in various forms including magnetic media (e.g.,

magnetic tape and disc), microfilm, or paper.

RETRIEVABILITY:

Data will be retrieved from the system by the individual's SSN and/or name and/or address.

SAFEGUARDS:

Security measures include the use of access codes to enter the computer system which will maintain the data, and storage of the computerized records in secured areas which are accessible only to employees who require the information in performing their official duties. SSA employees who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in the system.

Access to information in this system of records will be restricted to authorized SSA personnel and alternate participants. Any business arrangement that SSA may enter into with an alternate participant to access the information in this system will stipulate (a) the alternate participant must establish safeguards to protect the personal information temporarily in its custody, in accordance with the Privacy Act requirements; (b) the alternate participant may use the information only as necessary in fulfilling the business arrangement; and (c) the alternate participant would be subject to criminal penalties for violations of the Privacy Act.

RETENTION AND DISPOSAL:

SSA retains records for one year when they concern: (1) Documents returned to an individual, (2) denials of confidential information, (3) release of confidential information to an authorized third party, and (4) undeliverable material. SSA retains records for four years when they concern information and evidence pertaining to coverage, wage, and self-employment determinations or when it affects future claims development, especially coverage, wage, and self-employment determinations. Information is erased or otherwise destroyed after the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system of records contains a record pertaining to him/her by providing his/her name, signature, and SSN to the address shown above under ''Systems manager and address'' and by referring to the system. (Furnishing the SSN is voluntary, but it will enable an easier and faster search for an individual's record.) If the SSN is not known, the individual should provide name, signature, date and place of birth, sex, mother's birth name, and father's name, and evidence of identity. An individual requesting notification of records in person need furnish only an identification document he/she would normally carry on his/her person (e.g., driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, SSN, and date of birth in order to establish identity, plus any additional information which may be requested.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably identify the record contents they are seeking.

CONTESTING RECORD PROCEDURE:

Same as notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification.

RECORD SOURCE CATEGORIES:

Records in this system of records are obtained from information collected by the State disability determination services when adjudicating claims for Social Security or Supplemental Security Income benefits based on disability and blindness, from SVRA responses, and from existing SSA systems of records (e.g. the Claims Folders system).

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 98–3416 Filed 2–10–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2723]

Privacy Act of 1974; Altered System of Records

Notice is hereby given that the Department of State proposes to alter an existing system of records, STATE–30, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on February 2, 1998.

It is proposed that the altered system description include revisions and/or additions to each section except ''System name'' and ''Systems exempted from certain provisions of the Act.'' These changes to the existing system description are proposed to reflect more accurately the Bureau of Finance and Management Policy's record-keeping practices, a reorganization of its activities and operations, and the enlargement of its mandate pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, 42 U.S.C. 653) and the disclosure of data from the Personnel Payroll Records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires.

Any persons interested in commenting on the altered system of records may do so by submitting comments in writing to Kenneth F. Rossman, Acting Chief; Programs and Policies Division; Office of Information Resources Management Programs and Services; Room 1239; Department of State; 2201 C Street, NW.; Washington, DC 20520–1512. This system of records will be effective 40 days from the date of publication unless the Department receives comments which will result in a contrary determination.

The altered system, the ''Personnel Payroll Records, STATE–30'' will read as set forth below.

Dated: February 2, 1998.

Andrew J. Winter,

Acting Assistant Secretary for the Bureau of Administration.

STATE–30

SYSTEM NAME:

Personnel Payroll Records.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

Department of State, Room 1921, 2201 C Street, NW, Washington, DC 20520; Annex 15, 1800 N. Kent Street, Arlington, VA 22209; Charleston Financial Service Center, Building 646A, 1969 Dyess Avenues, Charleston, SC 29408; and overseas at U.S. embassies, U.S. consulates general and consulates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Civil Service and Foreign Service employees of the Department of State including those serving under full-time, part-time, intermittent, temporary, and limited

appointments; Foreign Service annuitants; and employees of other agencies for whom the Department provides payroll service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel actions, payroll control records, allotment requests, tax forms, death claims, bond requests, leave records, time and attendance records, federal, state and city income tax withholding statements, compensation records, health insurance forms, reconciliation records, employee payroll authorizations from other agencies, retirement/separation and transfer forms, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 2651a (Organization of the Department of State; 22 U.S.C. 3921 (Management of service); 5 U.S.C. 301 (Management of the Department of State); 22 U.S.C. 4042 (Maintenance of the Foreign Service Retirement and Disability Fund); 42 U.S.C. 653 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996); Executive Order 11491, as amended (Labor-management relations in the Federal service); 5 U.S.C. 5501–5584 (Pay Administration); and 31 U.S.C. 901–903 (Agency Chief Financial Officers).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in this system is used to prepare accurate and complete biweekly/monthly payroll and related reports which include: Entering change data into the computerized personnel payroll system; producing a variety of machine reports for use by allotment accountants; issuing biweekly/monthly pay checks and statements; computing and issuing lump-sum pay checks for personnel separating; issuing terminal leave payments; confirming time and attendance and leave data to assist in documenting claims for restored annual leave; providing leave data to the Bureau of Personnel and the Office of Personnel Management to facilitate computing retirement cases; providing appropriate allotments for individuals; issuing salary advances; reporting wages, compensation and allowances; reporting federal, state, city and other related taxes; filing information returns; processing debt collection actions; and processing other related payroll documents.

Information consisting of the names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed: (1) To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, 42 U.S.C. 653); (2) to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the Federal Parent Locator System by the Office of Child Support Enforcement; and (3) to the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

The principal users of this information outside the Department of state are: federal, state, and city governments which are issued tax reports; the Internal Revenue Service and the Social Security Administration which are sent tax and withholding data; and the Office of Personnel Management which receives the total record of the Civil Service Retirement System and the Federal Employees Retirement System benefit deductions including life and health insurance. A record from this system of records may be disclosed to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of federal personnel management. The Department's Consolidated American Payroll Division (CAPD) of the Office of Compensation and Pension provides employee payroll services and data to other U.S. Government agencies pursuant to agreements, Memoranda of Understanding or other documents authorizing services. Those agencies include: American Institute in Taiwan; Department of Agriculture; Department of Commerce; Department of Justice including the Drug Enforcement Administration and Immigration and Naturalization Service; Department of Defense; Department of Treasury including the Customs Service and the Secret Service; Department of Transportation including the Federal Aviation Administration and the Maritime Administration; Department of Health and Human Services; Department of Energy; U.S. Trade Representative; Nuclear Regulatory Commission; Department of the Army; Federal Emergency Management Agency; ACTION (Peace Corps); United States Information Agency; Agency for International Development; Social Security Administration; Center for Disease Control; United States Battle Monuments Commission; National Aeronautics and Space Administration; and the Board of International Broadcasting. Information is also made available to officials of labor organizations recognized under E.O. 11491, as amended, concerning the identity of Department of State employees contributing dues each pay period and the amount of dues withheld from each contributor; to officers and employees of a federal agency or public accounting firm for purposes of audit; to the Department of Justice when representing the Department or another U.S. Government agency in litigation; to an authorized appeal grievance examiner, formal complaints examiner; equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. Information may also be released on a need-to-know basis to other government agencies having statutory or other lawful authority to maintain such information. Also see the ''Routine Uses'' paragraphs of the Prefatory Statement published in the **Federal Register.**

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, microfiche, electronic media.

RETRIEVABILITY:

Individual name, Social Security Number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Annex 15 has security access controls (code entrances) and/or security alarm systems. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct

supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

Retention of these records varies from 3 to 99 years, depending upon the specific kind of record involved. They are retired or destroyed in accordance with published records schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director; Office of Information Resources Management Programs and Services; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1512.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Applications Programming Division, Systems and Integration Office, Information Management, Bureau of Administration, Room 4428, Department of State, Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Bureau of Finance and Management Policy's Office of Compensation and Pension (Personnel Payroll Records) might have records pertaining to themselves should write to the Director; Office of Information Resources Management Programs and Services; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1512. The individual must specify that he/she wishes the Personnel Payroll Records to be checked. At a minimum, the individual must include: name; date and place of birth; Social Security Number; approximate dates of employment with the Department of State; current mailing address and zip code; and signature.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director; Office of Information Resources Management Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained from the individual who is the subject of these records, the Bureau of Personnel, and other U.S. Government agencies where an employee was previously employed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(4) certain records contained within this system of records are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) in accordance with Department of State rules published in the **Federal Register.**

[FR Doc. 98–3382 Filed 2–10–98; 8:45 am]

BILLING CODE 4710–05–M

DEPARTMENT OF STATE

[Public Notice 2722]

Bureau of Political-Military Affairs; Office of Nuclear Energy Affairs; Interagency Procedures for the Implementation of the U.S.-IAEA Safeguards Agreement

This notice sets forth U.S. agency procedures for implementation of the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, with Protocol (IAEA INFCIRC/288), hereinafter referred to as the Agreement.

For additional information, contact Alex Burkart (phone: 202–647–4413), Office of Nuclear Energy Affairs, Bureau of Political-Military Affairs (PM/NE), Department of State, Washington, DC 20520.

A. Coordination

(1) IAEA Steering Committee.

(a) The interagency mechanism for coordinating policy and resolving disputes relating to the implementation of the Agreement shall be the IAEA Steering Committee (ISC), which is concerned generally with IAEA policy matters. The ISC is composed of representatives from the Department of State (State), the Department of Energy (DOE), the Nuclear Regulatory Commission (NRC), the Arms Control and Disarmament Agency (ACDA), the Department of Defense (DOD), the Office of Management and Budget (OMB), and the staff of the National Security Council (NSC) and the intelligence community (IC). The ISC is chaired by the U.S. Representative to the IAEA or such other official as may be designated by the Secretary of State. Representatives of the agencies which are ISC members are designated by the respective heads of such agencies. The ISC shall meet at such intervals set by the ISC and at any time at the request of any ISC member.

(b) In the event any question of interpretation of the Agreement affecting NRC arises which is not resolved by the ISC, the NRC shall seek and be bound by guidance from the President. Neither this provision, nor any other provision in these procedures, shall in any way alter the responsibilities of the NRC or in any way limit the existing authorities and responsibilities of the NRC.

(2) Subgroup on IAEA Safeguards in the U.S.

(a) The ISC shall establish a subcommittee known as the Subcommittee on International Safeguards and Monitoring (SISM). This subcommittee will, in turn, establish the Subgroup on IAEA Safeguards in the U.S. (SISUS). SISUS shall be composed of representatives from State, ACDA, NRC, DOE, and DOD. The NRC will appoint the Chair of the SISUS. Each agency shall designate its respective representatives to serve on the SISUS.

(b) The SISUS shall monitor implementation of the Agreement, carry out responsibilities specifically prescribed in these procedures, and undertake such other working level activities as may be designated by the SISM or the ISC.

(3) Negotiating Team.

(a) The Negotiating Team shall be composed of the members of the Subgroup or their designates. Designates must be full-time Government

(b) The Negotiating Team shall negotiate with the IAEA the Subsidiary Arrangements and the Transitional Subsidiary Arrangements (collectively referred to as the Arrangements), and undertake such other responsibilities as may be designated by the SISM or the ISC.

(c) Counsel and other agency officials may participate in Negotiating Team activities at the request of their respective agency representative.

B. Communications

As provided in the Arrangements, normally, official communications on matters relating to implementation of the Agreement from the IAEA are to be addressed to State through the Mission of the United States of America to the IAEA (Mission), and from State are to be addressed to the IAEA through the Mission. An officer in PM/NE and an officer in the Mission shall be assigned responsibility for communications to and from the IAEA in connection with implementation of the Agreement. In the event of the occurrence of unexpected circumstances, communications may be undertaken, as appropriate, other than as set forth in this Section of the procedures.

C. Regulation of NRC Licensed or Certified Facilities and Management of DOE License-Exempt Facilities

(1) For implementation of the Agreement,

(a) The NRC shall be responsible for maintaining necessary regulations applicable to NRC licensed or certified facilities; and

(b) DOE shall be responsible for maintaining appropriate mechanisms applicable to DOE license-exempt facilities.

(2) Requirements contained in the Arrangements shall be implemented as follows:

(a) With respect to an NRC licensed or certified facility, through the promulgation of regulations, the incorporation of appropriate amendments to licenses and the issuance of such orders as may be necessary to assure compliance; and

(b) With respect to a DOE license-exempt facility, through the promulgation of appropriate mechanisms.

D. Facility Attachments and Transitional Facility Attachments

The responsible agency (RA) is the NRC for NRC licensed or certified facilities and the DOE for DOE license-exempt facilities.

(1) Preparation. The RA shall participate with the IAEA in preparation of the material for the draft facility attachment and transitional facility attachment (collectively referred as the draft attachment) for each facility selected by the IAEA, under Article 39 of the Agreement or Article 2 of the Protocol. The RA shall consult with the facility operator and, as appropriate, arrange for such operator to participate in the preparation of the material for the draft attachment for such facility. The RA shall provide the Negotiating Team an opportunity to take part in preparation with the IAEA of the draft facility attachment for use in negotiation.

(2) Negotiation. The draft attachment shall be approved by the Negotiating Team for negotiation. Each facility attachment or transitional facility attachment (collectively referred to as the attachment) shall be negotiated with the IAEA by the Negotiating Team under the guidance of the SISM. In the course of these negotiations, the operator of the facility will be consulted and views and interests of each such operator will be considered. The facility operator will be given the opportunity to review and comment on the attachment before it is agreed to by the U.S. Agreement shall be indicated by the ISC Chair or his designee initialing the attachment.

E. Information To Be Provided to the IAEA

(1) Reports on the status of nuclear material required to be submitted to the IAEA pursuant to the Agreement at specified intervals or occasions shall be compiled and submitted as follows:

(a) Review and transmission of initial reports and periodic accounting reports, including amplifications and clarifications thereof, in accordance with Codes 3.3 and 3.4 of the Arrangements, shall be the obligation of the RA. These reports shall be prepared on computer diskette by the Nuclear Materials Management and Safeguards System (NMMSS) operated jointly by NRC and DOE. The RA shall make arrangements for submission of the necessary data from each facility operator to NMMSS, which shall compile consolidated reports and send the diskette to the RA for review and transmission to PM/NE for delivery to the IAEA. The RA shall consult and provide to PM/NE, and PM/NE shall provide to the IAEA, the telex address and the telephone number of appropriate personnel to be available for use by the IAEA in seeking clarifications and amplifications (including questions concerning reported data) of the accounting reports.

(b) The RA shall prepare and transmit special reports, including amplifications and clarification thereof, in accordance with Code 3.5 of the Subsidiary Arrangements. The RA shall send each report to PM/NE to permit PM/NE to decide if any further review is needed prior to transmission by PM/NE to the IAEA and whether the report should be referred to the ISC for its consideration.

(c) In the event a material unaccounted for (MUF) at any facility selected by the IAEA under the Agreement exceeds the IAEA limits or the limits specified in 74.31(c)(5) or 74.59(f)(1)(i), whichever is smaller, the ISC shall determine in satisfying the terms of the Agreement what information if any relating to any U.S. investigation of the MUF is to be transmitted to the IAEA.

(2) Information other than reports described in paragraph (1) of this Section includes completed Design Information Questionnaires and other information needed in connection with design review, changes in design, and requirements with respect to radiological protection; and notification of an intended withdrawal (Agreement Article 12(a)) and of an international transfer (Agreement Article 89). The RA shall be responsible for obtaining such required information and ensuring that it is prepared in prescribed format for transmission to the IAEA in accordance with Codes 3.1, 3.2, 3.6, and 3.7 of the Subsidiary Arrangements and Codes 3.1 and 3.2 of the Transitional Subsidiary Arrangements. Such information and notification shall be transmitted to the IAEA by State.

(3) The Agreement shall not be construed to permit the communication to the IAEA of Restricted Data controlled by the Atomic Energy Act of 1954, as amended.

F. Eligible List

(1) The list of eligible U.S. facilities provided to the IAEA under Agreement Article 1(b) (eligible list) shall be reviewed by the SISUS from time to time to determine if any addition or removal of a facility should be made. The RA shall be responsible for informing the SISUS of any change in the status of any facility, relative to possible addition to, or removal from, the eligible list. The SISUS shall recommend to the ISC changes to be made in the eligible list. In the event that any ISC member agency believes that for national security reasons a particular urgency exists relative to the removal of a facility from the eligible list, such agency may, where disagreement develops or where immediate affirmative action is deemed essential and cannot be accommodated by the ISC, seek to have the President decide regarding such proposed removal.

(2) Any changes in the eligible list shall be submitted to the IAEA by PM/NE through the Mission as provided in Agreement Article 34, after the following notification by State to the Congress:

(a) For any addition, after 60 days notice to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs, which notice shall include an explanation of the basis on which the determination to make the addition was made, and if the Congress has not during said 60-day period passed a concurrent resolution of disapproval; and

(b) For any deletion, after notification to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs.

(3) State shall provide each of the ISC member agencies with a copy of the eligible list and changes thereto. The NRC shall make it available for inspection in the NRC Public Document Room.

G. IAEA Consultations

(1) The Director General of the IAEA, in selecting any facility under the Agreement, may seek to consult with the United States in the interest of avoiding discrimination among U.S. facilities in accordance with Agreement Article 2(c). Moreover, the U.S. and IAEA may likely consult to insure compliance with Agreement Article 22; and the United States may request consultations in accordance with Agreement Article 80. All matters concerning any such consultation shall be considered by the SISM on the basis of recommendations by the SISUS.

(2) In addition to consultations contemplated in paragraph (a) of this Section, PM/NE shall arrange for periodic consultations between the SISUS and the IAEA, in accordance with Agreement Article 19, to review progress in implementation of the Agreement and to consider any matter relevant to the Agreement which either party to the Agreement may raise.

H. Matters Raised by Facility Operators

Any question, complaint or request from a facility operator shall be directed to the RA. The RA shall consider the matter in accordance with its established procedures. Any questions from a facility operator concerning any interpretation of the Agreement or the Arrangements, any question relating to the payment of invoices by the IAEA to the facility operator, and any request from a facility operator with respect to exemption or termination of safeguards, other than as provided for in an attachment, shall be addressed to the RA. The RA will advise SISUS of such question or request for consideration. If necessary the matter will be referred to the SISUS, the Negotiating Team, or the SISM/ISC for consideration or resolution.

I. Matters Raised by the IAEA

Any question, complaint, or request concerning implementation of the Agreement which is received from IAEA Headquarters by the Mission in accordance with Codes 1.1 of the Arrangements, and is not otherwise provided for in these procedures, shall be transmitted to PM/NE. PM/NE shall refer such matters to the SISUS for consideration and recommendation or resolution. The Chair of the SISUS will communicate these matters to the Negotiating Team, the SISM, and the RA, as appropriate.

J. Matters Concerning IAEA Inspectors

(1) Any question, complaint or request for assistance from any IAEA inspector, while performing inspection activities in the United States, which is not resolved by personnel at the facility in question or through the RA contact, shall be referred to SISUS. The IAEA shall be provided with the names of designated officials in the NRC, DOE and PM/NE for this purpose, including 24-hour telephone number information. The designated official contacted shall advise the RA as soon as possible whenever so contacted, to determine whether any immediate action is appropriate and to obtain any necessary assistance from the appropriate RA official. If time and circumstances permit, the matter may be referred to the SISUS and, in any event, the SISUS shall be advised of the matter and its resolution.

(2) Any question, complaint or request from a facility operator concerning an action by an IAEA inspector shall be addressed to the RA. This shall be undertaken in the first instance by contacting an appropriate RA official, if present at the facility. If necessary, a designated official at RA headquarters shall be consulted. If not resolved by such consultation, the matter will then be addressed as described in Section H above.

(3) The RA shall be responsible for ensuring compliance with footnotes to Codes 3.2 of the Arrangements with respect to safety, radiation protection, and medical care of IAEA staff members carrying out functions under the Agreement.

K. Designation of IAEA Inspectors

Each proposal by the IAEA for designation of one or more inspectors for service in the United States which is received by the Mission shall be referred to the SISUS for consideration. If consensus cannot be reached, the matter will be referred to the SISM. State shall provide the U.S. response to each such proposal to the Mission for transmittal to the IAEA. PM/NE shall maintain the list of IAEA inspectors formally designated for service in the United States and shall provide copies of the list, and changes as they occur, to each ISC member agency. The NRC and DOE may provide copies of such lists to facility operators under their respective jurisdictions for their information.

L. Notification of IAEA Inspections and Visits

NRC and DOE shall consult and provide to PM/NE, and PM/NE shall provide the IAEA, the name, telex address, and telephone number of an appropriate official and alternate to be contacted by the IAEA for advance, informal coordination and planning of any inspection or visit. This official shall coordinate preparation for each inspection or visit with any facility involved and provide timely responses directly to the IAEA. Such coordination shall be in preparation for the formal advance notification of each IAEA inspection and visit (Agreement Article 81 and Protocol Article 11(b)) which, when received by the Mission, shall be provided to State by telegram, with the NRC and DOE as information addresses. SISUS shall maintain a schedule of each planned IAEA inspection or visit and provide copies to the ISC member agencies upon request. The operator of each facility to be inspected or visited shall be so informed by the RA. The RA shall also arrange for the IAEA inspector to be accompanied by one or more RA representatives. The RA shall, to the extent possible, accommodate requests by SISUS members to be present during inspections. Should the IAEA elect to perform unannounced inspections, the RA, when notified by the facility, shall make a determination of the need to send a representative to the site as soon as practical.

M. Reports by the IAEA

Reports by the IAEA, in accordance with Agreement Articles 41, 64 and 88, of its inspections and other safeguards activities in the United States, when received by the Mission, shall be transmitted to State. PM/NE shall provide copies to the ISC member agencies and the Chair of the SISUS, and shall also maintain a file of such reports. The SISUS shall review these reports and determine any needed action.

N. Implementation Reports

SISUS, on the basis of information collected by the NRC and DOE and information obtained from the IAEA, may prepare periodic reports concerning implementation of the Agreement, including, inter alia, pertinent statistics, lists of facilities inspected, and other relevant data for the information of government agencies, the Congress and the public.

O. Agreement Article 22

State shall institute steps as necessary to suspend, for the duration of the Agreement, the application of IAEA safeguards in the United States under other safeguards agreements with the IAEA. State shall maintain a list of the agreements, required by Code 3.8.1 of the Subsidiary Arrangements, under which the application of such safeguards has been suspended and shall provide this list and all subsequent changes to each ISC member agency. DOE shall prepare the reports required

by Codes 3.8.2 and 3.8.3 of the Subsidiary Arrangements for delivery of these reports to State for transmission by State to the IAEA within the time limits stipulated in Codes 3.8.2 and 3.8.3 DOE shall also be responsible for the monitoring function called for in footnote 3 of Code 3.8 of the Subsidiary Arrangements and for reporting, at least annually, to State the results of such monitoring.

P. Role of These Procedures and Their Modification

(1) Scope. These procedures are for the purpose of interagency coordination and shall not affect the internal coordination mechanism of any agency. These procedures establish requirements solely applicable to certain agencies of the United States Government, rather than individuals, and, accordingly, are not rules within the meaning of the Administrative Procedure Act.

(2) Amendment. These procedures may be amended from time to time by the ISC.

Dated: January 16, 1998.

Richard J. K. Stratford,

Director, Office of Nuclear Energy Affairs, Bureau of Political-Military Affairs, United States Department of State.

[FR Doc. 98–3381 Filed 2–10–98; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Portland International Jetport, Portland, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Portland International Jetport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 13, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas F. Valleau, Director, Transportation and Waterfront Department at the following address: Portland International Jetport, 1001 Westbrook Street, Portland, Maine, 04102.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Portland under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Portland International Jetport under the provisions of the Aviation Safety and capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 29, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Portland was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than April 29, 1998.

The following is a brief overview of the impose and use application.

PFC Project #: 98–02–C–00–PWM.

Level of the proposed PFC: $3.00.

Charge effective date: November 1, 1998.

Estimated charge expiration date: October 1, 2002.

Estimated total net PFC revenue: $6,887,241.

Brief description of project: Reconstruct Aircraft Parking Apron, Acquisition of Passenger Loading Bridges, Acquisition of Flight Information Display Systems, Reconstruction of Airport Access Road and Construction of Canopy, PFC Application Costs.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO) that (1) do not enplane or deplane passengers at the airport's main passenger terminal building and (2) enplane less than 200 passengers per year at the airport, and (3) file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Portland International Jetport, 1001 Westbrook Street, Portland, Maine, 04120.

Issued in Burlington, Massachusetts on February 4, 1998.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 98–3426 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration and Federal Transit Administration

Environmental Impact Statement: Denver, Arapahoe, and Douglas Counties

AGENCY: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent and public scoping meetings.

SUMMARY: The FHWA and FTA are jointly issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed transportation improvements in the Southeast Corridor of the Denver metropolitan area.

FOR FURTHER INFORMATION CONTACT:

Mr. Vincent P. Barone, FHWA Colorado Division, 555 Zang Street, Room 250, Denver, Co 80228, Telephone: (303) 969–6730, extension 369

Mr. David L. Beckhouse, FTA Region VIII, 216 16th Street Mall, Suite 650, Denver, CO 80202, Telephone (303) 844–3242

SUPPLEMENTARY INFORMATION: The FHWA and FTA, in cooperation with the Colorado Department of Transportation (CDOT), hereby give notice that they intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transportation improvements in the Southeast Corridor of the Denver metropolitan area. This EIS will

evaluate the No Build, and a Light Rail Transit alternative (including highway improvements and transportation management solutions) in the I–25 Southeast Corridor study limits from Broadway to Lincoln Avenue, which includes I–225 from I–25 to Parker Road, and determine the estimated costs and potential impacts associated with each. CDOT will be the local lead agency for the preparation of the EIS. The EIS also will satisfy the requirements of the 1999 Clean Air Act Amendments. Scoping will be accomplished through coordination with affected parties, organizations, federal, state and local agencies and through three public meetings which will be held from 5:00 p.m. to 8:00 p.m. at the following locations and dates:

Tuesday, March 31, 1998, Castlewood Public Library, 6739 South Uinta Street, Denver, CO 80112

Thursday, April 2, 1998, Most Precious Blood Catholic School, 2250 South Harrison, Denver, CO 80210

Tuesday, April 7, 1998, Hebrew Educational Alliance, 3600 South Ivanhoe, Denver, CO 80237

A 45-day scoping period will begin on March 4, 1998 and conclude on April 17, 1998. Written comments on the scope of the alternatives and impacts to be considered must be received by CDOT by April 17, 1998.

Written comments on project scope should be sent to:

Mr. Robert Sakaguchi, Region 6 Planning and Environmental Manager CDOT, 2000 South Holly Street, Denver, CO 80222 Telephone: (303) 757–9818

or

Mr. John Basner, Region 6 South Area Program Engineer, CDOT, 2000 South Holly Street, Denver, CO 80222, Telephone: (303) 757–9387

FHWA, FTA, CDOT, and other local agencies invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the purpose of the project, the proposed alternatives, the areas to be evaluated, the citizen involvement program, and the preliminary project schedule will be developed. These scoping materials may be requested by contacting Mr. Robert Sakaguchi, Region 6 Planning and Environmental Manager, or Mr. John Basner, Region 6 South Area Program Engineer, at the address and phone numbers above. Scoping comments may be made verbally at the public scoping meetings or in writing. The public will receive notices on location and time of the scoping meetings through newspaper advertisements and individual correspondence.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. If you wish to be placed on the mailing list to receive further information as the project develops, contact Mr. Robert Sakaguchi, or Mr. John Basner, as previously described.

The proposed action is consistent with the recently completed Southeast Corridor Major Investment Study. It begins at approximately I–25 and Broadway and proceeds south and southeast to Lincoln Avenue following the general alignment of I–25. Also included is a segment along I–225 from I–25 to Parker Road. The proposed action excludes any proposed roadway improvements near I–25 from 6th Avenue to approximately the Logan Street crossing, including the I–25 interchanges at Alameda, Santa Fe, and Broadway. Transit and highway improvements are intended to alleviate traffic congestion in the Southeast Corridor, address safety problems and help achieve regional air quality goals by providing an alternative to the single occupant vehicle.

The alternatives to be evaluated include the following. The No-Build alternative will serve as the baseline for environmental analysis and consists of the existing transit and highway systems and all projects contained in the federally approved Transportation Improvement Program (TIP) for the Denver metropolitan area. The Light Rail Transit (LRT) alternative will generally use the I–25 right-of-way between Broadway and Lincoln Avenue, and the I–225 right-of-way between I–25 and Parker. This alternative, designed to accommodate future transportation needs, also includes improvements to the highway, transportation systems management, and pedestrian facilities in the study area.

FHWA, FTA, and CDOT will evaluate all significant social, economic, and environmental impacts of the alternatives. The primary areas of examination will include transit ridership, the capital outlays needed to construct the recommended alternative, the cost of operating and maintaining facilities created by the project, and the financial requirements on the funding agencies. Environmental and social impacts to be evaluated in the analysis include land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, hazardous material impacts, impacts on cultural and paleontological resources, and noise and vibration impacts. Impacts on natural areas, threatened and endangered species, air and water quality, groundwater, and geological forms will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate significant adverse impacts will be developed.

In accordance with the Federal Transit Act, as amended, and FHWA and FTA policy, the draft EIS will be prepared with required engineering design studies necessary to complete the document. After its publication, the draft EIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS and the comments received, a preferred alternative will be selected and preparation of the Final EIS and Record of Decision will proceed.

(Catalog of Federal Domestic Assistance Program 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: February 5, 1998.

Ronald A. Speral,

Environmental/ROW Program Manager Colorado Division

Federal Highway Administration, Lakewood, Colorado.

Louis F. Mraz, Jr.,

Regional Administrator,

Federal Transit Administration, Region VIII

Denver, Colorado.

[FR Doc. 98–3409 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Additional Interchanges to the Interstate System

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of policy statement.

SUMMARY: This document issues a revision of the FHWA policy statement regarding requests for added access to the existing Interstate system. The policy includes guidance for the justification and documentation needed for requests to add access (interchanges and ramps) to the existing Interstate System. The policy statement was

originally issued in the **Federal Register** on October 22, 1990 (55 FR 42670).

DATES: The effective date of this policy is February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Seppo I. Sillan, Federal-Aid and Design Division, Office of Engineering, (202) 366–0312, or Mr. Wilbert Baccus, Office of Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 111 of title 23, U.S.C., provides that all agreements between the Secretary and the State highway department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. The Secretary has delegated the authority to administer 23 U.S.C. 111 to the Federal Highway Administrator pursuant to 49 CFR 1.48(b)(10). A formal policy statement including guidance for justifying and documenting the need for additional access to the existing sections of the Interstate System was published in the **Federal Register** on October 22, 1990 (55 FR 42670).

The FHWA has adopted the AASHTO publication ''A Policy on Design Standards—Interstate System'' as its standard for projects on the Interstate System. This publication provides that access to the Interstate System shall be fully controlled by constructing grade separations at selected public crossroads and all railroad crossings. Where interchanges with selected public crossroads are constructed, access control must extend the full length of ramps and terminals on the crossroad.

Summary of Changes

The changes in the policy statement are being made to reflect the planning requirements of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, Pub. L. 102–240) as implemented in 23 CFR part 450, to clarify coordination between the access request and environmental processes, and to update language at various locations. The following specific revisions are made to the existing policy statement:

1. An additional sentence is added to item 5 under ''Policy'' that ensures requests for new or revised access are consistent with 23 CFR part 450 and 40 CFR parts 51 and 93.

2. Text in item 5 pertaining to future interchange additions has been moved to item 6 because it covers a different subject.

3. Item 6 is redesignated as item 7.

4. A new item 8 is added so that those reviewing the access request have the information necessary to process the request.

5. The fifth paragraph under ''Application'' is revised to clarify coordination with the environmental process.

The revised policy statement also includes various editorial changes to enhance clarity and readability. The revised policy statement is as follows:

Policy

It is in the national interest to maintain the Interstate System to provide the highest level of service in terms of safety and mobility. Adequate control of access is critical to providing such service. Therefore, new or revised access points to the existing Interstate System should meet the following requirements:

1. The existing interchanges and/or local roads and streets in the corridor can neither provide the necessary access nor be improved to satisfactorily accommodate the design-year traffic demands while at the same time providing the access intended by the proposal.

2. All reasonable alternatives for design options, location and transportation system management type improvements (such as ramp metering, mass transit, and HOV facilities) have been assessed and provided for if currently justified, or provisions are included for accommodating such facilities if a future need is identified.

3. The proposed access point does not have a significant adverse impact on the safety and operation of the Interstate facility based on an analysis of current and future traffic. The operational analysis for existing conditions shall, particularly in urbanized areas, include an analysis of sections of Interstate to and including at least the first adjacent existing or proposed interchange on either side. Crossroads and other roads and streets shall be included in the analysis to the extent necessary to assure their ability to collect and distribute traffic to and from the interchange with new or revised access points.

4. The proposed access connects to a public road only and will provide for all traffic movements. Less than ''full interchanges'' for special purpose access for transit vehicles, for HOV's, or into park and ride lots may be considered on a case-by-case basis. The proposed access will be designed to meet or exceed current standards for Federal-aid projects on the Interstate System.

5. The proposal considers and is consistent with local and regional land use and transportation plans. Prior to final approval, all requests for new or revised access must be consistent with the metropolitan and/or statewide transportation plan, as appropriate, the applicable provisions of 23 CFR part 450 and the transportation conformity requirements of 40 CFR parts 51 and 93.

6. In areas where the potential exists for future multiple interchange additions, all requests for new or revised access are supported by a comprehensive Interstate network study with recommendations that address all proposed and desired access within the context of a long-term plan.

7. The request for a new or revised access generated by new or expanded development demonstrates appropriate coordination between the development and related or otherwise required transportation system improvements.

8. The request for new or revised access contains information relative to the planning requirements and the status of the environmental processing of the proposal.

Application

This policy is applicable to new or revised access points to existing Interstate facilities regardless of the funding of the original construction or regardless of the funding for the new access points. This includes routes incorporated into the Interstate System under the provisions of 23 U.S.C. 139(a) or other legislation.

Routes approved as a future part of the Interstate system under 23 U.S.C. 139(b) represent a special case because they are not yet a part of the Interstate system and the policy contained herein does not apply. However, since the intention to add the route to the Interstate system has been formalized by agreement, any proposed access points, regardless of funding, must be coordinated with the FHWA Division Office. This policy is not applicable to toll roads incorporated into the Interstate System, except for segments where Federal funds have been expended, or where the toll road section has been added to the Interstate System under the provisions of 23 U.S.C. 139(a).

For the purpose of applying this policy, each entrance or exit point, including ''locked gate'' access, to the mainline is considered to be an access point. For example, a diamond

interchange configuration has four access points.

Generally, revised access is considered to be a change in the interchange configuration even though the number of actual points of access may not change. For example, replacing one of the direct ramps of a diamond interchange with a loop, or changing a cloverleaf interchange into a fully directional interchange would be considered revised access for the purpose of applying this policy.

All requests for new or revised access points on completed Interstate highways must be closely coordinated with the planning and environmental processes. The FHWA approval constitutes a Federal action, and as such, requires that the National Environmental Policy Act (NEPA) procedures are followed. The NEPA procedures will be accomplished as part of the normal project development process and as a condition of the access approval. This means the final approval of access cannot precede the completion of the NEPA process. To offer maximum flexibility, however, any proposed access points can be submitted in accordance with the delegation of authority for a determination of engineering and operational acceptability prior to completion of the NEPA process. In this manner, the State highway agency can determine if a proposal is acceptable for inclusion as an alternative in the environmental process. This policy in no way alters the current NEPA implementing procedures as contained in 23 CFR part 771.

Although the justification and documentation procedures described in this policy can be applied to access requests for non-Interstate freeways or other access controlled highways, they are not required. However, applicable Federal rules and regulations, including NEPA procedures, must be followed.

Implementation

The FHWA Division Office will ensure that all requests for new or revised access submitted by the State highway agency for FHWA consideration contain sufficient information to allow the FHWA to independently evaluate the request and ensure that all pertinent factors and alternatives have been appropriately considered. The extent and format of the required justification and documentation should be developed jointly by the State highway agency and the FHWA to accommodate the operations of both agencies, and should also be consistent with the complexity and expected impact of the proposals. For example, information in support of isolated rural interchanges may not need to be as extensive as for a complex or potentially controversial interchange in an urban area. No specific documentation format or content is prescribed by this policy.

Policy Statement Impact

The policy statement, first published in the **Federal Register** on October 22, 1990 (55 FR 42670), describes the justification and documentation needed for requests to add or revise access to the existing Interstate System. The revisions made by this publication of the policy statement reflect the planning requirements of the ISTEA as implemented in 23 CFR part 450, clarify coordination between the access request and environmental processes, and update language at various locations. The States will have to take these factors into consideration when making future requests for new or revised access points, but the overall effort necessary for developing the request will not be significantly increased.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued: February 4, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

[FR Doc. 98–3460 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Notice 97–1]

Safety Advisory: Unauthorized Cargo Tanks Used to Transport Hazardous Materials

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice.

SUMMARY: This is to notify the public that certain specification DOT 407 and DOT 412 cargo tank motor vehicles manufactured by Prairie State Equipment, doing business as Petro Steel, in Mitchell, SD, are not authorized for the transportation of hazardous materials unless the original accident damage protection devices have been modified to improve their structural strength. Failure of these devices during a collision could result in serious injury, death, and property damage.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Quade, Office of Motor Carrier Safety and Technology, (202) 366–0476; Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street S.W., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Cargo tanks represented, marked, certified, or sold for use in the bulk transportation of hazardous materials must conform with the Hazardous Materials Regulations (HMR) (49 CFR 171–180). Specification DOT 407 and DOT 412 cargo tanks are authorized to transport numerous hazardous materials including flammable liquids (e.g., toluene), poisonous liquids, (e.g., pesticides), corrosive liquids (e.g., sulfuric acid), and others. Due to the risk of transporting these types of materials in bulk, the DOT 407 and DOT 412 cargo tank specifications require these tanks to be protected from damage during rear-end or rollover accidents. Requirements concerning the size and strength of these accident damage protection devices are set forth in § 178.345–8.

During a compliance review of Prairie State Equipment, doing business as Petro Steel, in Mitchell, SD, the FHWA discovered that rollover protection devices and rear-end protection devices as manufactured and installed on some cargo tanks did not meet the requirements of the DOT specifications. Since these tanks were not equipped with adequate accident damage protection devices required by the specifications, they may not be represented as specification cargo tanks and may not be used to transport hazardous materials which require a specification cargo tank. Specifically, as manufactured by Petro Steel, the rollover damage protection devices installed on the following cargo tanks did not meet the requirements of the specifications:

Vehicle identification No./serial No.	DOT specification	Design type
93115	DOT 407	CVA–5–TM
1P9TAR203R2021217	DOT 407	CVT–25
1P9TAR208R2021214	DOT 407	CVT–25
1P9TAR20XS2021219	DOT 407	CVT–25

Vehicle identification No./serial No.	DOT specification	Design type
1P9TAR20XR2021215	DOT 407	CVT–25
1P9TAR208S2021218	DOT 407	CVT–25
1P9TAR206S2021220	DOT 407	CVT–25
1P9TAR207P2021203	DOT 407	CVT–25
1P9TAR200P2021205	DOT 407	CVT–25
1P9TAR209P2021204	DOT 407	CVT–25–SS
94101	DOT 412	CST–38
94102	DOT 412	CST–38
92130	DOT 407	CTM–42
92123	DOT 407	CTM–45
92124	DOT 407	CTM–45
94103	DOT 407	CTM–55
92120	DOT 407/412	CTM–70–SS
95101	DOT 407	CTM–70
95104	DOT 407	CTM–70
93114	DOT 407	CTM–70
93113	DOT 407	CTM–70
92125	DOT 407	CTM–70
93116	DOT 407	CTM–70
94108	DOT 407	CTM–70
93117	DOT 407	CTM–70
93105	DOT 407	CRO–70
92121	DOT 407/412	CTM–80
94105	DOT 407	CTM–80
92117	DOT 407/412	CTM–80
93118	DOT 407	CTM–80
95102	DOT 407	CTM–80
92131	DOT 407	CTM–80
94109	DOT 407	CTM–80
92119	DOT 407	CTO–80
93100	DOT 407	CTM–90
93119	DOT 407	CTM–90
95100	DOT 407	CTM–110–2
1P9TAA208N2021189	DOT 407	CVT–130
1P9TAA207N2021197	DOT 407	CVT–130
1P9TAA204R2021213	DOT 412	CVT–130
1P9TAA200R2021208	DOT 412	CVT–130–2
1P9TAA209N2021198	DOT 407	CVT–130–2
1P9TAA209R2021207	DOT 412	CVT–130–SS
1P9TAA200R2021209	DOT 412	CVT–130–SS
1P9TAA202R2021210	DOT 412	CVT–130–SS
1P9TAA209R2021211	DOT 412	CVT–130–SS
1P9TAA200R2021212	DOT 412	CVT–130–SS
1P9TAA207R2021206	DOT 412	CVT–160–2
1P9TBA209N2021194	DOT 407	CVT–196

Additionally, as manufactured by Petro Steel, the rear-end protection devices installed on the following cargo tanks did not meet the requirements of the specifications:

Vehicle identification No./serial No.	DOT specification	Design type
1P9TAA208N2021189	DOT 407	CVT–130
1P9TAA207N2021197	DOT 412	CVT–130
1P9TAA204R2021213	DOT 412	CVT–130
1P9TAA200R2021208	DOT 412	CVT–130–2
1P9TAA209N2021198	DOT 412	CVT–130–2
1P9TAA209R2021207	DOT 412	CVT–130–SS
1P9TAA200R2021209	DOT 412	CVT–130–SS
1P9TAA202R2021210	DOT 412	CVT–130–SS
1P9TAA209R2021211	DOT 412	CVT–130–SS
1P9TAA200R2021212	DOT 412	CVT–130–SS
1P9TAA207R2021206	DOT 412	CVT–160–2
1P9TBA209N2021194	DOT 407	CVT–196

Cargo tanks listed above may be used to transport hazardous materials if they have been modified to a design certified by Petro Steel or another Design Certifying Engineer (DCE) as meeting the requirements of § 178.345–8. Cargo tanks which have not had appropriate modifications must have the DOT specification plate removed, obliterated, or covered and may not be used to transport hazardous materials requiring a specification cargo tank.

Authority: 49 CFR 1.48.

Issued on: February 3, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

[FR Doc. 98–3303 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT Of TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 32760]

Union Pacific Railroad Company, Control and Merger; Southern Pacific Transportation Company: Reno Mitigation Study, Preliminary Mitigation Plan

AGENCY: Surface Transportation Board.

ACTION: Issuance of Final Mitigation Plan (FMP), request for public comment.

SUMMARY: The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) issued the Final Mitigation Plan (FMP) for the Reno, NV Mitigation Study on February 11, 1998 for public review and comment. On August 12, 1996, in Decision No. 44, the Board approved the Union Pacific/Southern Pacific merger. As part of its approval, the Board directed SEA to conduct a mitigation study to develop further tailored environmental mitigation measures, in addition to those already imposed in Decision No. 44) to address unique local conditions in Reno and Washoe County. The FMP is part of this ongoing Reno mitigation study process. The FMP contains SEA's proposed environmental conditions at this time for mitigating the potential effects of increased train traffic through Reno as a result of the UP/SP merger. The FMP also contains comments from over 530 commenters on the Preliminary Mitigation Plan (released on September 15, 1997), SEA's responses to those comments, and additional technical analysis conducted by SEA.

The Board encourages public comment on the FMP during the 30-day review period, which will end on March 12, 1998. SEA will distribute copies of the FMP to interested parties, and copies will also be available at the Reno and Sparks branches of the Washoe County Public Library.

SEA will consider all timely public comments before making its final recommendations to the Board. The Board will consider SEA's final recommendations, the Preliminary Mitigation Plan, the Final Mitigation Plan, and all public comments when making its final decision imposing additional specific mitigation measures for Reno and Washoe County that it deems appropriate.

Individuals who wish to file a comment may submit one original; government agencies and businesses are asked to submit an original plus 10 copies. Public comments should be submitted in writing no later than March 12, 1998 to: Office of the Secretary, Case Control Unit, Finance Docket No. 32760, Surface Transportation Board, 1925 K Street, NW, Room 715, Washington, DC 20423–0001. Mark the lower left-hand corner of the envelope: Attention: Elaine K. Kaiser, Chief, Section of Environmental Analysis, Environmental Filing—Reno.

FOR FURTHER INFORMATION CONTACT: Harold McNulty, Section of Environmental Analysis, Room 500, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423, (202) 565–1539, TDD for the hearing impaired: (202) 565–1695.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 98–3461 Filed 2–10–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 72–363; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Wednesday, November 12, 1997, 10:00 a.m. to 4:00 p.m. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC, in conference room 10234–38 of the Nassif Building.

The Advisory Council, called for under Section 6007 of Public Law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include a review of the last meeting, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Carolee Bush, Council Liaison, on (202) 366–6946 prior to November 10. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Bush.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Bush (202) 366–6946 at least seven days prior to the meeting.

Issued in Washington, DC, on February 5, 1998.

Robert A. Knisely,

Executive Director, Advisory Council on Transportation Statistics.

[FR Doc. 98–3427 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds; United States Surety Company

AGENCY: Financial Management Service, Fiscal Service Department of the Treasury.

ACTION: Surety companies acceptable on Federal bonds; United States Surety Company.

SUMMARY: (Dept. Circ. 570, 1997 Rev., Supp. No. 7).

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch (20) 874–6905.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1997 Revision, on page 35578 to reflect this addition:

United States Surety Company.
Business Address: P.O. Box 5605, Timonium, MD 21094. Phone: (410) 453–9522. Underwriting Limitation *b/*: $185,000. Surety Licenses *c/*: MD. Incorporated IN: Maryland.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://WWW.fms.treas.gov/c570.htm1) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscrip0tion Service Washington, DC, telephone (202) 512–1800 . When ordering the Circular from GPO, use the following stock number: 048–000–00499–7.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: January 30, 1998.

Charles F. Schwan III,

Director Funds Management Division, Financial Management Service.

[FR Doc. 98–3431 Filed 2–10–98; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the 1998 Unsolicited Spring Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency Announces its Upcoming Deadline for the 1998 Unsolicited Grant Spring Competition, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution.

Deadline: March 1, 1998.

DATES: Applicaton Material Available Upon Request

Receipt Date for Return of Application: March 1, 1998 (applications will be accepted on March 2.)

Notification of Awards: June, 1998.

ADDRESSES: For Application Package: United States Institute of Peace Grant Program, 1550 M Street, NW • Suite 700, Washington, DC 20005–1708, (phone) (202) 429–3842, (fax) (202) 429–6063, (TTY) (202) 457–1719, Email: grant__program@usip.org.

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202) 429–3842 www.usip.org.

Dated: February 5, 1998.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 98–3398 Filed 2–10–98; 8:45 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

OMB Control No. 2900–0252

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the application for authority to close loans on an automatic basis for nonsupervised lenders.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 13, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0252'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–5079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders, VA Form 26–8736.

OMB Control Number: 2900–0252.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38 U.S.C. 3702(d)(3) provides for nonsupervised lenders to make automatically guaranteed loans if the Secretary of Veterans Affairs approves them for such purposes. Automatic lending privileges eliminate the requirement for submission of loans to VA for prior approval. Lending institutions with automatic loan privileges may process and disburse such loans and subsequently report the loan to VA for issuance of guaranty. VA Form 26–8736 is used by nonsupervised lenders to request approval to close loans on an automatic basis. The form requests information considered crucial for VA to make acceptability determinations as to lenders who shall be approved for this privilege.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 50 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 120.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director Information Management Service.

[FR Doc. 98–3401 Filed 2–10–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0342]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements to determine the individual's continued entitlement to VA benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 13, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0342'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or fax (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Apprenticeship and On-the-Job Training Agreement and Standards, VA Form 22–8864 and Employer's Applications to Provide Training, VA Form 22–8865.

OMB Control Number: 2900–0342.

Type of Review: Extension of a currently approved collection.

Abstract: VA has used the information on the current VA Form 22–8864 to ensure that a trainee is entering an approved training program. VA has used the information on the current VA Form 22–8865 to ensure that training programs and agreements meet the statutory requirements for approval of an employer's job-training program.

Affected Public: Business or other for-profit, non-for-profit institutions, farms, Federal, State, Local or Tribal Governments.

Estimated Annual Burden: 575 hours.

Estimated Average Burden Per Respondent: 120 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,050.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–3402 Filed 2–10–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Percentage To Determine Net Value

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This notice provides information to participants in the Department of Veterans Affairs (VA) loan guaranty program concerning the percentage to be used in determining whether the Secretary will accept conveyance of a foreclosed property. The new percentage is 13.97 percent.

EFFECTIVE DATE: The new percentage is effective February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan and Property Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7344.

SUPPLEMENTARY INFORMATION: VA regulations concerning the payment of loan guaranty claims are set forth at 38 CFR 36.4300, et seq. The formulas for determining whether VA will offer the lender an election to convey the property to VA are set forth at 38 CFR 36.4320. A key component of this is the ''net value'' of the property to the Government, as defined in 38 CFR 36.4301. Essentially, ''net value'' is the fair market value of the property, minus the total of the costs the Secretary estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, administration, and resale. Each year VA reviews the average operating expenses incurred for properties acquired under 38 CFR 36.4320, which were sold during the preceding three fiscal years, and the average administrative cost to the Government associated with the property management activity. Administrative cost is based on the average holding time for properties sold during the preceding fiscal year. Property improvement expenses are estimated on an individual case basis at the time the net value is estimated. VA also includes in the net value calculation an amount equal to the gain or loss experienced by VA on the resale of acquired properties during the prior fiscal year. VA annually updates the net value percentage and publishes a notice of the new percentage in the **Federal Register**. For Fiscal Year 1997, the percentage was 13.54 percent. For Fiscal Year 1998, the revised percentage will be 13.97 percent, based upon the operating expenses incurred, exclusive of estimated property improvement expenses, which are accounted for separately in each case, for Fiscal Years 1994, 1995, and 1996, and property resale experience for Fiscal Year 1997. Accordingly, VA will subtract 13.97 percent from the fair market value of the property to be foreclosed in order to arrive at the ''net value'' of the property to VA. This new percentage will be used in ''net value'' calculations made by VA on and after [date of publication], the date the new percentage was provided to VA field stations for use in these calculations.

Approved: February 3, 1998.

Togo D. West, Jr.,

Acting Secretary of Veterans Affairs.

[FR Doc. 98–3404 Filed 2–10–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Education, authorized by 38 U.S.C. 3692, will be held on March 5 and March 6, 1998. The meeting will take place at the Wyndham Garden Hotel—Buckhead, 3340 Peachtree Rd NE, Atlanta, Georgia, 30326 from 8:30 a.m. to 4:30 p.m. on Thursday, March 5, and from 8:30 a.m. to 1:00 p.m. on Friday, March 6. The purpose of the Committee is to assist in the evaluation of existing programs and services, and recommend needed programs and services. Thursday the Committee will discuss ways to strengthen the Montgomery GI Bill program and ways to increase usage of the program. Friday the Committee will conduct a field hearing with the Southern Region, Education Advocacy Committee for Veterans, to receive suggestions and recommendations.

The meeting will be open to the public. Those wishing to attend should contact Mr. Bill Susling, Education Policy and Program Administration, (phone 202–273–7187) prior to February 26, 1998.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9:00 a.m., Friday, March 6, 1998.

Dated: February 4, 1998.

By direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–3403 Filed 2–10–98; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday
February 11, 1998

Part II

Department of Health and Human Services

National Institutes of Health

Office of Recombinant DNA Activities, Gene Therapy Policy Conference; Notice

Recombinant DNA Advisory Committee Meeting; Notice

Recombinant DNA Research; Proposed Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Recombinant DNA Activities; Gene Therapy Policy Conference, Notice of Conference

Notice is hereby given of a Gene Therapy Policy Conference entitled: Lentiviral Vectors for Gene Delivery, on March 9, 1998. The conference will be held at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20892, starting on March 9, 1998, at approximately 8:30 a.m., and will recess at approximately 5:00 p.m. The conference will be open to the public and free of charge; however, registration is required. Registration is available online at http://www.nih.gov/od/orda or you can contact Ms. Anne Dunne, Strategic Results, 6004 Lakeview Road, Baltimore, Maryland 21210, Phone 410–377–0110, Fax 410–377–6429. Ms. Dunne will provide conference information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Dunne in advance of the meeting.

On July 8, 1996, the NIH Director published a Notice of Intent to Propose Amendments to the NIH Guidelines for Research Involving Recombinant DNA Molecules Regarding Enhanced Oversight of Recombinant DNA Activities (61 FR 3577). One significant component of the NIH Director's proposal was to establish Gene Therapy Policy Conferences (GTPC). These conferences are intended to offer the unique advantage of assembling numerous participants who possess significant scientific, ethical, and legal expertise and/or interest that is directly applicable to specific recombinant DNA issues. In order to enhance the depth and value of scientific and ethical/social discussion, each GTPC will be devoted to a single issue relevant to scientific merit and/or safety as it relates to research on the use of novel gene delivery vehicles and applications to human gene therapy, novel applications of gene transfer, or relevant ethical/social implications of a particular application of gene transfer technology.

The findings and recommendations of each GTPC will be made available to multiple Department of Health and Human Services (DHHS) components, including the Food and Drug Administration (FDA) and the Office for Protection from Research Risks (OPRR).

The NIH Director anticipates that this expanded public policy forum will serve as a model of interagency communication and collaboration, concentrated expert discussion of novel scientific issues and their potential societal implications, and enhanced opportunity for public discussion of specific issues and the potential impact of such applications on human health and the environment.

On March 9, 1998, the NIH will hold its second GTPC entitled: Lentiviral Vectors for Gene Delivery. Tentative topics for discussion include: (1) Vector design and genetic requirements for lentivirus-based systems; (2) in vivo gene transfer and issues relating to vector distribution and gene expression; (3) packaging cell line strategies; (4) issues related to testing for replication-competent virus; (5) strategies for patient monitoring, e.g., possible seroconversion; (6) potential clinical applications (both in vivo and ex vivo); (7) potential for mobilization (by recombination) with wild-type HIV in infected hosts; and (8) relevant social and ethical issues.

The findings and recommendations of this conference will be submitted in the form of a report to the NIH Director.

Dated: February 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3490 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on March 10, 1998. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on March 10, 1998, at approximately 9 a.m., and will recess at approximately 5 p.m. The meeting will be open to the public to discuss Proposed Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of meeting. Attendance by the public will be limited to space available.

Debra W. Knorr, Acting Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone (301) 496–9838, FAX (301) 496–9839, will provide summaries of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Knorr in advance of the meeting.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: February 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3491 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth proposed actions that NIH plans to consider under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782, 62 FR 53335, 62 FR 56196, 62 FR 59032). NIH invites all interested parties to submit comments concerning these proposals. The Recombinant DNA Advisory Committee (RAC) will consider these proposals at its meeting on March 10, 1998. After consideration of these proposals and comments by the RAC, the NIH Director will issue decisions according to the NIH Guidelines.

DATES: Comments received by March 2, 1998 will be reproduced and distributed to the RAC for consideration at its March 10, 1998, meeting.

ADDRESSES: Interested parties should submit written comments and recommendations to Debra Knorr, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839.

All comments received in response to this notice will be considered and will be available for public inspection in the ORDA offices on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Interested parties can obtain background documentation and additional information from the Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. The Office of Recombinant DNA Activities web site is located at http://www.nih.gov/od/orda for further information about the office.

I. Proposed Actions Regarding Amendments to the NIH Guidelines

The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines):

I–A. Amendment to Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, Under the NIH Guidelines Regarding Electronic Submission of Protocols

In January 1998, Dr. C. Estuardo Aguilar-Cordova, a member of the RAC, participated in a pilot test with ORDA staff regarding electronic submission to ORDA. In this test, the documents submitted electronically included a human gene transfer protocol; responses to Appendices M–II through M–V, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider); and the ORDA registration document. The 82-page electronic submission, including tables, satisfactorily proved the efficiency and effectiveness of using this method for submission of protocols.

ORDA recognizes that electronic submission of documents is an accepted standard of practice within the scientific community; therefore, this practice is not novel. The practice of using this medium to submit formal protocols to ORDA, however, is novel and therefore requires amendments to the NIH Guidelines. As a result, ORDA proposes to amend Appendix M–I of the NIH Guidelines to provide guidance to investigators regarding optional electronic submission procedures.

Electronic submission of human gene transfer protocols to ORDA offers several distinct advantages over the current practice of submitting protocols by printed matter, including: (1) ORDA can review protocols more expeditiously because they are received immediately; (2) electronic submission allows ORDA to search protocols electronically for keywords or phrases; (3) registration tasks performed at ORDA will be reduced substantially because the investigator has already completed most of the registration document as part of the electronic submission; and (4) ORDA can facilitate RAC review of the protocol by forwarding the complete protocol to RAC members electronically.

Appendix M–I is proposed to read:

''Appendix M–I. Submission Requirements—Human Gene Transfer Experiments

''Investigators must submit the following material (see exemption in Appendix M–VIII–A, Footnotes of Appendix M) to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. Investigators may submit this material electronically and can obtain specific instructions from the ORDA home page (http://www.nih.gov/od/orda) regarding electronic submission requirements. For all submissions, whether printed or electronic, ORDA will confirm receipt within three working days after receiving the submission. Investigators should contact ORDA if they do not receive this confirmation.

''Proposals in printed form and/or in an electronic version shall be submitted to NIH/ORDA in the following order: (1) scientific abstract; (2) non-technical abstract; (3) Responses to Appendix M–II through M–V, Description of the Proposal, Informed Consent, Privacy and Confidentiality, and Special Issues (the pertinent responses can be provided in the protocol or as an appendix to the protocol); (4) clinical protocol as approved by the local Institutional Biosafety Committee and Institutional Review Board; (5) Informed Consent document as approved by the Institutional Review Board (see Appendix M–III, Informed Consent); (6) appendices (including tables, figures, and manuscripts); and (7) curricula vitae— no more than 2 pages for each key professional person in biographical sketch format.

''All submissions must include Institutional Biosafety Committee (IBC) and Institutional Review Board (IRB) approvals and their deliberations pertaining to your protocol. IBC approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution involved in the production of vectors for human application and each institution at which there is ex vivo transduction of recombinant DNA material into target cells for human application). Because these written IBC and IRB approvals require appropriate signatures, investigators cannot submit them electronically. Investigators should submit these signed approvals either by mail or by facsimile transmission.

''Investigational New Drug (IND) applications shall be submitted to the FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, IND Content and Format. Submissions to the FDA should be sent to the Division of Congressional and Public Affairs, Document Control Center, HFM–99, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, Maryland 20852–1448.

Note: NIH/ORDA will accept submission material at any time. However, if a protocol is submitted less than eight weeks before a scheduled RAC meeting and subsequently is recommended for public discussion by the full RAC, the public discussion of that protocol will be deferred until the next scheduled RAC meeting. This eight-week period is needed to ensure adequate time for review by the committee members.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and

title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Date: January 28, 1998.

Lana R. Skirboll,

Associate Director for Science Policy, National Institutes of Health.

[FR Doc. 98–3492 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–P

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Federal Register

Vol. 63, No. 28

Wednesday, February 11, 1998

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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.

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