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NUCLEAR REGULATORY COMMISSION

10 CFR Part 55

RIN 3150–AG40

Operator License Eligibility and Use of Simulation Facilities in Operator Licensing

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to permit applicants for operator and senior operator licenses to fulfill a portion of the required experience prerequisites by manipulating a plant-referenced simulator as an alternative to manipulation of the controls of the actual nuclear power plant. This change, along with other amendments contained in this rule, takes advantage of improvements in simulator technology and reduces unnecessary regulatory burden on licensees.

EFFECTIVE DATE: The final rule is effective November 16, 2001.

ADDRESSES: The final rule and any related documents are available on the NRC's rulemaking Website at *http://ruleforum.llnl.gov.* For information about the interactive rulemaking Web site, contact Carol Gallagher, 301–415–5905 (electronic mail: *cag@nrc.gov*)

Copies of certain documents related to this rulemaking may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may be viewed and downloaded electronically via the rulemaking Web site. Documents created or received at the NRC after April 1, 2000, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agency Document Access and Management System (ADAMS) that provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 301–415–4737 or toll-free at 1–800–397–4209, or by e-mail at *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: David Trimble, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2942, or by electronic mail to *dct@nrc.gov.*

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) is amending the regulations that govern operators' licenses to allow applicants for operator and senior operator licenses to fulfill a portion of the required experience prerequisites by manipulating a plant-referenced simulator as an alternative to manipulation of the controls of the actual nuclear power plant. This final rule also removes requirements for facility licensee certification of their simulation facilities and routine submittal of reports to the NRC for review that identify any uncorrected performance test failures and a related schedule for correction. Continued assurance of simulator fidelity is provided because a facility licensee must: (1) Conduct performance testing and retain results for four years; (2) correct modeling and hardware discrepancies and discrepancies identified from scenario validation and from performance testing; (3) make the results of any uncorrected performance test failures available onsite; and (4) maintain the provisions for license application, examination, and test integrity consistent with Section 55.49. The final rule also revises two definitions and adds clarity to the regulations by relocating language relating to the use of a simulation facility to a new section dedicated to ''Simulation Facilities.'' Lastly, the final rule facilitates voluntary licensee transition to an improved approach to simulator testing as described in an American National Standards Institute/American Nuclear Society (ANSI/ANS) standard, ANSI/ANS–3.5–1998, ''Nuclear Power Plant Simulators for Use in Operator Training and Examination.'' Revision 3 to Regulatory Guide 1.149, ''Nuclear Power Plant Simulation Facilities for Use in Operator Training and License Examinations,'' (RG 1.149) endorses this standard and is being published in conjunction with this final rule.

Background

Prior to 1987, the Commission's regulatory position was that simulator experience was not necessarily equivalent to actual nuclear power plant operating experience. The industry and the public supported this position, citing inherent problems and uncertainties in simulator technology, and the few plant-specific simulators in existence at the time.

The Commission became increasingly aware of the need to update its operator licensing requirements, in particular the need to clarify the extent to which simulators may be used in the operator licensing process. In 1987, the Commission amended substantial portions of 10 CFR part 55 to (1) formalize the requirement for license applicants to perform five significant manipulations to control reactivity or power level on the actual plant as a prerequisite for license eligibility; (2) require that every operating test be administered in a plant walk-through and a simulation facility that was either approved by the Commission or certified by the facility licensee as a plant-referenced simulator; and (3) require submittal of periodic performance tests on the simulation facility, and maintenance of records pertaining to the conduct of these tests and the results obtained. (See 52 FR 9453; March 25, 1987). Consequently, facility licensees began to develop simulators for operator licensing and training which were certified by licensees to be in accordance with national standard ANSI/ANS–3.5–1985, ''Nuclear Power Plant Simulators for Use in Operator Training.'' Eventually, every facility with a current Part 50 license procured a plant-referenced simulator and submitted a certification for its use to the Commission.

Since 1987, technology has allowed advances in the simulators' computing capability, model complexity, and fidelity. Consequently, the Commission has fewer concerns regarding the equivalence of experience gained on simulation facilities and that obtained

on the actual plant. Additionally, simulator testing has changed considerably since the current rule was published in 1987. Specifically, the ANS 3.5 Standard Committee Working Group (WG) initiated a new, improved approach to simulator testing with the issuance of ANSI/ANS–3.5–1998, ''Nuclear Power Plant Simulators for Use in Operator Training and Examination,'' which employs a scenario-based testing philosophy that is inconsistent with the testing assumptions and requirements of the current rule. The Commission has reviewed this new industry standard, found it acceptable, and determined that the existing regulatory requirements contain prescriptive aspects that are impediments to industry adoption of the 1998 standard and are no longer necessary to support required training and examination programs. The Commission has also determined that the current requirements for facility licensee certification of plant referenced simulators and routine submittal of simulation facility performance test failures, with a schedule for corrections, are unnecessarily burdensome for licensees. As an alternate approach, the NRC can review plant-referenced simulators for acceptability and performance test results of simulation facilities before the simulator facility is used for operating tests.

Discussion

With this final rule, the Commission is updating its positions regarding the use, certification, and reporting requirements for performance testing of simulation facilities. The final rule amends 10 CFR part 55 to take advantage of improvements in simulator technology and to reduce unnecessary regulatory burden on licensees by:

(1) Allowing applicants for operator and senior operator licenses to fulfill a portion of the required experience prerequisites by manipulating a plant-referenced simulator as an alternative to manipulation of the controls of the actual nuclear power plant,

(2) Removing current requirements for facility licensee certification of their simulation facilities, and

(3) Eliminating the necessity for routine submittal of reports to the NRC for review that identify any uncorrected performance test failures and a schedule for correction.

Finally, the final rule facilitates voluntary licensee transition to an improved approach to simulator testing as described in industry standard ANSI/ANS–3.5–1998, ''Nuclear Power Plant Simulators for Use in Operator Training and Examination.'' Revision 3 to Regulatory Guide 1.149, ''Nuclear Power Plant Simulation Facilities for Use in Operator Training and License Examinations,'' endorses this standard and is being published in conjunction with this final rule.

Performance of Control Manipulations on the Plant-Referenced Simulator

The current rule requires that applicants for operator and senior operator licenses perform five significant control manipulations that affect reactivity or power level on the actual plant. This final rule will allow applicants to perform the manipulations either on a plant-referenced simulator or on the actual plant at the facility licensee's discretion. When simulators are used to provide for performance of control manipulations, the final rule requires that: (1) Simulator models replicate the nuclear and thermal-hydraulic characteristics of the most recent core load in the nuclear power reference plant for which a license is being sought; and (2) significant control manipulations are completed without procedural exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence. These requirements ensure that simulator experience replicates evolutions on the plant and that license applicants receive the same overall experience in safe plant operation as they would on the plant itself.

The use of a plant-referenced simulator of appropriate fidelity for these manipulations is acceptable because of improvements in simulator technology and 14 years of successful experience in using simulators after the 1987 revision of part 55. Plant-referenced simulators provide operator training and realistic examination scenarios on reactivity manipulations, other normal and abnormal procedure operations, complex plant operations, and emergency operating procedure evolutions, including the management of simultaneous tasks and faulted conditions. This final rule will allow license applicants to fulfill a portion of the required experience requirements in the facility's plant-referenced simulator without disrupting the operation of the actual plant.

During the public comment period, the Nuclear Energy Institute (NEI) and several additional commenters recommended changing proposed § 55.45(b)(3)(i)(A), which would have required that the simulator model replicate the plant ''at the time of the applicant's operating test.'' The commenters stated that the words ''at the time of the applicant's operating test'' could unnecessarily restrict the candidate's opportunities to conduct reactivity manipulations. The commenters also stated that the proposed language would create a problem if a refueling outage occurs near the time the applicant was scheduled for the operating test or if the date of the operating test changed. The Commission acknowledges the concern that the proposed wording of § 55.45(b)(3)(i)(A) (§ 55.46(c)(2)(i) of the final rule) would have restricted the candidates' opportunities to conduct the reactivity manipulations. The Commission does not intend to be unduly restrictive with regard to the timing for conduct of the five significant control manipulations on a plant-referenced simulator. Therefore, the Commission has revised § 55.46(c)(2)(i) of the final rule to require the plant-referenced simulator to ''replicate the most recent core load in the nuclear power reference plant for which a license is being sought,'' while deleting the words ''at the time of the applicant's operating test.'' It is the Commission's intent that the phrase ''most recent'' means the current core or if the plant is in a refueling outage, the core just previous to the outage.

Simulator Certification and Routine Submittal of Performance Test Reports

The current rule requires licensees who use plant-referenced simulators to certify on NRC Form 474, ''Simulation Facility Certification,'' that their simulator meets Commission regulations. The current regulations also require that test documentation and test schedules be submitted quadrennially. Currently licensed power reactor facilities have licensee-certified, plant-referenced simulators and the NRC staff's experience has shown that the submitted quadrennial reports are of minimal value.

The final rule eliminates current requirements in § 55.45(b) for: (1) Facility licensee certification of their simulation facilities, and (2) routine submittal of reports to the NRC for review which identify any uncorrected performance test failures and a schedule for correction. Continued assurance of simulator fidelity is provided, in the final rule in new § 55.46(d), by requiring licensees to: (1) Conduct performance testing and retain results for four years, (2) correct modeling and hardware discrepancies and discrepancies identified from scenario validation and from performance testing, (3) make the results of any uncorrected performance test failures available for NRC review, and (4) maintain the provisions for license application, examination, and test integrity consistent with Section

55.49. In addition, NRC reviews or inspections to ensure compliance with final rule requirements at simulation facilities will maintain safety without the unnecessary burden of certification and submittal of simulator performance test reports. If NRC reviews associated with operating tests for operator license applicants or inspections completed using the Requalification Inspection Procedure as part of the oversight process find that a plant-referenced simulator is unsuitable because it does not demonstrate expected plant performance or meet the requirement specified in items (1) and (4) above, then the simulator may not be used to conduct operating tests for operator license applicants, requalification training, or control manipulations until the simulator is made suitable. In any case, simulation facilities, including plant-referenced simulators, must additionally meet (2) and (3) of the requirements of § 55.46(d) for continued assurance of simulator fidelity. Further, NUREG–1021, Revision 8, ''Operator Licensing Examination Standards for Power Reactors,'' provides detailed policies, procedures, and practices for examining applicants for reactor operator and senior reactor operator licenses. NUREG–1021 essentially ensures that simulator scenarios for examinations are completed without procedure exceptions or simulator performance exceptions.

Facility licensees have trained licensed operators and applicants for operator and senior operator licenses on plant-referenced simulators that were certified in accordance with the 1985 edition of ANSI/ANS–3.5, ''Nuclear Power Plant Simulators for Use in Operator Training and Examination.'' This national industry standard specifies full-scope, stand-alone testing of system models and simulator training capabilities as part of initial simulator acceptance testing. Facility licensees have continued to test their plant-referenced simulators during initial development and to submit test schedules and reports on a quadrennial basis. The industry's approach to computer software development and simulator testing has changed considerably since 1987 through the issuance of the 1998 version of ANSI/ANS–3.5. The standard has moved away from continued full-scope, stand-alone testing of system models and simulator training capabilities toward a scenario-based testing and quality-control philosophy.

For facility licensees that adopt the 1998 revised national standard, the final rule revision allows for a change in the type of performance testing from a prescriptive simulator testing program in the context of initial simulator procurement to a scenario-based and operability performance testing program. The final rule does not require facility licensees to adopt the 1998 version of ANSI/ANS–3.5 or to modify existing simulator support programs or practices. Because the final rule continues to require performance testing, facility licensees that do not adopt the 1998 revised national standard will perform the same type of performance testing as before. The final rule will allow facility licensees to adjust their performance test programs to their end-user needs, as defined by their accredited systems-approach-to-training (SAT) programs, or to conform their existing simulator programs to the new revision of ANSI/ANS–3.5.

This rule and the associated Revision 3 of Regulatory Guide 1.149, ''Nuclear Power Simulation Facilities for Use in Operator Training and License Examinations,'' that endorses ANSI/ANS–3.5–1998 without exceptions, reduces inconsistencies between the operational needs of facility licensee programs and the simulator testing requirements.

Clarification of Part 55 Definitions

In 10 CFR 55.4, ''Definitions,'' the proposed rule would have defined performance testing as follows: ''Performance testing means validation, scenario-based, or operability testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance.'' During the public comment period, the ANS 3.5 Standards Committee WG recommended that the proposed definition be changed to eliminate the word ''validation.'' The Commission agrees with that suggestion and, further, the Commission has reconsidered the inclusion of the phrase ''* * * scenario-based, or operability * * *'' because it could be interpreted as limiting a facility licensee to the use of the ANSI/ANS–3.5–1998 standard. Therefore, the Commission has retained the original definition of performance testing in the final rule as ''Performance testing means testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance.''

The definition of ''plant-referenced simulator'' is revised to remove the last sentence and to relocate the substance of that sentence—a ''plant-referenced simulator demonstrates expected plant response to operator input, and to normal, transient, and accident conditions to which the simulator has been designed to respond''—to new § 55.46(c)(1). This is a conforming change that provides clarity to the regulation. The first sentence of the definition remains the same.

The term ''reference plant'' is defined in § 55.4 as ''the specific nuclear power plant from which a simulation facility's control room configuration, system control arrangement, and design data are derived.'' This definition remains the same in the final rule and continues to provide clarification that for a simulation facility, a specific plant (unit) at a multi-plant (unit) site is the ''reference plant.'' The Commission realizes that the use of inconsistent terminology can be confusing and has made clarifications where appropriate in preparing the final rule. However, the Commission intends to re-evaluate the use of the term ''reference plant'' in the future.

The term ''simulation facility'' is revised to include part-task and limited-scope simulator devices so that these devices can be used if a request were received and approved by the Commission for their use. The definition of ''simulation facility'' is also revised to remove ''the plant'' as a potential ''simulation facility.'' Use of ''the plant'' is now addressed in the new § 55.46(b). This is a conforming change that provides clarity to the regulation. The intent remains to allow facility licensees to use the plant, if approved, for the administration of the operating test and to meet experience requirements for applicants for operator and senior operator licenses. This conforming change is intended to continue to provide the regulatory flexibility that facility licensees have had since 1987.

New Section 55.46

The final rule includes administrative changes to move the requirements for the use of simulation facilities from § 55.45 to a new § 55.46, ''Simulation Facilities.'' Former §§ 55.45(b) (4) and (5) dealing with simulators have been separated from § 55.45 and consolidated in the new § 55.46. This is simply an administrative change to clarify the existing rule by separating requirements concerning simulation facilities from requirements in § 55.45 concerning operating tests.

Related Activities

To implement this rule the NRC staff is also developing revisions to the process for initial licensing, requalification, and examination of reactor and senior operators, including updating NUREG–1021, Revision 8, and the ''Licensed Operator Requalification Program Inspection Procedure,'' (IP–

71111.11) of the reactor oversight process. Training of examiners will be conducted as appropriate. The NRC staff expects that these revisions will be completed one year from the date the final rule is published. Since the proposed rulemaking notice, the staff has determined that it is not necessary to revise and update NUREG–1262, ''Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, part 55 on Operator's Licenses'' and NUREG–1258, ''Evaluation Procedure for Simulation Facilities Certified Under 10 CFR 55.'' Instead of revising the NUREG's listed above, answers to questions from a public meeting/workshop concerning this final rulemaking will be posted on the NRC's homepage at *www.nrc.gov* in the Nuclear Reactors icon under ''Principal Reactor Regulatory Programs'' under ''Operator Licensing Program.'' Additionally, the answers to any questions will be available and may be viewed as discussed above under the heading **ADDRESSES**.

Revisions to Regulatory Guide REG 1.149, Revision 3

A draft version of the associated regulatory guide (DG–1080, Proposed Revision 3 of Regulatory Guide 1.149) that proposed endorsing ANSI/ANS–3.5–1998 was made available for public comment (64 FR 45985). The final Regulatory Guide 1.149 is being made available concurrently with this final amendment. The regulatory guide is available for inspection in the NRC Public Document Room or it may be viewed and downloaded electronically through the interactive rulemaking web site established by the NRC for this rulemaking, as discussed above under the heading **ADDRESSES**. Single copies may be obtained from David Trimble, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2942, or by electronic mail to *dct@nrc.gov.*

Analysis of Public Comments

The proposed rule was published in the **Federal Register** on July 3, 2000 (65 FR 41021), and the public comment period ended on September 18, 2000. The Commission received 15 comment letters on the proposed rule: 3 comments from individuals, 9 from nuclear power plant licensees (utilities), 1 from a utility organization (Nuclear Energy Institute), 1 from a licensed operator organization (the Professional Reactor Operators Society (PROS)), and 1 from a national consensus standard working group (Standards Committee WG ANS–3.5). One letter with a request for an extension to the comment deadline was also received. No public comments were received from any State agency. No public meetings were held to discuss the proposed rule nor were any requested. However, the general status of the proposed rule was discussed at NEI Initial Operator Licensing Focus Group Meetings open to the public. The comment letters may be viewed on the NRC's Web site, *http://www.nrc.gov/NRC/rule.html,* under ''NRC Rulemaking Web Site,'' at ''News, Information and Contacts for Current Rulemaking.''

Twelve of the 15 commenters expressed support for amending the rule. Several of the commenters provided specific recommendations for changes to the proposed rule. The comments and responses were grouped into five categories: (1) General support of the proposed rule, (2) general opposition to the proposed rule, (3) reactivity manipulations, (4) simulator issues, including certification of simulation facilities, and (5) definitions and wording.

General Support of the Proposed Rule

Comment 1–1: The majority of commenters supported the proposed changes to 10 CFR part 55, ''Operator's licenses'' to allow licensed operator candidate reactivity manipulations on a plant-referenced simulator as an alternative to use of the actual plant.

Response: No response necessary.

Comment 1–2: The Professional Reactor Operator Society (PROS) commented that the proposed rule would allow initial license candidates to perform required reactivity changes on a plant-referenced simulator is a welcome and acceptable change. PROS stated that the rule does not specify that license candidates cannot or should not perform manipulations on the actual plant. The amended rule will simply allow the requirement for performing five significant control manipulations that affect reactivity to be performed on either the actual plant or on the simulation facility.

Response: No response necessary.

Comment 1–3: One commenter stated that hands-on individual demonstrations of a reactivity manipulation on a simulator would seem to be a significant benefit of the rule change.

Response: The Commission agrees.

General Opposition to the Proposed Rule

Comment 2–1: One commenter stated that plant owners should not be able to shirk their responsibility for adequately training new operators. The commenter noted that there may be an enormous cost involved with the current rule and although it may be inconvenient, it does not justify diluting the licensing requirements to the point where a licensed operator does not even have to operate the real plant. The current cold license exceptions should not be used as justification because there are many extra controls and safeguards in place on a new startup. Another commenter stated that the industry needs clear guidelines, minimum deviations, and appropriate penalties for any noncompliance. The commenter also stated that safety dictates that initial license candidates are given the opportunity to move the plant without regard to real or perceived costs and that it has always been hard to put a dollar value on training until past mistakes are examined. The opportunity for actual reactivity manipulations reduces the stress-induced error rate, notably during transient conditions when clear decision-making counts.

Response: The Commission believes that the level of reactor safety established under the regulations is adequate and that the rule does not need to be strengthened. The Commission believes that the proposed changes are justified based not on an extension of the cold license exceptions (cold license examinations are those administered before the unit completes pre-operational testing and the initial start up test program) in the existing regulation, but rather on significant improvements in simulation technology, including increases in computing capability, model complexity, and fidelity. In addition, the NRC staff has conducted and observed operator licensing and requalification examinations on plant-referenced simulators for approximately 15 years and has found that scenarios are performed on simulators in a very realistic manner.

Further, this final rule does not change any of the training requirements of § 50.120 or the specific licensed operator training and requalification requirements in § 55.45(a) or § 55.59. The candidates are still required to spend a substantial amount of time actually performing the duties of their particular positions in an on-the-job training environment. In response to the concern that the industry needs clear guidelines, minimum deviations, and appropriate penalties for any noncompliance, the Commission believes that the final rule in conjunction with the regulatory guide endorsing the ANSI/ANS standard provides clear guidance to the industry.

Penalties for noncompliance are addressed by the Commission's enforcement program.

Although the NRC's primary mission is to maintain adequate levels of reactor safety, it must also give due consideration to the principle of regulatory efficiency. Because the Commission has concluded that the proposed regulatory change will not affect the existing level of reactor safety, it would be inappropriate not to take advantage of this opportunity to adopt a regulatory alternative that will minimize the burden on facility licensees. The Commission concludes that there is no measurable net benefit in requiring facility licensees to have license candidates perform reactivity control manipulations on the plant for experience purposes when doing so can entail significant expense for the facility licensee and a measure of risk to plant operations and safety. Therefore, no changes are warranted in response to this comment.

Reactivity Manipulations

Comment 3–1: The Nuclear Energy Institute (NEI) and several additional commenters recommended changing proposed § 55.45(b)(3)(i)(A), which requires that the simulator model replicate the plant ''at the time of the applicant's operating test.'' The commenters recommended that the words ''at the time of the applicant's operating test'' be deleted because this could unnecessarily restrict the candidate's opportunities to conduct reactivity manipulations to a short time just before the operating test. The commenters also stated that this would be a problem if a refueling outage occurs near the time the applicant was scheduled for the operating test or if the date of the operating test changed.

Response: The Commission agrees with this comment as discussed above in the ''Discussion'' section under ''Performance of Control Manipulations on the Plant-Referenced Simulator.'' This change has been incorporated in the final rule.

Comment 3–2: The NEI and several additional commenters recommended that because plant-referenced simulators are modeled to one plant, the reference plant, the regulatory text should be clarified to indicate that the simulator modeling is for the referenced plant.

Response: The Commission agrees with NEI's recommendation that the regulatory text be clarified to indicate that the simulator core model will replicate the reference plant for the simulation facility. This change has been incorporated in the final rule.

Comment 3–3: The NEI and several additional commenters recommended that training objectives could be met if the models reasonably represent the reference plant at the time of the manipulations. Therefore, they recommend that § 55.45(b)(3)(i)(A) be changed to read: ''The plant-referenced simulator uses models relating to nuclear and thermal-hydraulic characteristics that reasonably represent the core load that exists in the nuclear power reference plant for the facility at which a license is being sought; and ...'' Another commenter stated that ''replicate'' could be misleading in a more legal application. Another commenter stated that in discussing the requirements of the simulator that will be used for control manipulations, the terms ''replicate,'' ''represent,'' and ''reasonably represent'' are used interchangeably.

Response: The Commission does not agree with NEI's recommendation that the simulator core model ''reasonably represent'' rather than ''replicate'' the core load that exists in the reference plant. The Commission believes that the terminology in the proposed rule is appropriate and consistent with ANSI/ANS–3.5–1998, ''Nuclear Power Plant Simulators for Use in Operator Training and Examination,'' the current industry consensus standard. It means that the plant-referenced simulator's nuclear and thermal-hydraulics models operate within the tolerances specified in section 4.1.3, ''Steady-State and Normal Evolutions'' of the industry standard. The commenter did not explain and the Commission does not understand why ''replicate could be misleading in a more legal application.'' On the contrary, the NRC staff believes that using different terminology in the regulation than in the industry standard would be more confusing and misleading.

Comment 3–4: One commenter thought that the five reactivity manipulations should be ''evaluated'' manipulations. The commenter also stated that perhaps three of the five reactivity manipulations should be required to be evaluated by senior management.

Response: The Commission agrees with the commenter's suggestion that the five reactivity manipulations should be ''evaluated'' manipulations and believes that this expectation is already addressed in the Commission's regulations and guidance documents. Section 55.4, ''Definitions'' describes the five elements of a systems approach to training, including the requirement to evaluate the trainees' mastery of the objectives during training, that apply to all licensed operator training programs. Section 4.6 of NUREG–1220, ''Training Review Criteria and Procedures,'' that provides direction to NRC staff for reviewing training programs to verify compliance with the regulations, clarifies the Commission's expectations regarding the evaluation of tasks performed to ensure that the trainees master the actual job performance requirements. The Commission believes that requiring senior management to evaluate the reactivity manipulations would be overly prescriptive while adding little value. In practice, whenever license applicants are engaged in on-the-job training (OJT) in the actual control room, they have to be closely supervised and evaluated by the on-shift licensed operators. Generally, the more safety-significant activities, including reactivity and power changes, are more closely supervised and evaluated than others, regardless of whether they are performed in the actual control room or the simulator.

The Commission encourages communication and cooperation between plant operations and training management when making determinations regarding the license applicants' mastery of the training objectives and job requirements and, ultimately, their readiness for the licensing examination. Under § 55.31(a)(4), an authorized representative of the facility licensee, usually the plant manager or higher, must certify on the license application that the applicant has successfully completed the facility licensee's requirements to be licensed as an operator or senior operator. Based on the foregoing, no changes are warranted in response to this comment.

Comment 3–5: One commenter indicated that it would appear that there are so many required reactivity manipulations for each operator that the time constraint alone would preclude all manipulations from being currently performed on the reactor. The commenter stated that the simulator must already be used extensively in meeting reactivity manipulations requirements.

Response: Although it is true that simulators are already being used extensively for operator training and to practice reactivity manipulations, the control manipulations that are required by the regulations cannot be performed on the simulator, though, a few exceptions to this rule have recently been granted. These five required significant control manipulations, which affect reactivity or power level, must be performed by applicants, as trainees at the controls of the facility for

which a license is sought. The Commission believes that the proposed changes to the regulation will promote the original intent of the control manipulation requirement.

Comment 3–6: One commenter stated that ''as a minimum, one 10 percent power change should be mandatory prior to an unconditional license. If plant conditions warrant, a conditional license is issued. The condition is that an observed manipulation is performed. For those plants not in compliance with 100 percent of the fidelity issues as delineated by the guideline, the candidates must perform three 10 percent changes, that would include startups and responses to reactor trips.'' The commenter also stated that they believed strictly requiring compliance with fidelity issues will ensure the identified fidelity issues are addressed.

Response: The commenter appears to address two different issues: (1) The need for an explicit requirement that the control manipulations involve at least a 10 percent change and (2) where the simulator is not ''100 percent'' compliant with fidelity requirements, then three 10 percent changes must be accomplished by the operator applicant. However, no basis was provided for these two proposals. The Commission does not believe that either proposal is necessary. With regard to the first issue, neither the current nor the final rule address how much of a percentage power change is required for the control manipulations. The first proposal indicates that the commenter believes that the magnitude of a power level change must be at least 10 percent if it is to be a meaningful experience for an operator. The Commission believes that the magnitude of a power level change is a secondary issue. It is more important that a license candidate understand the operation of the systems involved and that the experience reinforce that knowledge and be conducted in an atmosphere as conducive to training as possible. A simulator setting in many ways is a more optimum setting for gaining this experience. To address the commenters' apparent concern, it is more likely that larger magnitude changes can be performed on the simulator than on the plant. The final rule does not alter the requirement for every license applicant to complete the control manipulations on the facility for which a license is sought, it simply gives facility licensees the flexibility to conduct some or all of the required manipulations on a plant-referenced simulator, but only if the simulator satisfies the NRC's core modeling and fidelity requirements. With regard to the second issue, the final rule does address the continued assurance of simulator fidelity issues in § 55.46(d) and also requires simulator fidelity to be demonstrated so that significant control manipulations can be completed without procedural exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence.

Comment 3–7: One commenter thought that in the past the Commission has allowed utilities to deviate from the intent of the reactivity manipulation requirements. This allowed the utilities to use a wide range of interpretations for the required reactivity manipulations. The commenter also thought that deviations had become the norm rather than the rule. The commenter stated that wholesale deviations from this rule cannot be made.

Response: NRC expects that the rule is uniformly applied to all facility licensees. The Commission agrees that deviations cannot be made. Contrary to the commenters belief, the Commission does not allow anyone to deviate from the requirements without an exemption. Therefore, no changes are warranted in response to this comment.

Simulator Issues

Comment 4–1: A few commenters stated that an operator's license should not be issued based on only operating a simulator.

Response: The Commission acknowledges that operating a plant-referenced simulator is not identical to operating the actual plant despite all efforts to maximize realism and fidelity. However, today's plant-referenced simulators are of sufficient quality and fidelity that significant control manipulations can be completed without procedural exceptions, simulator performance exceptions, or deviation from the approved scenario sequence. The Commission does not believe that the rule will dilute the operators' licensing requirements. The rule will not change the requirement for every initial license applicant to complete five significant (power or reactivity) control manipulations, nor will it allow all of an applicant's training to be ''simulated'' because it does not change the requirement for every applicant to complete an on-the-job-training (OJT) program. OJT programs include hands-on experience in shift operations under the direct supervision of a licensed operator. Therefore, no changes are warranted in response to this comment.

Comment 4–2: One commenter stated that the difference between operating a real plant and a simulator is ''stress'' and further noted that the Commission did not mention the difference in operator stress while operating the real plant versus a simulator. Another commenter stated that the fidelity of the simulator is not proportional to the induced stressed from real plant operations.

Response: The level of stress experienced by licensed operators while performing the required significant control manipulations and other routine, controlled, and supervised evolutions are, in the Commission's opinion, insignificant when compared with the level of stress that they experience while responding to major plant transients (real or simulated as part of an examination scenario) that require the implementation of emergency operating procedures and response plans. Consequently, the Commission believes that there is little value in trying to distinguish between the levels of stress associated with routine control manipulations performed on a plant-referenced simulator and the actual plant. While undergoing OJT, the license applicants will still be given many opportunities to operate the real plant and experience ''the stress of knowing that the impact of a mistake may be much more dramatic than a call to 'reset the simulator.' '' The NRC staff has conducted and observed operator licensing and requalification examinations on plant-referenced simulators for approximately 15 years and has detected no discernible difference in the operators' and applicants' demeanor while performing control manipulations in simulators versus actual control rooms.

Comment 4–3: One commenter stated that the Commission should give very high priority to comments submitted by qualified operators and further stated that ''if qualified operators do not believe that plant-referenced simulators are an adequate replication for this purpose, or indicate that this proposal is a step toward degrading operator training, or judge that safety in reactor operation is compromised, then the rule should not go forward without modifications that can gain the operators' support.''

Response: The Commission agrees completely and has given high priority and serious consideration to comments submitted by qualified operators and to any concerns they have about this amendment. Only one formerly licensed senior operator and one instructor of licensed operators submitted comments in general opposition to the rule. PROS, who submitted comments on behalf of its members, portrayed the change to the rule as welcome and acceptable.

Comment 4–4: One commenter thought that with more reliance being placed on the plant-referenced simulator for operator qualification, it would seem logical that greater attention is paid to ensure that the simulator is the best possible replication of the plant. If removal of current requirements for certification of simulation facilities and routine submittal of simulator performance test reports to the Commission is not consistent with greater attention, then the proposal seems self-contradictory.

Response: The Commission agrees that, when a plant-referenced simulator is used for operator qualification, there must be assurance that the simulator is the best possible replication of the plant. The fact that this rule removes the current regulatory requirements for facility licensees to certify their simulator facilities and submit periodic performance test results to the Commission does not mean that the Commission is reducing the technical requirements for simulator fidelity. When simulators are used to provide control manipulation experience, the final rule requires the simulator to utilize models relating to nuclear and thermal-hydraulic characteristics that replicate the most recent core load in the nuclear power reference plant for which a license is being sought. It also requires simulator fidelity to be demonstrated so that significant control manipulations can be completed without procedure exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence. These requirements should ensure that experience gained on the simulator essentially replicates that obtained from actual control manipulations on the plant. The final rule simply changes the nature of the reporting requirements for the performance test reports but does not eliminate the requirement for performance testing. No changes are warranted in response to this comment.

Comment 4–5: One commenter noted that there are licensed operators and senior licensed operators who have never seen or responded to an actual reactor trip. They should not experience an actual trip for the first time during real plant operations. The stress-induced error rate would be unacceptable.

Response: The Commission acknowledges that there may be licensed operators and senior operators who have never seen or responded to an actual reactor trip because many plants are experiencing record runs with unplanned reactor trip rates far below the levels seen several years ago. This simply highlights the importance of having high-quality, high-fidelity, plant-referenced simulators that enable operators to practice normal, abnormal, and emergency evolutions (most of which would never be possible to perform on the plant) without procedural or simulator performance exceptions. Although there is no regulatory requirement to do so, the Commission believes that facility licensees assign most new and inexperienced operators to crews containing other operators having greater levels of experience. Moreover, the Commission has encouraged teamwork between control room operators and, therefore, in 1987, significantly revised its requalification examination process to focus primarily on the crews' ability to successfully accomplish those activities deemed critical to safe plant operation.

Definitions and Other Rule Wording

Comment 5–1: The Standards Committee WG ANS–3.5 stated that the ANSI/ANS–3.5–1998 Standard defines performance testing as, ''testing characterized by a comparison of the results of integrated operation of the simulation facility to actual or predicted reference plant data. Performance testing encompasses testing other than software development testing.'' Also Section 4.4.3 states, ''Simulator performance testing comprises operability and scenario-based testing.'' In § 55.4, ''Definitions,'' the proposed rule would define performance testing as follows: ''Performance testing means validation, scenario-based, or operability testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance.'' The Standards Committee WG ANS–3.5 recommends that the proposed definition be changed to read as follows: ''Performance testing means scenario-based and operability testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance.''

Response: The Commission agrees that the proposed wording of the definition of ''performance testing'' (i.e., ''validation, scenario-based, or operability testing'') may have caused some confusion. Further, the Commission has reconsidered the inclusion of the phrase '' * * * scenario-based, or operability * * * '' because it could be interpreted as limiting a facility licensee to the use of the ANSI/ANS–3.5–1998 standard. Therefore, the Commission has retained the original definition of performance testing in the final rule as ''Performance testing means testing conducted to verify a simulation facility's performance as compared to actual or predicted reference plant performance.''

Comment 5–2: One commenter stated that the terms ''plant facility,'' ''plant,'' and ''nuclear power unit'' are used interchangeably when discussing the requirement for control manipulations. For a multi-unit facility, the three phrases can have distinctly different meanings and ramifications on the actual number of manipulations that would be required. The use of ''nuclear power unit'' could be slightly different on each unit at the time of an operator license application due to staggered outages and design upgrade implementation schedules. The use of ''plant'' could be interpreted as one of the units of a multi-unit facility or as a ''facility.'' A more appropriate term would be ''reference unit.''

Response: The Commission acknowledges the commenter's observation that the terms ''plant facility,'' ''plant,'' and ''nuclear power unit'' were used interchangeably when discussing the requirement for control manipulations. The Commission does not require that a plant-referenced simulator reflect multiple unit configurations or that the control manipulations would have to be completed on each configuration separately. The term ''reference plant'' is defined in § 55.4 as ''the specific nuclear power plant from which a simulation facility's control room configuration, system control arrangement, and design data are derived.'' This definition remains the same in the final rule and continues to clarify that for a simulation facility, a specific plant (unit) at a multi-plant (unit) site is the ''reference plant.'' The Commission realizes that the use of inconsistent terminology can be confusing and has made clarifications where appropriate in preparing the final rule. However, the Commission intends to re-evaluate the use of the term ''reference plant'' in the future.

Comment 5–3: One commenter stated that in discussing the testing that would be required by the Commission to take credit for a manipulation performed as a plant-reference simulator in the Statements of Consideration, the scope of testing is described as (1) to encompass verification, validation, and documentation and (2) developmental and verification testing. On the other hand, the proposed wording in § 55.45(b)(3)(i)(B) of the proposed rulemaking (65 FR 41021) describes the specific performance testing requirements as follows: ''Simulator fidelity has been demonstrated so that

significant control manipulations are completed without procedural exceptions, simulator performance exceptions, or deviation from approved training scenarios sequence.'' It is important to note that certain words with specific definitions in ANSI/ANS–3.5–1998 (i.e., verification and validation) are not used in the rule itself. The commenter recommends that the Statements of Consideration use the same language as the rule itself.

Response: The Commission acknowledges the commenter's observation that certain words with specific definitions in ANSI/ANS–3.5–1998 (i.e., verification and validation) were not used in the proposed rule and the recommendation that the Statements of Consideration use the same language as the rule itself. The intent of § 55.45(b)(3)(i)(B) of the proposed rule was not to establish specific performance testing requirements but to ensure that the significant control manipulations that are performed on the simulator are completed without procedural exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence. It is important to remember that while the Commission has endorsed ANSI/ANS–3.5–1998, it is not requiring facility licensees to upgrade their commitments and requirements with respect to simulator testing. Therefore, no changes are warranted in response to this comment.

Comment 5–4: One commenter noted that § 55.45(b)(3)(i)(A) states in part that ''the plant-referenced simulator uses models related to nuclear and thermal-hydraulic characteristics that replicate the core load that exists in the nuclear power unit.'' Engineering and real-time numerical models contain approximations. Generally, neither reproduces physical processes exactly. Therefore, guidance identifying the level of modeling detail required and a definition for the term ''replicate'' need to be developed. The level of modeling detail required has to coincide with actual plant's response as seen by the operators. Paragraphs 4.1.3.1.3 and 4.1.3.1.4 of the 1998 ANSI/ANS–3.5 Standard do not provide any assistance. Additionally, no guidance is provided on rod worth, notch worth, SRM-IRM range performance, axial power distribution, radial power distribution, stored energy, fuel time constant, core coupling, etc., that are the actual plant responses that the operator sees. Also, older, coarser mesh models are less refined than the more recent wheel-up engineering look-alike models. Therefore, the commenter believes that guidance as to what level of modeling detail is acceptable to the Commission needs to be developed.

Response: When the Commission developed the proposed rule, it purposely excluded prescriptive guidance on the level of modeling detail for a plant-referenced simulator because the NRC staff believes that section 4.1, ''Simulator Capabilities Criteria'' of ANSI/ANS–3.5–1998, the latest industry consensus standard, provides adequate guidance in that area. The NRC staff believes that the concerns regarding paragraphs 4.1.3.1.3 and 4.1.3.1.4 of the standard and the specific parameters identified in the comment are unrelated to the proposed rule. Technical issues such as these should be brought to the attention of the Standards Committee WG ANS–3.5 for resolution. Therefore, no changes are warranted in response to this comment.

Comment 5–5: One commenter stated that clear guidance should be provided for multi-unit sites training on one simulator. In addition, the commenter stated that provisions have to be made that allow for training on a simulator that may not exactly replicate the reactor core in each reactor unit.

Response: The Commission acknowledges the commenter's concerns regarding training at multi-unit sites and has clarified the final rule language to indicate that the simulator core model will replicate the reference plant for the facility. The NRC does not expect that a plant-referenced simulator would reflect multiple unit configurations or that the control manipulations would have to be completed on each configuration separately. If a facility licensee wishes to use a simulation facility to simulate more than one nuclear power plant, it must be able to demonstrate to the NRC that the differences between the plants are not so significant that they have an impact on the ability of the simulation facility to meet the requirements and guidance of ANSI/ANS–3.5. Therefore, no additional changes are warranted in response to this comment.

Comment 5–6: One commenter noted that under the ''Discussion of Proposed Rule Change,'' the statement is made that ''absent certification, assurance of simulator suitability would be provided through Commission reviews and validation of operating test scenarios, with review of performance test results, and uncorrected modeling or hardware discrepancies, if needed.'' Objective guidance should be developed for Commission's review of ''uncorrected modeling or hardware discrepancies'' because such a review could render the simulator unsuitable for examination.

Response: As discussed in the proposed regulatory analysis attached to SECY–00–0083, the Commission is planning to revise and develop additional implementation guidance for use by the NRC staff in evaluating whether a plant-referenced simulator is suitable for use in conducting the required control manipulations and operating examinations. This effort is expected to include revisions of the appropriate sections of NUREG–1021, Revision 8, ''Operator Licensing Examination Standards for Power Reactors,'' and the Licensed Operator Requalification Inspection Procedure (IP–71111.11) of the reactor oversight process.

Comment 5–7: One commenter notes that, as stated in SECY–00–0083, dated April 12, 2000, the current revision of the national standard, ANSI/ANS–3.5–1998, ''Nuclear Power Plant Simulators for Use in Operator Training and Examination,'' employs a scenario-based testing and quality control philosophy that is inconsistent with the testing assumptions and requirements of the rule. With the elimination of the certification process and NRC Form 474, the commenter did not understand where the linkage between the proposed regulatory change, Regulatory Guide 1.149, ''Nuclear Power Plant Simulation Facilities for Use in Operator Training and License Examinations,'' and the ANSI/ANS–3.5–1998 Standard is maintained.

Response: The Commission believes that the rule will facilitate the voluntary implementation of ANSI/ANS–3.5–1998 because it deletes the prescriptive requirements for simulator test performance and scheduling that were implemented in connection with the industry standard that was in effect at the time of the 1987 rule change. If those requirements had not been deleted, facility licensees would have had little incentive to revise their programs to be compatible with the current industry standard. As with most other NRC regulations, the linkage between 10 CFR Part 55 and ANSI/ANS–3.5, the industry consensus standard for nuclear power plant simulation facilities, is established by the associated regulatory guide, in this case RG 1.149. Eliminating NRC Form 474 does not affect that linkage.

Section-by-Section Summary of Final Amendments

Part 55—Operator's Licenses, Table of Contents

In 10 CFR part 55, ''Operators's Licenses,'' the Table of Contents regarding subpart E-Written

Examinations and Operating Tests, is amended by reference to new § 55.46.

Section 55.4 Definitions

The term ''plant-referenced simulator'' is revised to remove the provision that ''a plant-referenced simulator demonstrates expected plant response to operator input, and to normal, transient, and accident conditions to which the simulator has been designed to respond'' from the definition and move it to new § 55.46(c)(1).

The term ''simulation facility'' is revised to include part-task and limited-scope simulator devices so that such devices can be used if a request were received and approved by the Commission for their use. The definition of ''simulation facility'' is also revised to relocate the ''the plant'' as a potential ''simulation facility'' to new § 55.46 (b).

Section 55.8 Information Collection Requirements: OMB Approval

NRC Form 474, ''Simulation Facility Certification'' no longer needs to be filed. Accordingly § 55.8(c)(3) is deleted.

Section 55.31 How to Apply

Section 55.31(a)(5) is revised to allow that the required five significant control manipulations that affect reactivity or power level to be performed either on a plant-referenced simulator or on the plant itself, at the facility licensee's discretion.

By providing an option for facility licensees to use plant-referenced simulators for control manipulations, the final rule makes unnecessary the need for current provisions in § 55.31(a)(5) addressing the use of simulators for performance of control manipulations for facilities that have not yet completed pre-operational testing and initial startup test programs and provisions addressing plants in extended shutdowns. Thus those provisions are removed.

Additionally, acceptable simulator training scenarios involving control manipulations that affect reactivity are identified in § 55.31(a)(5) for clarity by reference to current control manipulations and training scenarios described in § 55.59. Consistent with previously issued regulatory guidance, the list provides examples of acceptable control manipulations, which are a subset of evolutions in § 55.59 (c)(3)(i), and affect reactivity in a controlled manner and exclude those items on the list that are major transients and accidents.

Section 55.45 Operating Tests (b) Implementation—Administration

Former §§ 55.45(b)(4) and (5) dealing with simulators have been separated from the requirements for operating tests in § 55.45 and consolidated in a new § 55.46, ''Simulation Facilities.''

Section 55.45(b) requires that the operating test for an operators license be administered on either a Commission-approved simulation facility, a plant-referenced simulator, or on the actual plant, if approved by the Commission.

Facility licensees proposing to use a plant-referenced simulator meeting the definition in § 55.4 are not required to submit a request for Commission approval of that simulator. For cases when facility licensees propose to use a simulation facility not meeting the definition of a plant-referenced simulator, the Commission will continue to require additional information to determine the acceptability of the simulator and thus, will require an application for Commission approval.

Section 55.46 Simulation Facilities

The final rule implements administrative changes to former § 55.45(b) to move the requirements to a new § 55.46, ''Simulation Facilities.'' The new section has one general and three implementation criteria as discussed below.

(a) General.

Section 55.46(a) explains that the purpose of this section is to set forth the requirements for the use of a simulation facility for the administration of the operating licensing operator test, and for the use of a plant-referenced simulator for fulfilling a portion of the experience requirements for applicants for operator and senior licenses.

(b) Commission-approved simulation facilities and Commission approval of use of the plant in the administration of the operating test.

Section 55.46(b)(1) provides that facility licensees who propose to use a simulation facility, other than a plant-referenced simulator, or the plant in the administration of the operating test under § 55.45(b)(1) or § 55.45(b)(3) shall request approval of the simulation facility from the Commission and that this request must include certain criteria as described below.

Section 55.46(b)(1)(i) provides that the request for approval of the simulation facility, other than solely a plant-referenced simulator, must describe the components of the simulation facility or the plant intended to be used for each part of the operating test, unless previously approved.

Section 55.46(b)(1)(ii) provides that the request for approval of the simulation facility, other than solely a plant-referenced simulator, must describe the performance tests and the results of the tests. Section 55.46(b)(1)(iii) provides that the request for approval of the simulation facility, other than solely a plant-referenced simulator, must describe the procedures for maintaining examination and test integrity consistent with the requirements of § 55.49. Section 55.46(b)(2) provides that the Commission will approve a simulation facility or use of the plant for administration of operating tests if it finds that the simulation facility or the plant and their proposed use are suitable for the conduct of operating tests for the facility licensee's reference plant under § 55.45(a).

(c) Plant-referenced simulators.

Section 55.46(c) requires that a plant-referenced simulator used for the administration of the operator licensing operator test or to meet the experience requirements of § 55.31(a)(5) to demonstrate expected plant response to operator input and to normal, transient, and accident conditions to which the simulator has been designed to respond. Sections 55.46(c)(1)(i) and (ii) are revised to include the provision that a plant-referenced simulator is designed and implemented so that it: (1) Is sufficient in scope and fidelity to allow conduct of the evolutions listed in §§ 55.45(a)(1) through (13) and §§ 55.59(c)(3)(i)(A) through (AA), as applicable to the design of the reference plant; and, (2) allow for the completion of control manipulations for licensed operator applicant eligibility consistent with § 55.46(c)(2).

Section 55.46(c)(2)(i) provides that the plant-referenced simulator utilizes models relating to nuclear and thermal-hydraulic characteristics that replicate the most recent core load in the nuclear power reference plant for which a license is being sought. Section 55.46(c)(2)(ii) provides that simulator fidelity has been demonstrated so that significant control manipulations are completed without procedural exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence. It is the Commission's intent that the phrase ''most recent'' means the current core or if the plant is in a refueling outage, the core just previous to the outage.

(d) Continued assurance of simulator fidelity.

Section 55.46(d) requires that facility licensees which maintain a simulation facility shall: (1) Conduct performance testing throughout the life of the

simulation facility in a manner sufficient to ensure that the criteria of § 55.46(c)(1)(ii), as applicable, and § 55.46(d)(3) are met, and retain the test results for four years after the completion of each performance test or until superseded by updated test results; (2) correct modeling and hardware discrepancies and discrepancies identified from scenario validation and from performance testing; (3) make the results of any uncorrected performance test failures that may exist at the time of the operating test or requalification program inspection available for NRC review, prior to or concurrent with preparations for each operating test or requalification program inspection; and, (4) maintain the provisions for license application, examination, and test integrity consistent with § 55.49.

Section 55.59 Requalification

As a result of the changes to § 55.45(b) that eliminate the simulator certification requirement, a conforming change to § 55.59(c)(4)(iv) deletes the terms ''certified'' when referring to a simulation facility in this section.

Electronic Reporting

The Commission is currently in the process of implementing an electronic document management and reporting program, known as the Agency Wide Documents Access and Management System (ADAMS) that will provide for electronic access of many types of reports. Accordingly, there is no separate rulemaking effort to provide for electronic access or submittal of reports.

State Input

Many States (Agreement States and Non-Agreement States) have agreements with power reactors to inform the States of plant issues. State reporting requirements are frequently triggered by Commission reporting requirements. Accordingly, the Commission sought State comment on issues related to the proposed amendment by letters to State Liaison Officers as well as by a specific request in the proposed rule. No comments on the proposed rule were received from any State agency.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. This final rule sets forth requirements with respect to training of operators, and removing current certification requirements for simulators. The Commission has determined that the industry consensus standard in this area, American National Standards Institute/American Nuclear Society (ANSI/ANS) 3.5, ''Nuclear Power Plant Simulators for Use in Operator Training and Examination'' is one acceptable means for complying with specific parts of the requirements of the final rule. Accordingly, Regulatory Guide 1.149, Revision 3, endorses the ANSI/ANS–3.5–1998 as an acceptable method by which facility licensees might implement specific parts of this rule.

Finding of No Significant Environmental Impact and Categorical Exclusion

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51 that this rule falls within the categorical exclusions of §§ 51.22(c)(1), (2), and (3)(i) and (iii). Therefore, neither an environmental impact statement nor an environmental assessment is required.

Paperwork Reduction Act Statement

This final rule eliminates all the information collection requirements for Office of Management and Budget approval number 3150–0138. Because the rule will reduce information collection requirements, the public burden for these information collections is expected to be decreased by 120 hours per response. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for further reducing the burden, to the Records Management Branch (T–6E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at *BJS1@nrc.gov.* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0138), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The Commission prepared a draft regulatory analysis for the proposed rule to examine the costs and benefits of the alternatives considered by the Commission. Public comments on this analysis were requested in connection with the proposed rule. No significant comments were received. Minor changes have been made to the draft regulatory analysis to prorate the cost and benefit of the final rule over the average remaining years of operating life of the facility. The final regulatory analysis is available for inspection in the Commission Public Document Room or it may be viewed and downloaded electronically via the interactive rulemaking web site established by NRC for this rulemaking, as discussed above under the heading **ADDRESSES.** Single copies may be obtained from the contact listed above under the heading, ''For Further Information Contact.''

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the Commission (10 CFR 2.810).

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule because it does not impose new requirements as defined in 10 CFR 50.109(a)(1). The final rule changes constitute either permissible relaxations from current requirements or provide an alternative regulatory approach without changing substantive existing requirements. Therefore, a backfit analysis has not been prepared. Facility licensees would not be required by this final rule to change existing programs. The final rule permits the five significant control manipulations to be conducted at either the actual facility or a plant-referenced simulator. The final rule clarifies criteria on simulator fidelity assurance. The final rule also eliminates certification of simulation facilities and submittal of quadrennial test reports and schedule information.

The final rule entails costs on the part of both the NRC and the industry for one-time revision of existing programs. However, the regulatory analysis suggests that industry could recover these costs and the final rule would be an overall burden reduction.

As discussed above, the Commission has prepared a regulatory analysis for

the proposed rule that examines the costs and benefits of the proposed requirements in this rule. The Commission regards the regulatory analysis as a disciplined process for assessing information collection and reporting requirements to determine that the burden imposed is justified in light of the potential safety significance of the information to be collected.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission has determined that this action will have no adverse impact on small businesses and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 55.

PART 55—OPERATORS' LICENSES

1. The authority citation for part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

2. In § 55.4, Definitions, the terms *Plant-referenced simulator,* and *Simulation facility* are revised to read as follows:

§ 55.4 Definitions.

* * * * *

Plant-referenced simulator means a simulator modeling the systems of the reference plant with which the operator interfaces in the control room, including operating consoles, and which permits use of the reference plant's procedures.

* * * * *

Simulation facility means one or more of the following components, alone or in combination: used for either the partial conduct of operating tests for operators, senior operators, and license applicants, or to establish on-the-job training and experience prerequisites for operator license eligibility:

(1) A plant-referenced simulator;

(2) A Commission-approved simulator under § 55.46(b); or

(3) Another simulation device, including part-task and limited scope simulation devices, approved under § 55.46(b).

* * * * *

3. In § 55.8, paragraphs (c)(3) and (4) are removed and (b) is revised to read as follows:

§ 55.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 55.11, 55.25, 55.27, 55.31, 55.40, 55.41, 55.43, 55.45, 55.46. 55.47, 55.53, 55.57, and 55.59.

4. In § 55.31, paragraph(a)(5) is revised to read as follows:

§ 55.31 How to apply.

(a) * * *

(5) Provide evidence that the applicant, as a trainee, has successfully manipulated the controls of either the facility for which a license is sought or a plant-referenced simulator that meets the requirements of § 55.46(c). At a minimum, five significant control manipulations must be performed that affect reactivity or power level. Control manipulations performed on the plant-referenced simulator may be chosen from a representative sampling of the control manipulations and plant evolutions described in § 55.59(c)(3)(i)(A–F), (R), (T), (W), and (X) of this part, as applicable to the design of the plant for which the license application is submitted. For licensed operators applying for a senior operator license, certification that the operator has successfully operated the controls of the facility as a licensed operator shall be accepted; and

* * * * *

5. In § 55.45, paragraph (b) is revised to read as follows.

§ 55.45 Operating tests.

* * * * *

(b) *Implementation—Administration.* The operating test will be administered in a plant walkthrough and in either—

(1) A simulation facility that the Commission has approved for use after application has been made by the facility licensee under § 55.46(b);

(2) A plant-referenced simulator (§ 55.46(c)); or

(3) The plant, if approved for use in the administration of the operating test by the Commission under § 55.46(b).

6. Section 55.46 is added to read as follows:

§ 55.46 Simulation facilities.

(a) *General.* This section addresses the use of a simulation facility for the administration of the operating test and plant-referenced simulators to meet experience requirements for applicants for operator and senior operator licenses.

(b) *Commission-approved simulation facilities and Commission approval of use of the plant in the administration of the operating test.*

(1) Facility licensees that propose to use a simulation facility, other than a plant-referenced simulator, or the plant in the administration of the operating test under §§ 55.45(b)(1) or 55.45(b)(3), shall request approval from the Commission. This request must include:

(i) A description of the components of the simulation facility intended to be used, or the way the plant would be used for each part of the operating test, unless previously approved; and

(ii) A description of the performance tests for the simulation facility as part of the request, and the results of these tests; and

(iii) A description of the procedures for maintaining examination and test integrity consistent with the requirements of § 55.49.

(2) The Commission will approve a simulation facility or use of the plant for administration of operating tests if it finds that the simulation facility and its proposed use, or the proposed use of the plant, are suitable for the conduct of operating tests for the facility licensee's reference plant under § 55.45(a).

(c) *Plant-referenced simulators.*

(1) A plant-referenced simulator used for the administration of the operating test or to meet experience requirements in § 55.31(a)(5) must demonstrate expected plant response to operator input and to normal, transient, and accident conditions to which the simulator has been designed to respond. The plant-referenced simulator must be designed and implemented so that it:

(i) Is sufficient in scope and fidelity to allow conduct of the evolutions listed in §§ 55.45(a)(1) through (13), and 55.59(c)(3)(i)(A) through (AA), as applicable to the design of the reference plant.

(ii) Allows for the completion of control manipulations for operator license applicants.

(2) Facility licensees that propose to use a plant-referenced simulator to meet

the control manipulation requirements in § 55.31(a)(5) must ensure that:

(i) The plant-referenced simulator utilizes models relating to nuclear and thermal-hydraulic characteristics that replicate the most recent core load in the nuclear power reference plant for which a license is being sought; and

(ii) Simulator fidelity has been demonstrated so that significant control manipulations are completed without procedural exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence.

(3) A simulation facility consisting solely of a plant-referenced simulator must meet the requirements of paragraph (c)(1) of this section and the criteria in paragraphs (d)(1) and (4) of this section for the Commission to accept the plant-referenced simulator for conducting operating tests as described in § 55.45(a) of this part, requalification training as described in § 55.59(c)(3) of this part, or for performing control manipulations that affect reactivity to establish eligibility for an operator's license as described in § 55.31(a)(5).

(d) *Continued assurance of simulator fidelity.* Facility licensees that maintain a simulation facility shall:

(1) Conduct performance testing throughout the life of the simulation facility in a manner sufficient to ensure that paragraphs (c)(2)(ii), as applicable, and (d)(3) of this section are met. The results of performance tests must be retained for four years after the completion of each performance test or until superseded by updated test results;

(2) Correct modeling and hardware discrepancies and discrepancies identified from scenario validation and from performance testing;

(3) Make results of any uncorrected performance test failures that may exist at the time of the operating test or requalification program inspection available for NRC review, prior to or concurrent with preparations for each operating test or requalification program inspection; and

(4) Maintain the provisions for license application, examination, and test integrity consistent with § 55.49.

7. In § 55.59, paragraph (c)(4)(iv) is revised to read as follows:

§ 55.59 Requalification.

* * * * *

(c) * * *

(4) * * *

(iv) Simulation of emergency or abnormal conditions that may be accomplished by using the control panel of the facility involved or by using a simulator. When the control panel of the facility is used for simulation, the actions taken or to be taken for the emergency or abnormal condition shall be discussed; actual manipulation of the plant controls is not required. If a simulator is used in meeting the requirements of paragraph (c)(4)(iii) of this section, it must accurately reproduce the operating characteristics of the facility involved and the arrangement of the instrumentation and controls of the simulator must closely parallel that of the facility involved. After the provisions of § 55.46 have been implemented at a facility, the Commission approved or plant-referenced simulator must be used to comply with this paragraph.

* * * * *

Dated at Rockville, Maryland, this 10th day of October, 2001.

For the Nuclear Regulatory Commission.

J. Samuel Walker,

Acting Secretary of the Commission.

[FR Doc. 01–26108 Filed 10–16–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–171–AD; Amendment 39–12469; AD 2001–20–20]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 series airplanes, that currently requires replacement of certain ground block screws with new screws; and retermination of the circuit ground wires of the electrical power control unit (EPCU) to separate grounding points. This amendment removes certain airplanes and adds certain other airplanes to the applicability of the existing AD. The actions specified in this AD are intended to prevent a loose electrical ground block of the circuit ground wires of the EPCU, which could result in complete loss of the primary electrical power of an airplane during flight.

DATES: Effective November 1, 2001.

The incorporation by reference of a certain publication, as listed in the regulations, is approved by the Director of the Federal Register as of November 1, 2001.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 19, 2000 (65 FR 49728, August 15, 2000), and as of November 13, 2000 (65 FR 59707, October 6, 2000).

Comments for inclusion in the Rules Docket must be received on or before December 17, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–171–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425)–227–1232. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–171–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On September 26, 2000, the FAA issued AD 2000–20–04, amendment 39–11915 (65 FR 59707, October 6, 2000). (A correction to that AD was published in

the **Federal Register** on January 9, 2001 (66 FR 1574)). That AD is applicable to certain McDonnell Douglas Model MD–90–30 series airplanes, to require replacement of certain ground block screws with new screws; and retermination of the circuit ground wires of the electrical power control unit (EPCU) to separate grounding points. That action was prompted by the Federal Aviation Administration's determination that the existing AD must be revised to ensure that the requirements apply to the appropriate airplane groups. The actions required by that AD are intended to prevent a loose electrical ground block of the circuit ground wires of the EPCU, which could result in complete loss of the primary electrical power of an airplane during flight.

Actions Since Issuance of Previous Rule

Since the issuance of that AD (which referenced McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000, and Alert Service Bulletin MD90–24–A060, Revision 01, dated September 2, 1999, as the appropriate sources of service information), the manufacturer has released McDonnell Douglas Alert Service Bulletin MD90–24–A060, Revision 02, dated February 28, 2001. Revision 02 removes six airplanes from the alert service bulletin effectivity and adds two more airplanes. Revision 02 also specifies that no additional work is required for airplanes previously modified per prior revisions of the service bulletin.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 2000–20–04, amendment 39–11915 (65 FR 59707, October 6, 2000). This AD requires replacement of certain ground block screws with new screws; and retermination of the circuit ground wires of the EPCU to separate grounding points. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Cost Impact

None of the new airplanes affected by this action are on the U.S. Register. The affected airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required actions at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–171–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11915 (65 FR 59707, October 6, 2000), and by adding a new airworthiness directive (AD), amendment 39–12469, to read as follows:

2001–20–20 McDonnell Douglas: Amendment 39–12469. Docket 2001–NM–171–AD. Supersedes AD 2000–20–04, Amendment 39–11915.

Applicability: Model MD–90–30 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 02, dated February 28, 2001; and McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000; 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 a loose electrical ground block of the circuit ground wires of the electrical power control unit (EPCU), which could result in complete loss of the primary electrical power of an airplane during flight., accomplish the following:

Note 2: Paragraphs (a) and (b) of this AD merely restate the requirements of paragraph (a) and (b) of AD 2000–20–04, amendment 39–11915. As allowed by the phrase, ''unless accomplished previously,'' if those requirements of AD 2000–20–04 have already been accomplished, this AD does not require that those actions be repeated.

Restatement of the Requirements of AD 2000–20–04

Replacement

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999: Within 30 days after November 13, 2000 (the effective of AD 2000–20–04), replace the electrical ground block screws with new screws in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999.

Note 3: Accomplishment of the replacement of electrical ground block screws prior to November 13, 2000, in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, dated July 28, 1999, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Modification of the Electrical Power Control Unit

(b) For airplanes listed in McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000: Within 12 months after November 13, 2000 (the effective date of AD 2000–20–04), reterminate the circuit ground wires of the EPCU to separate grounding points to ensure that a single point failure does not occur, in accordance with McDonnell Douglas Service Bulletin MD90–24–062, dated February 3, 2000.

New Requirements of This Ad

Replacement

(c) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 02, dated February 28, 2001, with the exception of those airplanes identified in paragraph (a) of this AD: Within 30 days after the effective of this AD, replace the electrical ground block screws with new screws in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 02, dated February 28, 2001.

Alternative Methods of Compliance

(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, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

Special Flight Permits

(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.

Incorporation by Reference

(f) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999; McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 02, dated February 28, 2001; and McDonnell Douglas Alert Service Bulletin MD90–24–062, dated February 3, 2000; as applicable.

(1) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 02, dated February 28, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD90–24A060, Revision 01, dated September 2, 1999, was approved previously by the Director of the Federal Register as of September 19, 2000 (65 FR 49728, August 15, 2000).

(3) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD90–24–062, dated February 3, 2000, was approved previously by the Director of the Federal Register as of November 13, 2000 (65 FR 59707, October 6, 2000).

(4) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on November 1, 2001.

Issued in Renton, Washington, on October 5, 2001.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 01–25663 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1309 and 1310

[DEA Number 198F1]

RIN 1117–AA57

Control of Red Phosphorus, White Phosphorus and Hypophosphorous Acid (and its salts) as List I Chemicals

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final Rule with request for comments.

SUMMARY: This rulemaking finalizes a September 25, 2000 Notice of Proposed Rulemaking (65 FR 57577) in which DEA proposed the addition of red phosphorus, white phosphorus (also known as yellow phosphorus) and hypophosphorous acid (and its salts) as List I chemicals. This action is being taken because of the use and importance of these chemicals in the illicit manufacture of methamphetamine (a Schedule II controlled substance).

As List I chemicals, handlers of these materials will be subject to CSA chemical regulatory controls including registration, recordkeeping, reporting, and import/export requirements. The Drug Enforcement Administration (DEA) has determined that these controls are necessary to prevent the diversion of these chemicals to clandestine drug laboratories.

Given the small quantities of these chemicals necessary for the production of methamphetamine, no threshold is being established for domestic and international transactions. As such, all transactions (regardless of size) shall be considered regulated transactions, subject to recordkeeping, reporting and/

or import/export notification requirements.

DATES: *Effective Date:* This final rule is effective November 16, 2001.

Comment date: Written comments on 21 CFR 1309.29(b), 1309.29(c) and 1310.09(d) must be submitted on or before November 16, 2001.

ADDRESSES: Comments should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307–7183.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Notice?

The Controlled Substances Act (CSA) and its implementing regulations, specifically 21 U.S.C. 802(34) and 21 CFR 1310.02(c), provide the Attorney General with the authority to specify, by regulation, additional chemicals as ''List I'' chemicals if they are used in the manufacture of a controlled substance in violation of the CSA and are important to the manufacture of the controlled substance. This authority has been delegated to the Administrator of DEA by 28 CFR 0.100.

What Specific Chemicals Does This Regulation Include? What Related Chemicals Will Not Be Subject to This Control Action?

Phosphorus is a nonmetallic element that can occur in three main allotropic (i.e. crystalline) forms (white, red and black). Elemental phosphorus is derived from phosphate rock. The most abundant variety produced is white phosphorus (also known as yellow phosphorus). Most other forms of phosphorus and phosphorus chemicals are produced from white phosphorus.

The second crystalline form is red phosphorus. Red phosphorus is usually prepared as a powder and is more stable and less toxic than the white form. A black crystalline form of phosphorus is also occasionally made and is similar to graphite in its physical, thermal and electrical properties.

The white and red forms of elemental phosphorus are being designated as List I chemicals. Black phosphorus and phosphate rock will not be affected by this action.

Additionally, DEA is adding hypophosphorous acid and its salts as List I chemicals. While hypophosphorous acid (H_3PO_2) is most commonly sold as 10%, 30% or 50% solutions, control will apply to all aqueous dilutions of hypophosphorous acid. Salts of hypophosphorous acid are known as hypophosphite salts. These salts are also being designated as List I chemicals. Examples of these salts include: Ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite and sodium hypophosphite.

Why Does DEA Believe That Control of Red Phosphorus, White Phosphorus, and Hypophosphorous Acid (and its Salts) Is Necessary?

DEA has identified these chemicals as being used in the illicit production of methamphetamine. The public health consequences of the manufacture, trafficking, and abuse of methamphetamine are well known and documented. The September 25, 2000 NPRM (65 FR 57577) demonstrated how the chemistry and illicit use of these chemicals make them important to the manufacture of methamphetamine and therefore meet the definition of List I chemicals. Hence, this rulemaking makes these chemicals subject to CSA regulatory controls for List I chemicals, including registration, recordkeeping, reporting, and import/export requirements as specified in 21 CFR parts 1309, 1310 and 1313. DEA believes that these regulatory controls are needed to prevent the diversion of these phosphorus chemicals to clandestine laboratories.

What Regulatory Controls Will Apply to These Chemicals?

As List I chemicals, red phosphorus, white phosphorus, and hypophosphorous acid and its salts will be subject to the chemical regulatory control provisions and civil and criminal sanctions of the CSA. As such, recordkeeping, reporting and import/export notification requirements (as described in 21 CFR parts 1310 and 1313) shall apply. Manufacturers, distributors, importers and exporters of white phosphorus, red phosphorus and hypophosphorous acid (and its salts) will be required to register with DEA pursuant to the provisions of 21 CFR part 1309.

Handlers of these chemicals will also be required to maintain records and meet CSA import/export notification requirements for ''regulated transactions'' of these chemicals. The CSA (21 U.S.C. 802(39)) defines the term ''regulated transaction'' as a ''distribution, receipt, sale, importation, or exportation of, or an international transaction involving the shipment of, a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical, a transaction involving a threshold amount''. The CSA, therefore, provides the Attorney General with authority to establish a threshold amount for ''listed chemicals'' if the Attorney General so elects. This rulemaking does not establish a threshold for red phosphorus, white phosphorus or hypophosphorous acid (and its salts). Therefore, all transactions regardless of size will be considered ''regulated transactions''.

DEA has endeavored, within this rulemaking, to limit the impact of these regulations on the affected industry. In some instances, as discussed below in the responses to specific comments (e.g., separate registration for separate locations) the specific language of the CSA established the parameters of control. However, in other areas, DEA has been able to take additional steps in these final regulations to lessen the impact of these regulatory requirements on the affected industry, while simultaneously carrying out DEA's mandate of preventing diversion of these chemicals.

When Will These Regulatory Requirements Become Effective?

Effective November 16, 2001, any person distributing, importing, or exporting any of these listed chemicals will become subject to the registration requirement under the CSA. DEA recognizes, however, that it is not possible for persons who distribute, import, or export any of these listed chemicals to immediately complete and submit an application for registration and for DEA to immediately issue registrations for those activities. Therefore, in order to allow continued legitimate commerce in these listed chemicals, DEA is establishing in 21 CFR 1310.09 a temporary exemption from the registration requirement for persons desiring to distribute, import, or export red phosphorus, white phosphorus and hypophosphorous acid (and its salts), provided that DEA receives a properly completed application for registration on or before December 17, 2001. The temporary exemption for such persons will remain in effect until DEA takes final action on their application for registration. The temporary exemption applies solely to the registration requirement; all other chemical control requirements, including recordkeeping and reporting, are effective on November 16. 2001. Additionally, the temporary exemption does not suspend applicable Federal

criminal laws relating to these listed chemicals, nor does it supersede state or local laws or regulations. All handlers of the listed chemicals must comply with applicable state and local requirements in addition to the CSA regulatory controls.

Comments

DEA received eight comments in response to the NPRM. While the general tone of the comments was supportive of efforts to prevent the flow of listed chemicals to clandestine laboratories, the commentors raised a number of concerns regarding certain provisions of the proposed regulation.

Registration

1. Four commentors expressed concerns regarding the registration requirement for handlers of List I chemicals. These commentors requested clarification as to the need for the List I registration requirement and expressed the belief that List II controls would be adequate to address the diversion problem.

DEA strongly believes that given the nature of the diversion of red phosphorus, white phosphorus and hypophosphorous acid (and its salts), the registration requirement is necessary in order to effectively prevent diversion. While neither DEA nor any commentors identified any household uses for any of these chemicals, they have been widely distributed by firms engaged primarily in retail sales to the general public.

The CSA requires persons who distribute, import or export a List I chemical to obtain a registration and requires that DEA determine if such registration would be in the public interest pursuant to the criteria set forth in 21 U.S.C. 823(h). Each registration applicant would be subject to a separate pre-registration investigation that would require, among other things, a visit to the applicant's place of business and a determination as to whether the criteria regarding public interest are met. DEA will closely scrutinize each registration applicant to ensure that only those who distribute these chemicals for legitimate purposes become and remain registered.

DEA has also noted that these chemicals have commonly been sold via the Internet to the general public. DEA has strong concerns regarding the sale of these chemicals via such means. DEA believes that those Internet sites which choose not to prohibit the sales of such items should, at a minimum, require sellers to provide proof of DEA registration prior to listing such items for sale. The registration requirement is essential to identify rogue distributors and eliminate the ability of firms to illegally distribute these chemicals.

2. Two commentors stated that the List I registration requirement would place a significant burden on industry. One of these commentors, a major national trade association, stated that it had identified six member firms which distribute hypophosphorous acid (and its salts). The commentor further stated that two of these members have between 22 and 30 facilities and expressed concerns regarding the need to register each location. One additional commentor objected to the requirement that a separate registration be obtained at each location at which List I chemicals activities are carried out. The commentor suggested that DEA allow companies to obtain a single registration, with attendant fee, for multiple locations.

The law, however, is specific on this point. The Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200) requires that a separate registration be obtained at each location at which the List I chemicals are distributed, imported or exported (21 U.S.C. 822(e) and 958(h).

3. The previously-mentioned trade association also expressed concerns that if a firm handles multiple phosphorus chemicals, then they must obtain multiple registrations. However, DEA wishes to emphasize that registration is by individual location (and not by chemicals handled). Only one registration is required for a firm which handles multiple listed chemicals at a single location.

Furthermore, there is the likelihood that chemical distributors represented by this trade association are already registered with DEA since they may already handle other listed chemicals. Therefore these firms would not be required to obtain a new registration, and instead, would only be required to add additional chemicals to their existing registration. No additional fees are required to make such additions.

Additionally, DEA is attempting to reduce the financial burden of registration. On December 1, 1999, DEA published a Notice of Proposed Rulemaking (64 FR 67216) which proposed a reduction in application fees for registration and reregistration of manufacturers, distributors importers and exporters of list I chemicals. DEA proposed a registration fee of $326 and re-registration fee of $171.

Importer Issues

4. Two commentors requested clarification regarding the registration of importers which distribute List I chemicals. These commentors inquired as to whether multiple registrations are required for importers which distribute. Pursuant to 21 CFR 1309.22(b), ''a person registered to import any List I chemical shall be authorized to distribute that List I chemical after importation, but no other chemical that the person is not registered to import.'' Therefore, an importer is not required to obtain multiple registrations to distribute a List I chemical, as long as the only List I chemical distributed is imported material for which the person is a registered importer.

Chemical Mixtures

5. One commentor stated that its red phosphorus is distributed in a thermoplastic encapsulated form and requested that such mixtures be exempted. It is apparent to DEA that such material is considered a ''chemical mixture''. Chemical mixtures are currently exempt from regulatory provisions of the CSA such as recordkeeping, registration and import/export requirements. On September 16, 1998 (63 FR 49506) DEA proposed regulations pertaining to the regulation of mixtures containing any of 34 listed chemicals. That notice proposed criteria for the determination of whether a chemical mixture shall qualify for automatic exemption from CSA regulatory controls. The NPRM was published to implement CSA requirements that only those chemical mixtures identified by regulation be exempt from applicable regulatory controls. Additionally, the NPRM defined an application process by which manufacturers may apply for an exemption for chemical mixtures that do not qualify for automatic exemption.

Upon publication of this Final Notice, red phosphorus, white phosphorus and hypophosphorous acid (and its salts) shall be subject to CSA chemical regulatory controls. However, chemical mixtures containing these chemicals shall remain exempt until such time as DEA proposes and finalizes regulations for chemical mixtures containing these chemicals. At such time, the manufacturer of chemical mixtures containing these chemicals may either qualify for automatic exemption, or may apply to DEA for exemption after documenting why the mixtures can not be easily used in the manufacture of a controlled substance and the listed chemical can not be readily extracted.

Threshold Issues

6. One commentor suggested that the zero threshold would place an undue burden on the company and its customers in the research community. The commentor stated that the Special

Surveillance List controls should be adequate to prevent diversion.

The Special Surveillance List chemicals are subject to civil penalties for the distribution of a ''laboratory supply'' with ''reckless disregard'' for the intended purpose. Red phosphorus and hypophosphorous acid have been on the Special Surveillance List since its initial publication on May 13, 1999.

DEA has determined that these civil penalty provisions alone are not adequate to prevent illicit use of these chemicals and the unregulated sale to the general public continues to be a source of diversion. DEA has concluded that these chemicals should be subject to registration, recordkeeping, reporting and import/export notification requirements of the CSA. As noted in the NPRM, these chemicals are used as catalysts in the illicit synthesis of methamphetamine. As such, the manufacture of methamphetamine requires only small quantities of these chemicals. DEA has evidence that indicates that small transactions are being diverted for illicit use. Therefore, no threshold is being established for domestic and international transactions. Consequently, all transactions involving these chemicals, regardless of size, shall be regulated.

End Users

7. Two commentors requested clarification regarding the term ''chemical handler'' and the potential applicability of this regulation on end-users which utilize red phosphorus in their production processes. These commentors expressed concerns that an end-user may become subject to regulatory requirements because of distribution of excess material off-site for disposal purposes or because of the transfer of stock from one company location to another.

Under the proposed regulations, distributions of red phosphorus, white phosphorus and/or hypophosphorous acid (and its salts) for the purpose of disposal would be considered regulated transactions subject to all CSA chemical regulatory requirements including registration, recordkeeping and reporting. Additionally, the transfer of stock from one company location to another would require the registration of each location.

However, in order to reduce any burden on end-users of these chemicals, DEA is waiving the registration requirement for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste disposal.

This waiver of registration as it pertains to distributions for waste disposal applies only to the registration requirement and all other CSA chemical regulatory controls such as recordkeeping and reporting will still apply. It is likely, however, that the CSA recordkeeping requirements are already being met as part of normal business practice. For phosphorus, compliance with EPA and DOT regulations should document such distributions. Hypophosphorous acid shipments should be documented, but shipments of the hypophosphites may not be. Nonetheless, it is likely that chemical handlers already maintain records of shipments and customers even if shipping papers are not required.

21 U.S.C. 822(d) provides that the Attorney General may, by regulation, waive the requirement of registration of certain manufacturers, distributors or dispensers, if consistent with the public health and safety. DEA is therefore modifying 21 CFR 1309.29 to provide that ''The requirement of registration is waived for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: Another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste disposal''.

Large Transactions

8. Two producers of elemental phosphorus requested that large transactions be exempted when shipped in reusable containers with capacities of 2500 or 2800 gallons. These commentors stated that these bulk containers are exclusively rail cars or large isotainers specially designed to enable safe transport.

After unloading, the bulk containers are shipped back to the producers (filled with water for safety reasons due to the remaining phosphorus in the container) for reuse. Therefore, the commentors expressed concerns that their other sites and customers would possibly be subject to recordkeeping and registration requirements due to the return shipments.

The commentors further stated that ''safeguards already include recordkeeping, incident reporting, tamper-detection, sealed valves, and use of bulk reusable containers''. The commentors believe that ''registering and tracking these types of shipments back and forth with DEA would provide no additional benefit and would impose an undue burden on DEA, our operations and our customers.''

DEA agrees that return shipments should not be impacted by this regulation. DEA also recognizes the difficulty in quantifying the residual amounts of red and white phosphorus contained in these rail cars and isotainers. The CSA authorizes DEA, pursuant to 21 U.S.C. 802(39)(A)(iii), to remove certain transactions in listed chemicals from the definition of regulated transaction. Therefore DEA is excluding from the definition of regulated transaction (21 CFR 1310.08(j)), domestic transactions involving red phosphorus and white phosphorus which are return shipments (from customer to producer) in rail cars and isotainers with capacities greater than or equal to 2500 gallons. As such, these return shipment transactions will not require recordkeeping. Additionally, DEA is waiving the registration requirement pursuant to 21 CFR 1309.29(c) for any person whose distribution of red phosphorus or white phosphorus is limited solely to residual quantities of chemical returned to the producer in reusable rail cars and isotainers (with capacities greater than or equal to 2500 gallons in a single container).

This exemption and waiver, however, pertain only to these return shipments. Manufacturers shall still be subject to registration, recordkeeping, reporting and other CSA chemical regulatory requirements pertaining to the production and distribution of listed chemicals to their customers. The customers will not be subject to registration or recordkeeping requirements for the return of reusable containers to the producer. However, should these customers re-distribute any of the received material (other than the return of reusable containers to the producer), they shall be subject to all CSA chemical regulatory requirements.

Since the two commentors noted that they already maintain records of these transactions, it is likely that normal business records are adequate to meet CSA recordkeeping requirements. 21 CFR 1310.06(b) provides that normal business records shall be considered adequate, provided they contain information described in § 1310.06(a) and are readily retrievable from other business records. These records can be those already required by other Federal, state and local regulatory agencies.

Because the above exemption was not discussed in the NPRM published on September 25, 2000, DEA requests

public comment with respect to this exemption.

Interim Rule With Request for Comments

This final rule will establish on an interim basis, an exclusion from the definition of regulated transaction for domestic transactions involving red phosphorus and white phosphorus which are return shipments (from customer to producer) in rail cars and isotainers with capacities greater than or equal to 2500 gallons. This final rule will also establish, on an interim basis, a waiver from the registration requirement for such activity. Additionally, this final rule will establish on an interim basis, a waiver from the registration requirement for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste disposal.

DEA is soliciting comments only on those portions of this Final Rule pertaining to these specific issues. DEA will allow 30 days for persons to comment on the exclusion and waivers. DEA will accept comments until November 16, 2001. After the close of this comment period, DEA will publish a final rule in the **Federal Register** to inform interested parties if changes are needed or if the exclusion and waivers will be adopted as stated.

DEA became aware of these issues via comments received in response to the September 25, 2000 NPRM (65 FR 57577). Since that Notice did not propose the exclusion and waivers, the general public did not have an opportunity to comment on these issues.

DEA has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553 et seq.) (APA) to forgo a Notice of Proposed Rulemaking for the exclusion and waivers. The APA states that an agency may forgo a NPRM if it is impracticable, unnecessary, or contrary to the public interest. To avoid unnecessary or temporary burdens on affected companies during the pendency of proceedings in this matter, DEA will include as part of this rulemaking an interim rule, with request for comments regarding these issues.

Certifications

This regulation is not considered to have an impact upon a substantial number of firms, given the limited distribution of these three chemicals. The Administrator hereby certifies that this rulemaking has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). It will not have a significant economic impact on a substantial number of small business entities.

The Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 section 1(b). DEA has determined that this is not a significant rulemaking action. Therefore, this action has not been reviewed by the Office of Management and Budget.

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

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 will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the 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 United States-based companies to compete with foreign-based companies in domestic and export markets.

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7297.

List of Subjects

21 CFR Part 1309

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

21 CFR Part 1310

Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR part 1309 and 1310 are amended as follows:

PART 1309—[AMENDED]

1. The authority citation for part 1309 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 830, 871(b), 875, 877, 958.

2. Section 1309.29 is revised to read as follows:

1309.29 Waiver of registration requirement for certain activities.

(a) The requirement of registration is waived for any retail distributor whose activities with respect to List I chemicals are restricted to the distribution of below-threshold quantities of a drug product that contains a List I chemical that is regulated pursuant to § 1300.02(b)(28)(i)(D) of this chapter to an individual for legitimate medical use.

(b) The requirement of registration is waived for any person whose activities with respect to List I chemicals are limited to the distribution of red phosphorus, white phosphorus, or hypophosphorous acid (and its salts) to: Another location operated by the same firm solely for internal end-use; or an EPA or State licensed waste treatment or disposal firm for the purpose of waste disposal.

(c) The requirement of registration is waived for any person whose distribution of red phosphorus or white phosphorus is limited solely to residual quantities of chemical returned to the producer, in reusable rail cars and isotainers (with capacities greater than or equal to 2500 gallons in a single container).

(d) If any person exempted under paragraph (b) or (c) of this section also engages in the distribution, importation or exportation of a List I chemical, other than as described in such paragraph, the person shall obtain a registration for such activities, as required by § 1309.21 of this part.

(e) The Administrator may, upon finding that continuation of the waiver would not be in the public interest, suspend or revoke a waiver granted under paragraph (b) or (c) of this section pursuant to the procedures set forth in §§ 1309.43 through 1309.46 and 1309.51 through 1309.57 of this part.

(f) Any person exempted from the registration requirement under this section shall comply with the security

requirements set forth in §§ 1309.71–1309.73 of this part and the recordkeeping and reporting requirements set forth under parts 1310 and 1313 of this chapter.

PART 1310—[AMENDED]

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

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

2. Section 1310.02 is amended by adding new paragraphs (a)(25) through (27) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(a) * * *

(25) Red phosphorus 6795
(26) White phosphorus (Other names: Yellow Phosphorus) 6796
(27) Hypophosphorous acid and its salts (Including ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite and sodium hypophosphite) 6797

* * * * *

3. Section 1310.04 is amended by adding new paragraphs (g)(1)(ii) through (g)(1)(iv) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(g) * * *

(1) * *

(ii) Red phosphorus

(iii) White phosphorus (Other names: Yellow Phosphorus)

(iv) Hypophosphorous acid and its salts

4. Section 1310.08 is amended by adding a new paragraph (j) to read as follows:

§ 1310.08 Excluded transactions.

* * * * *

(j) Domestic return shipments of reusable containers from customer to producer containing residual red phosphorus or white phosphorus in isotainers and rail cars with capacities greater than or equal to 2500 gallons (in a single container).

5. Section 1310.09 is amended by adding a new paragraph (d) to read as follows:

§ 1310.09 Temporary exemption from registration.

* * * * *

(d) Each person required by section 302 of the Act (21 U.S.C. 822) to obtain a registration to distribute, import, or export the List I chemicals red phosphorus, white phosphorus, and hypophosphorous acid (and its salts), is temporarily exempted from the registration requirement, provided that the person submits a proper application for registration on or before December 17, 2001. The exemption will remain in effect for each person who has made such application until the Administration has approved or denied that application. This exemption applies only to registration; all other chemical control requirements set forth in parts 1309, 1310, and 1313 of this chapter remain in full force and effect.

Dated: October 5, 2001.

Asa Hutchinson,

Administrator.

[FR Doc. 01–26013 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 599

[Docket No. FR–4663–C–05]

RIN 2506–AC09

Designation of Forty Renewal Communities; Technical Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule; technical correction.

SUMMARY: On July 9, 2001, HUD published an interim rule to govern the designation of Renewal Communities nominated by States and local governments. This document corrects an error in the interim rule by removing arson from the list of offenses counted in determining the Crime Index and the Local Crime Index.

DATES: *Effective Date:* August 8, 2001.

FOR FURTHER INFORMATION CONTACT: John Haines, Renewal Community Initiative, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7130, Washington, DC 20410, (202) 708–6339. Persons with hearing or speech disabilities may call (800) 877–8339 (the Federal Information Relay Service-TTY).

SUPPLEMENTARY INFORMATION:

On July 9, 2001 (66 FR 35850), HUD published an interim rule for the designation of Renewal Communities (RCs) and Round III urban Empowerment Zones (EZs). The preamble, at 66 FR 35853, cited the Crime Index (CI) of the FBI's Uniform Crime Reporting (UCR) as including the offense of arson. The rule, in § 599.107(a)(3) at 66 FR 35858, includes arson in the list of offenses that must be included when determining the Local Crime Index (LCI) in a nominated area for purposes of comparing the LCI to the CI.

Although the offense of arson is included as part of the UCR, it is not included in the CI determination because the reporting for arson is not as consistent as for other offenses. The references to arson in the interim rule are, therefore, being removed. In addition, a correction to make conforming changes to the August 7, 2001 (66 FR 41432) Notice Inviting Applications for Designation of Forty Renewal Communities is published elsewhere in this issue of the **Federal Register**.

Accordingly, FR Doc. 01–17011, Designation of Round III Urban Empowerment Zones and Renewal Communities, (FR–4663–I–01), published in the **Federal Register** on July 9, 2001 (66 FR 35850), is corrected as follows:

1. On page 35853, second column, the second complete sentence is revised to read as follows: ''The offenses included are the violent crimes of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault, and the property crimes of burglary, larceny-theft, and motor vehicle theft.''

PART 599—RENEWAL COMMUNITIES

§ 599.107 [Corrected]

2. On page 35858, second column, the last complete sentence of § 599.107(a)(3) is revised to read as follows: ''The offenses used in determining the LCI are the violent crimes of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault, and the property crimes of burglary, larceny-theft, and motor vehicle theft.''

Dated: October 10, 2001.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 01–26023 Filed 10–16–01; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8966]

RIN 1545–AT47

Effect of the Family and Medical Leave Act on the Operation of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to cafeteria plans that reflect changes made by the Family and Medical Leave Act of 1993 (Act). The final regulations provide the public with guidance needed to comply with the Act and affect employees who participate in cafeteria plans.

DATES: *Effective Date:* These regulations are effective October 17, 2001.

Applicability Date: These regulations are applicable for cafeteria plan years beginning on or after January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Shoshanna Chaiton at (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains additions to the Income Tax Regulations (26 CFR part 1) under section 125 of the Internal Revenue Code of 1986 (Code). These additions conform the cafeteria plan regulations to the Family and Medical Leave Act of 1993 (FMLA), Public Law 103–3, 29 U.S.C. 2601 *et seq.* FMLA imposes certain requirements on employers regarding coverage, including family coverage, under group health plans for employees taking FMLA leave and regarding the restoration of benefits to employees who return from FMLA leave. Proposed regulations, EE–20–95, published in the **Federal Register** on December 21, 1995 (60 FR 66229), addressed a number of the principal questions that were raised about how these FMLA requirements affect the operation of cafeteria plans (including flexible spending arrangements) maintained under section 125. These final regulations are based on the 1995 proposed regulations, and include clarifications and other changes resulting from comments received on the proposed regulations.

Summary of Changes

A number of comments that were made in response to the 1995 proposed regulations relate to FMLA. The requirements pertaining to FMLA leave, including the employer's obligation to maintain coverage under a group health plan during FMLA leave and to restore benefits upon return from FMLA leave, are established by FMLA, not the Code. The U.S. Department of Labor, in 29 CFR part 825, has published rules interpreting the requirements of FMLA, and the Department of Labor has jurisdiction relating to those rights or obligations. These final regulations do not interpret FMLA or the rules published by the Department of Labor. Rather, they provide guidance on the cafeteria plan rules that apply to an employee in circumstances to which FMLA and the Labor Regulations thereunder also apply. Accordingly, these final regulations include a number of changes intended to clarify which particular conditions must be satisfied to comply with FMLA and with the cafeteria plan rules.

The Department of the Treasury, including the Internal Revenue Service (IRS), discussed these final regulations with the Department of Labor to ensure that they do not conflict with, and are not inconsistent with, the provisions of FMLA or the Labor regulations thereunder, at 29 CFR part 825. In response to those discussions and comments made by the public, these cafeteria plan regulations have been changed to clarify the circumstances under which an employer is required to maintain coverage and an employee is required to continue paying premiums. These changes are described below.

As a general matter, under FMLA, an employer has the obligation to offer coverage under any group health plan for the duration of FMLA leave, whether paid or unpaid, and under the same conditions as coverage would have been provided if the employee had been continuously working during the entire leave period. The employee has the right to keep this coverage by continuing to pay the premium. During the period of FMLA leave, the employer is required to continue payment of its share of the costs of group health insurance coverage, but may condition such continued payments on the employee paying his or her share of the costs under one of the methods set forth at 29 CFR 825.210. See also the notice requirements at 29 CFR 825.301(b)(1)(iv).

Furthermore, the employer must either allow the employee to revoke coverage while on unpaid FMLA leave, or continue coverage but allow the employee to discontinue his or her share of the premium payments while the employee is on unpaid leave. Although ordinarily health plan coverage would cease if an employee does not make his or her share of the premium payments, FMLA does not give the employee a right to require that the employer terminate coverage. The FMLA permits an employer to continue health plan coverage while the employee is on unpaid FMLA leave by paying both the employer's and the employee's share of group health plan contributions. In this event, the employer may recover the employee's share of the contributions when the employee returns from leave or, if the employee fails to return from leave, the employer may recover the employee's share of contributions and may also recover its own share as well under the circumstances set forth in 29 CFR 825.213(a). However, under the FMLA, an employee who chooses to discontinue premium payments may not be required to make contributions until the unpaid FMLA leave ends.

Upon return from leave, FMLA requires that the employee have the right to be reinstated under the same terms as if the employee had worked during the entire leave period without any break in coverage. An employee who has revoked coverage or has failed to make required payments therefore has the right to be reinstated in the group health plan upon return from leave. If the employee does not elect to be reinstated in the group health plan upon return from FMLA leave, the employer may nevertheless require the employee to resume participation if the employer also requires employees who return from unpaid non-FMLA leave to resume participation upon return from leave. This reflects a change in position from the 1995 proposed regulations, which specifically prohibited an employer from requiring an employee whose coverage has terminated while on FMLA leave to reinstate coverage under a health FSA upon return from FMLA leave. Several commentators disagreed with this position, and suggested that the FMLA regulations do not require this rule. In response to these comments, the rule has been modified as described above.

One commentator questioned whether an employee on paid FMLA leave may change or revoke an election. Whether an employer is required to permit an employee on paid FMLA leave to revoke an election is governed by the FMLA and the Labor Regulations thereunder, rather than these regulations. As described above, the FMLA permits an employer to require that the employee continue coverage during an FMLA leave if the employer is continuing the employee's pay during the FMLA leave and does not treat employees on paid FMLA leave differently from other employees on paid leave. If these two conditions are satisfied, as described in Q&A–4, an employer may require that an employee who goes on paid FMLA leave continue to pay premiums by the method normally used during any paid leave.

In response to comments, the rule in the 1995 regulations concerning the catch-up payment option was modified. Under the 1995 regulations, an employee who elected to use the catch-up payment option before going on FMLA leave was required to enter into

an advance agreement with the employer specifying that the employee wanted to continue health coverage while on unpaid FMLA leave, that the employer would pay the premiums during the FMLA leave, and that the employee would repay these amounts upon return. Commentators noted that this rule did not provide enough flexibility for employers attempting to recoup payments in situations where employees originally elected the pay-as-you-go method but then were not able to make those required payments. Accordingly, the rule under the final regulations eliminates the requirement that an employee who elects the catch-up payment option enter into an advance agreement with the employer. The new rule adds flexibility and permits continued coverage because, although employees may still use either the catch-up payment option or the after-tax pay-as-you-go method from the outset, now employers may continue coverage and, under the catch-up payment option, recoup any amounts paid on an employee's behalf if the employee cannot make all the payments under the pay-as-you-go method.

The 1995 proposed regulations included a special proration rule for cases in which health coverage under a flexible spending arrangement (FSA) did not continue during an FMLA leave because the employee revoked coverage or failed to make required payments, and then the employee elects to resume the coverage when the leave ends during the same year. The proposed regulation permitted the employee's coverage to be reduced after the employee resumes work if the employee did not have coverage during the FMLA leave. Based on information provided by the Department of Labor concerning FMLA, the final regulations require that, where an employee does not have coverage under the FSA during FMLA leave because the employee chooses to revoke coverage or does not pay required premiums for any reason during FMLA leave, the employer must provide the employee upon return from FMLA leave a choice between: (1) Resuming coverage at the original level and making up the unpaid premium payments or (2) resuming coverage at a level that is reduced under the proration rule and resuming premium payments at the original level. Where the employee selects the prorated method and the plan has already made disbursements to the employee that exceed the premiums that will be paid for the year, the employer may not require the employee to pay any more than the remaining premiums due. If health FSA coverage does continue during the leave (whether due to an FMLA coverage continuation election by the employee or because the employer's plan requires health FSA coverage to be continued during a leave), there would of course be no proration.

Commentators requested clarification regarding whether employers are required to obtain elections from employees who are on FMLA leave when an open enrollment period occurs. In response to this comment, the final regulations clarify that employees on FMLA leave have the same rights during the leave period as employees participating in a cafeteria plan who are not on FMLA leave. Accordingly, employers are required to give employees on FMLA leave the right to enroll in a plan or change their election while they are on leave in the same manner as for active employees, rather than waiting for the employees on FMLA leave to return to work.

These final regulations supplement the regulations that were issued at § 1.125–4 (TD 8878 issued in March of 2000 (65 FR 15548) and TD 8921 (issued in January of 2001 (66 FR 1837)) setting forth the conditions under which a cafeteria plan can permit an employee to make an election change during the year. Thus, as provided at § 1.125–4(g), if an employee goes on an FMLA leave, section 125 allows a cafeteria plan to permit the employee to make an election change if the conditions in either these final regulations or the regulations at § 1.125–4 are satisfied. Further, as described above, FMLA requires that an employee who goes on an FMLA leave have the same election rights under a group health plan as an employee who is not on FMLA leave. Thus, a cafeteria plan that is subject to FMLA must allow an employee who goes on an FMLA leave to be able to make the same election changes as an employee who is not on an FMLA leave.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Christine Keller, Division Counsel/Associate Chief Counsel (Office of Tax Exempt and Government Entities). However, other personnel from the IRS and Department of the Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.125–3 is added to read as follows:

§ 1.125–3 Effect of the Family and Medical Leave Act (FMLA) on the operation of cafeteria plans.

The following questions and answers provide guidance on the effect of the Family and Medical Leave Act (FMLA) on the operation of cafeteria plans:

Q–1: May an employee revoke coverage or cease payment of his or her share of group health plan premiums when taking unpaid Family and Medical Leave Act (FMLA), 29 U.S.C. 2601 et seq., leave?

A–1: Yes. An employer must either allow an employee on unpaid FMLA leave to revoke coverage, or continue coverage but allow the employee to discontinue payment of his or her share of the premium for group health plan coverage (including a health flexible spending arrangement (FSA)) under a cafeteria plan for the period of the FMLA leave. See 29 CFR 825.209(e). FMLA does not require that an employer allow an employee to revoke coverage if the employer pays the employee's share of premiums. As discussed in Q&A–3, if the employer continues coverage during an FMLA leave, the employer may recover the employee's share of the premiums when the employee returns to work. FMLA also provides the employee a right to be reinstated in the group health plan coverage (including a health FSA) provided under a cafeteria plan upon returning from FMLA leave if the employee's group health plan coverage terminated while on FMLA leave (either

by revocation or due to nonpayment of premiums). Such an employee is entitled, to the extent required under FMLA, to be reinstated on the same terms as prior to taking FMLA leave (including family or dependent coverage), subject to any changes in benefit levels that may have taken place during the period of FMLA leave as provided in 29 CFR 825.215(d)(1). See 29 CFR 825.209(e) and 825.215(d). In addition, such an employee has the right to revoke or change elections under § 1.125–4 (e.g., because of changes in status or cost or coverage changes as provided under § 1.125–4) under the same terms and conditions as are available to employees participating in the cafeteria plan who are working and not on FMLA leave.

Q–2: Who is responsible for making premium payments under a cafeteria plan when an employee on FMLA leave continues group health plan coverage?

A–2: FMLA provides that an employee is entitled to continue group health plan coverage during FMLA leave whether or not that coverage is provided under a health FSA or other component of a cafeteria plan. See 29 CFR 825.209(b). FMLA permits an employer to require an employee who chooses to continue group health plan coverage while on FMLA leave to be responsible for the share of group health premiums that would be allocable to the employee if the employee were working, and, for this purpose, treats amounts paid pursuant to a pre-tax salary reduction agreement as amounts allocable to the employee. However, FMLA requires the employer to continue to contribute the share of the cost of the employee's coverage that the employer was paying before the employee commenced FMLA leave. See 29 CFR 825.100(b) and 825.210(a).

Q–3: What payment options are required or permitted to be offered under a cafeteria plan to an employee who continues group health plan coverage while on unpaid FMLA leave, and what is the tax treatment of these payments?

A–3: (a) *In general.* Subject to the limitations described in paragraph (b) of this Q&A–3, a cafeteria plan may offer one or more of the following payment options, or a combination of these options, to an employee who continues group health plan coverage (including a health FSA) while on unpaid FMLA leave; provided that the payment options for employees on FMLA leave are offered on terms at least as favorable as those offered to employees not on FMLA leave. These options are referred to in this section as pre-pay, pay-as-you-go, and catch-up. See also the FMLA notice requirements at 29 CFR 825.301(b)(1)(iv).

(1) *Pre-pay.* (i) Under the pre-pay option, a cafeteria plan may permit an employee to pay, prior to commencement of the FMLA leave period, the amounts due for the FMLA leave period. However, FMLA provides that the employer may not mandate that an employee pre-pay the amounts due for the leave period. See 29 CFR 825.210(c)(3) and (4).

(ii) Contributions under the pre-pay option may be made on a pre-tax salary reduction basis from any taxable compensation (including from unused sick days or vacation days). However, see Q&A–5 of this section regarding additional restrictions on pre-tax salary reduction contributions when an employee's FMLA leave spans two cafeteria plan years.

(iii) Contributions under the pre-pay option may also be made on an after-tax basis.

(2) *Pay-as-you-go.* (i) Under the pay-as-you-go option, employees may pay their share of the premium payments on the same schedule as payments would have been made if the employee were not on leave or under any other payment schedule permitted by the Labor Regulations at 29 CFR 825.210(c) (e.g., on the same schedule as payments are made under section 4980B (relating to coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA), 26 U.S.C. 4980B), under the employer's existing rules for payment by employees on leave without pay, or under any other system voluntarily agreed to between the employer and the employee that is not inconsistent with this section or with 29 CFR 825.210(c)).

(ii) Contributions under the pay-as-you-go option are generally made by the employee on an after-tax basis. However, contributions may be made on a pre-tax basis to the extent that the contributions are made from taxable compensation (e.g., from unused sick days or vacation days) that is due the employee during the leave period.

(iii) An employer is not required to continue the group health coverage of an employee who fails to make required premium payments while on FMLA leave, provided that the employer follows the notice procedures required under FMLA. See 29 CFR 825.212. However, if the employer chooses to continue the health coverage of an employee who fails to pay his or her share of the premium payments while on FMLA leave, FMLA permits the employer to recoup the premiums (to the extent of the employee's share). See 29 CFR 825.212(b). Such recoupment may be made as set forth in paragraphs (a)(3)(i) and (ii) of this Q&A–3. See also Q&A–6 of this section regarding coverage under a health FSA when an employee fails to make the required premium payments while on FMLA leave.

(3) *Catch-up.* (i) Under the catch-up option, the employer and the employee may agree in advance that the group coverage will continue during the period of unpaid FMLA leave, and that the employee will not pay premiums until the employee returns from the FMLA leave. Where an employee is electing to use the catch-up option, the employer and the employee must agree in advance of the coverage period that: the employee elects to continue health coverage while on unpaid FMLA leave; the employer assumes responsibility for advancing payment of the premiums on the employee's behalf during the FMLA leave; and these advance amounts are to be paid by the employee when the employee returns from FMLA leave.

(ii) When an employee fails to make required premium payments while on FMLA leave, an employer is permitted to utilize the catch-up option to recoup the employee's share of premium payments when the employee returns from FMLA leave. See, e.g., 29 CFR 825.212(b). If the employer chooses to continue group coverage under these circumstances, the prior agreement of the employee, as set forth in paragraph (a)(3)(i) of this Q&A–3, is not required.

(iii) Contributions under the catch-up option may be made on a pre-tax salary reduction basis from any available taxable compensation (including from unused sick days and vacation days) after the employee returns from FMLA leave. The cafeteria plan may provide for the catch-up option to apply on a pre-tax salary reduction basis if premiums have not been paid on any other basis (i.e., have not been paid under the pre-pay or pay-as-you-go options or on a catch-up after-tax basis).

(iv) Contributions under the catch-up option may also be made on an after-tax basis.

(b) *Exceptions.* Whatever payment options are offered to employees on non-FMLA leave must be offered to employees on FMLA leave. In accordance with 29 CFR 825.210(c), cafeteria plans may offer one or more of the payment options described in paragraph (a) of this Q&A–3, with the following exceptions:

(1) FMLA does not permit the pre-pay option to be the sole option offered to employees on FMLA leave. However, the cafeteria plan may include pre-payment as an option for employees on FMLA leave, even if such option is not

offered to employees on non-FMLA leave-without-pay.

(2) FMLA allows the catch-up option to be the sole option offered to employees on FMLA leave if and only if the catch-up option is the sole option offered to employees on non-FMLA leave-without-pay.

(3) If the pay-as-you-go option is offered to employees on non-FMLA leave-without-pay, the option must also be offered to employees on FMLA leave. The employer may also offer employees on FMLA leave the pre-pay option and/or the catch-up option.

(c) *Voluntary waiver of employee payments.* In addition to the foregoing payment options, an employer may voluntarily waive, on a nondiscriminatory basis, the requirement that employees who elect to continue group health coverage while on FMLA leave pay the amounts the employees would otherwise be required to pay for the leave period.

(d) *Example.* The following example illustrates this Q&A–3:

Example. (i) Employer Y allows employees to pay premiums for group health coverage during an FMLA leave on an after-tax basis while the employee is on unpaid FMLA leave. Under the terms of Y's cafeteria plan, if an employee elects to continue health coverage during an unpaid FMLA leave and fails to pay one or more of the after-tax premium payments due for that coverage, the employee's salary after the employee returns from FMLA leave is reduced to cover unpaid premiums (i.e. the premiums that were to be paid by the employee on an after-tax basis during the FMLA leave, but were paid by the employer instead).

(ii) In this *Example,* Y's cafeteria plan satisfies the conditions in this Q&A–3. Y's cafeteria plan would also satisfy the conditions in this Q&A–3 if the plan provided for coverage to cease in the event the employee fails to make a premium payment when due during an unpaid FMLA leave.

Q–4: Do the special FMLA requirements concerning payment of premiums by an employee who continues group health plan coverage under a cafeteria plan apply if the employee is on paid FMLA leave?

A–4: No. The Labor Regulations provide that, if an employee's FMLA leave is paid leave as described at 29 CFR 825.207 and the employer mandates that the employee continue group health plan coverage while on FMLA leave, the employee's share of the premiums must be paid by the method normally used during any paid leave (e.g., by pre-tax salary reduction if the employee's share of premiums were paid by pre-tax salary reduction before the FMLA leave began). See 29 CFR 825.210(b).

Q–5: What restrictions apply to contributions when an employee's FMLA leave spans two cafeteria plan years?

A–5: (a) No amount will be included in an employee's gross income due to participation in a cafeteria plan during FMLA leave, provided that the plan complies with other generally applicable cafeteria plan requirements. Among other requirements, a plan may not operate in a manner that enables employees on FMLA leave to defer compensation from one cafeteria plan year to a subsequent cafeteria plan year. See section 125(d)(2).

(b) The following example illustrates this Q&A–5:

Example. (i) Employee A elects group health coverage under a calendar year cafeteria plan maintained by Employer X. Employee A's premium for health coverage is $100 per month throughout the 12-month period of coverage. Employee A takes FMLA leave for 12 weeks beginning on October 31 after making 10 months of premium payments totaling $1,000 (10 months × $100 = $1,000). Employee A elects to continue health coverage while on FMLA leave and utilizes the pre-pay option by applying his or her unused sick days in order to make the required premium payments due while he or she is on FMLA leave.

(ii) Because A cannot defer compensation from one plan year to a subsequent plan year, A may pre-pay the premiums due in November and December (i.e., $100 per month) on a pre-tax basis, but A cannot pre-pay the premium payment due in January on a pre-tax basis. If A participates in the cafeteria plan in the subsequent plan year, A must either pre-pay for January on an after-tax basis or use another option (e.g., pay-as-you-go, catch-up, reduction in unused sick days, etc.) to make the premium payment due in January.

Q–6: Are there special rules concerning employees taking FMLA leave who participate in health FSAs offered under a cafeteria plan?

A–6: (a) *In general.* (1) A group health plan that is a flexible spending arrangement (FSA) offered under a cafeteria plan must conform to the generally applicable rules in this section concerning employees who take FMLA leave. Thus, to the extent required by FMLA (see 29 CFR 825.209(b)), an employer must—

(i) Permit an employee taking FMLA leave to continue coverage under a health FSA while on FMLA leave; and

(ii) If an employee is on unpaid FMLA leave, either—

(A) Allow the employee to revoke coverage; or

(B) Continue coverage, but allow the employee to discontinue payment of his or her share of the premium for the health FSA under the cafeteria plan during the unpaid FMLA leave period.

(2) Under FMLA, the plan must permit the employee to be reinstated in health coverage upon return from FMLA leave on the same terms as if the employee had been working throughout the leave period, without a break in coverage. See 29 CFR 825.214(a) and 825.215(d)(1) and paragraph (b)(2) of this Q&A–6. In addition, under FMLA, a plan may require an employee to be reinstated in health coverage upon return from a period of unpaid FMLA leave, provided that employees who return from a period of unpaid leave not covered by the FMLA are also required to resume participation upon return from leave.

(b) *Coverage.* (1) Regardless of the payment option selected under Q&A–3 of this section, for so long as the employee continues health FSA coverage (or for so long as the employer continues the health FSA coverage of an employee who fails to make the required contributions as described in Q&A–3(a)(2)(iii) of this section), the full amount of the elected health FSA coverage, less any prior reimbursements, must be available to the employee at all times, including the FMLA leave period.

(2) (i) If an employee's coverage under the health FSA terminates while the employee is on FMLA leave, the employee is not entitled to receive reimbursements for claims incurred during the period when the coverage is terminated. If an employee subsequently elects or the employer requires the employee to be reinstated in the health FSA upon return from FMLA leave for the remainder of the plan year, the employee may not retroactively elect health FSA coverage for claims incurred during the period when the coverage was terminated. Upon reinstatement into a health FSA upon return from FMLA leave (either because the employee elects reinstatement or because the employer requires reinstatement), the employee has the right under FMLA: to resume coverage at the level in effect before the FMLA leave and make up the unpaid premium payments, or to resume coverage at a level that is reduced and resume premium payments at the level in effect before the FMLA leave. If an employee chooses to resume health FSA coverage at a level that is reduced, the coverage is prorated for the period during the FMLA leave for which no premiums were paid. In both cases, the coverage level is reduced by prior reimbursements.

(ii) FMLA requires that an employee on FMLA leave have the right to revoke or change elections (because of events described in § 1.125–4) under the same

terms and conditions that apply to employees participating in the cafeteria plan who are not on FMLA leave. Thus, for example, if a group health plan offers an annual open enrollment period to active employees, then, under FMLA, an employee on FMLA leave when the open enrollment is offered must be offered the right to make election changes on the same basis as other employees. Similarly, if a group health plan decides to offer a new benefit package option and allows active employees to elect the new option, then, under FMLA, an employee on FMLA leave must be allowed to elect the new option on the same basis as other employees.

(3) The following examples illustrate the rules in this Q&A–6:

Example 1. (i) Employee B elects $1,200 worth of coverage under a calendar year health FSA provided under a cafeteria plan, with an annual premium of $1,200. Employee B is permitted to pay the $1,200 through pre-tax salary reduction amounts of $100 per month throughout the 12-month period of coverage. Employee B incurs no medical expenses prior to April 1. On April 1, B takes FMLA leave after making three months of contributions totaling $300 (3 months × $100 = $300). Employee B's coverage ceases during the FMLA leave. Consequently, B makes no premium payments for the months of April, May, and June, and B is not entitled to submit claims or receive reimbursements for expenses incurred during this period. Employee B returns from FMLA leave and elects to be reinstated in the health FSA on July 1.

(ii) Employee B must be given a choice of resuming coverage at the level in effect before the FMLA leave (i.e., $1,200) and making up the unpaid premium payments ($300), or resuming health FSA coverage at a level that is reduced on a prorata basis for the period during the FMLA leave for which no premiums were paid (i.e., reduced for 3 months or 1/4 of the plan year) less prior reimbursements (i.e., $0) with premium payments due in the same monthly amount payable before the leave (i.e., $100 per month). Consequently, if B chooses to resume coverage at the level in effect before the FMLA leave, B's coverage for the remainder of the plan year would equal $1,200 and B's monthly premiums would be increased to $150 per month for the remainder of the plan year, to make up the $300 in premiums missed ($100 per month plus $50 per month ($300 divided by the remaining 6 months)). If B chooses prorated coverage, B's coverage for the remainder of the plan year would equal $900, and B would resume making premium payments of $100 per month for the remainder of the plan year.

Example 2. (i) Assume the same facts as *Example 1* except that B incurred medical expenses totaling $200 in February and obtained reimbursement of these expenses.

(ii) The results are the same as in *Example 1*, except that if B chooses to resume coverage at the level in effect before the FMLA leave, B's coverage for the remainder of the year would equal $1,000 ($1,200 reduced by $200) and the monthly payments for the remainder of the year would still equal $150. If instead B chooses prorated coverage, B's coverage for the remainder of the plan year would equal $700 ($1,200 prorated for 3 months, and then reduced by $200) and the monthly payments for the remainder of the year would still equal $100.

Example 3. (i) Assume the same facts as *Example 1* except that, prior to taking FMLA leave, B elects to continue health FSA coverage during the FMLA leave. The plan permits B (and B elects) to use the catch-up payment option described in Q&A–3 of this section, and as further permitted under the plan, B chooses to repay the $300 in missed payments on a ratable basis over the remaining 6-month period of coverage (i.e., $50 per month).

(ii) Thus, B's monthly premium payments for the remainder of the plan year will be $150 ($100 + $50).

Q–7: Are employees entitled to non-health benefits while taking FMLA leave?

A–7: FMLA does not require an employer to maintain an employee's non-health benefits (e.g., life insurance) during FMLA leave. An employee's entitlement to benefits other than group health benefits under a cafeteria plan during a period of FMLA leave is to be determined by the employer's established policy for providing such benefits when the employee is on non-FMLA leave (paid or unpaid). See 29 CFR 825.209(h). Therefore, an employee who takes FMLA leave is entitled to revoke an election of non-health benefits under a cafeteria plan to the same extent as employees taking non-FMLA leave are permitted to revoke elections of non-health benefits under a cafeteria plan. For example, election changes are permitted due to changes of status or upon enrollment for a new plan year. See § 1.125–4. However, FMLA provides that, in certain cases, an employer may continue an employee's non-health benefits under the employer's cafeteria plan while the employee is on FMLA leave in order to ensure that the employer can meet its responsibility to provide equivalent benefits to the employee upon return from unpaid FMLA. If the employer continues an employee's non-health benefits during FMLA leave, the employer is entitled to recoup the costs incurred for paying the employee's share of the premiums during the FMLA leave period. See 29 CFR 825.213(b). Such recoupment may be on a pre-tax basis. A cafeteria plan must, as required by FMLA, permit an employee whose coverage terminated while on FMLA leave (either by revocation or nonpayment of premiums) to be reinstated in the cafeteria plan on return from FMLA leave. See 29 CFR 825.214(a) and 825.215(d).

Q–8: What is the applicability date of the regulations in this section?

A–8: This section is applicable for cafeteria plan years beginning on or after January 1, 2002.

Par. 3. Section 1.125–4 is amended by adding a sentence at the end of paragraph (g) to read as follows:

§ 1.125–4 Permitted election changes.

* * * * *

(g) *Special requirements relating to the Family and Medical Leave Act.* * * * See § 1.125–3 for additional rules.

* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: October 9, 2001.

Mark Weinberger,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 01–25909 Filed 10–16–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

National Imagery and Mapping Agency

32 CFR Part 320

[NIMA Instruction 5500.7R1]

Privacy Act; Implementation

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Final rule.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is revising its existing Privacy Act procedural and exemption rule. This rule is being adopted as final.

EFFECTIVE DATE: October 9, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Willess, Associate General Counsel, at (301) 227–2953.

SUPPLEMENTARY INFORMATION: The proposed rule was previously published on August 9, 2001 at 66 FR 41811. No comments were received.

Executive Order 12866, ''Regulatory Planning and Review''.The Director of Administration and Management, Office of the Secretary of Defense, hereby determines that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment;

public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6).

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35).

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act'.

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.Executive Order 13132, ''Federalism'.

The Director of Administration and Management, Office of the Secretary of Defense, hereby certifies that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 320

Privacy.

Accordingly, 32 CFR part 320 is revised as follows:

PART 320—NATIONAL IMAGERY AND MAPPING AGENCY PRIVACY PROGRAM

Sec.

320.1 Purpose and scope.
320.2 Definitions.
320.3 Responsibilities
320.4 Procedures for requesting information.
320.5 Disclosure of requested information.
320.6 Requests for correction or amendment to record.
320.7 Agency review of request for correction or amendment of record.
320.8 Appeal of initial adverse agency determination on correction or amendment.
320.9 Disclosure of record to person other than the individual to whom it pertains.
320.10 Fees.
320.11 Penalties.
320.12 Exemptions.

Authority: Pub. L. 93–579, 88 Stat. 1986 (5 U.S.C. 552a).

§ 320.1 Purpose and scope.

(a) This part is published pursuant to the Privacy Act of 1974, as amended (5 U.S.C. 552a), (hereinafter the ''Privacy Act''). This part:

(1) Establishes or advises of the procedures whereby an individual can:

(i) Request notification of whether the National Imagery and Mapping Agency (NIMA) maintains or has disclosed a record pertaining to him in any nonexempt system of records,

(ii) Request a copy or other access to such a record or to an accounting of its disclosure,

(iii) Request that the record be amended and

(iv) Appeal any initial adverse determination of any such request;

(2) Specifies those systems of records which the Director, Headquarters NIMA has determined to be exempt from the procedures established by this regulation and from certain provisions of the Privacy Act. NIMA policy encompasses the safeguarding of individual privacy from any misuse of NIMA records and the provision of the fullest access practicable to individuals to NIMA records concerning them.

§ 320.2 Definitions.

As used in this part:

(a) *Appellate authority (AA).* A NIMA employee who has been granted authority to review the decision of the Initial Denial Authority (IDA) that has been appealed by the Privacy Act requester and make the appeal determination for NIMA on the release ability of the records in question.

(b) *Individual.* A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not ''individuals''.

(c) *Initial denial authority (IDA).* A NIMA employee, or designee, who has been granted authority to make an initial determination for NIMA that records requested in a Privacy Act request should be withheld from disclosure or release.

(d) *Maintain.* Includes maintain, collect, use or disseminate.

(e) *Personal information.* Information about an individual that identifies, relates to or is unique to, or describes him or her; e.g., a social security number, age, military rank, civilian grade, marital status, race, or salary, home/office phone numbers, etc.

(f) *Record.* Any item, collection, or grouping of information, whatever the storage media (e.g., paper, electronic, etc.), about an individual that is maintained by NIMA, including, but not limited to education, financial transactions, medical history, criminal or employment history, and that contains the individual's name or the identifying number, symbol or other identifying particulars assigned to the individual such as a finger or voice print or a photograph.

(g) *Routine use.* The disclosure of a record outside the Department of Defense for a use that is compatible with the purpose for which the information was collected and maintained by the Department of Defense. The routine use must be included in the published system notice for the system of records involved.

(h) *System of records.* A group of records under the control of NIMA from which personal information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual.

(i) *System manger.* The NIMA official who is responsible for the operation and management of a system of records.

§ 320.3 Responsibilities.

(a) Director of NIMA:

(1) Implements the NIMA privacy program.

(2) Designates the Director of the Public Affairs Office as the NIMA Initial Denial Authority;

(3) Designates the Chief of Staff as the Appellate Authority.

(4) Designates the General Counsel as the NIMA Privacy Act Officer and the principal point of contact for matters involving the NIMA privacy program.

(b) NIMA General Counsel:

(1) Oversees systems of records maintained throughout NIMA, administered by Information Services. This includes coordinating all notices of new systems of records and changes to existing systems for publication in the **Federal Register**.

(2) Coordinates all denials of requests for access to or amendment of records.

(3) Assesses and collects fees for costs associated with processing Privacy Act requests and approves or denies requests for fee waivers. Fees collected are forwarded through Financial Management Directorate to the U.S. Treasury.

(4) Prepares the annual report to the Defense Privacy Office.

(5) Oversees investigations of allegations of unauthorized maintenance, disclosure, or destruction of records.

(6) Conducts or coordinates Privacy Act training for NIMA personnel as needed, including training for public affairs officers and others who deal with the public and news media.

(c) NIMA System Managers:

(1) Ensure that all personnel who either have access to a system of records or who are engaged in developing or supervising procedures for handling records in a system of records are aware of their responsibilities for protecting personal information.

(2) Prepare notices of new systems of records and changes to existing systems for publication in the **Federal Register**.

(3) Ensure that no records subject to this part are maintained for which a systems notice has not been published.

(4) Respond to requests by individuals for access, correction, or amendment to records maintained pursuant to the NIMA privacy program.

(5) Provide recommendations to General Counsel for responses to requests from individuals for access, correction, or amendment to records.

(6) Safeguard records to ensure that they are protected from unauthorized alteration or disclosure.

(7) Dispose of records in accordance with accepted records management practices to prevent inadvertent compromise. Disposal methods such as tearing, burning, melting, chemical decomposition, pulping, pulverizing, shredding, or mutilation are considered adequate if the personal data is rendered unrecognizable or beyond reconstruction.

§ 320.4 Procedures for requesting information.

(a) Upon request in person or by mail, any individual, as defined in § 320.2, shall be informed whether or not any NIMA system of records contains a record pertaining to him.

(b) Any individual requesting such information in person may appear at NIMA General Counsel Office (refer to the NIMA address list at paragraph (e) of this section) or at the NIMA office thought to maintain the record in question and shall provide:

(1) Information sufficient to identify the record, e.g., the individual's own name, date of birth, place of birth, and, if possible, an indication of the type of record believed to contain information concerning the individual, and

(2) Acceptable identification to verify the individual's identity, e.g., driver's license, employee identification card or Medicare card.

(c) Any individual requesting such information by mail shall address the request to the Office of General Counsel (refer to paragraph (e) of this section) or NIMA office thought to maintain the record in question and shall include in such request the following:

(1) Information sufficient to identify the record, e.g., the individual's own name, date of birth, place of birth, and, if possible, an indication of the type of record believed to contain information concerning the individual, and

(2) A notarized statement or unsworn declaration in accordance with 28 U.S.C. 1746 to verify the individual's identity, if, in the opinion of the NIMA system manager, the sensitivity of the material involved warrants.

(d) NIMA procedures on requests for information. Upon receipt of a request for information made in accordance with these regulations, notice of the existence or nonexistence of any records described in such requests will be furnished to the requesting party within ten working days of receipt.

(e) Written requests for access to records should be sent to NIMA Bethesda, ATTN: NIMA/GC, Mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003.

(f) Requests for information made under the Freedom of Information Act are processed in accordance with ''DoD Freedom of Information Act Program Regulation'' (32 CFR part 286).

(g) Requests for personal information from the Government Accounting Office (GAO) are processed in accordance with DoD Directive 7650.1 [1] ''GAO Access to Records''.

§ 320.5 Disclosure of requested information.

(a) Upon request by an individual made in accordance with the procedures set forth in this section, such individual shall be granted access to any pertinent record which is contained in a nonexempt NIMA system of records. However, nothing in this section shall allow an individual access to any information compiled by NIMA in reasonable anticipation of a civil or criminal action or proceeding.

(b) Procedures for requests for access to records. Any individual may request access to a pertinent NIMA record in person or by mail.

(1) Any individual making such request in person shall appear at Office of General Counsel, NIMA Bethesda, ATTN: NIMA/GC, Mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003, and shall provide identification to verify the individuals' identity, e.g., driver's license, employee identification card, or Medicare card.

(2) Any individual making a request for access to records by mail shall address such request to the Office of General Counsel, NIMA Bethesda, ATTN: NIMA/GC, Mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003; and shall include therein a signed, notarized statement, or an unsworn statement or declaration in accordance with 28 U.S.C. 1746, to verify identity.

(3) Any individual requesting access to records under this section in person may be accompanied by a person of the individual's own choosing while reviewing the record requested. If an individual elects to be so accompanied, said individual shall give notice of such election in the request and shall provide a written statement authorizing disclosure of the record in the presence of the accompanying person. Failure to so notify NIMA in a request for access shall be deemed to be a decision by the individual not to be accompanied.

(c) NIMA determination of requests for access.

(1) Upon receipt of a request made in accordance with this section, the NIMA Office of General Counsel or NIMA office having responsibility for maintenance of the record in question shall release the record, or refer it to an Initial Denial Authority, who shall:

(i) Determine whether such request shall be granted.

(ii) Make such determination and provide notification within 30 working days after receipt of such request.

(iii) Notify the individual that fees for reproducing copies of records will be assessed and should be remitted before the copies may be delivered. Fee schedule and rules for assessing fees are contained in § 320.9.

(iv) Requests for access to personal records may be denied only by an agency official authorized to act as an

[1] Copies may be obtained via Internet at http://www.dtic.mil/whs/directives

Initial Denial Authority or Final Denial Authority, after coordination with the Office of General Counsel.

(2) If access to a record is denied because such information has been compiled by NIMA in reasonable anticipation of a civil or criminal action or proceeding, the individual will be notified of such determination and his right to judicial appeal under 5 U.S.C. 552a(g).

(d) Manner of providing access.

(1) If access is granted, the individual making the request shall notify NIMA whether the records requested are to be copied and mailed.

(2) If the records are to be made available for personal inspection the individual shall arrange for a mutually agreeable time and place for inspection of the record. NIMA reserves the right to require the presence of a NIMA officer or employee during personal inspection of any record pursuant to this section and to request of the individual that a signed acknowledgment of the fact be provided that access to the record in question was granted by NIMA.

§ 320.6 Request for correction or amendment to record.

(a) Any individual may request amendment of a record pertaining to said individual.

(b) After inspection of a pertinent record, the individual may file a request in writing with the NIMA Office of General Counsel for amendment. Such requests shall specify the particular portions of the record to be amended, the desired amendments and the reasons, supported by documentary proof, if available.

§ 320.7 Agency review of request for correction or amendment of record.

(a) Not later than 10 working days after receipt of a request to amend a record, in whole or in part, the NIMA Office of General Counsel, or NIMA office having responsibility for maintenance of the record in question, shall correct any portion of the record which the individual demonstrates is not accurate, relevant, timely or complete, and thereafter either inform the individual of such correction or process the request for denial.

(b) Denials of requests for amendment of a record will be made only by an agency official authorized to act as an Initial Denial Authority, after coordination with the Office of General Counsel. The denial letter will inform the individual of the denial to amend the record setting forth the reasons therefor and notifying the individual of his right to appeal the decision to NIMA.

(c) Any person or other agency to whom the record has been previously disclosed shall be informed of any correction or notation of dispute with respect to such records.

(d) These provisions for amending records are not intended to permit the alteration of evidence previously presented during any administrative or quasi-judicial proceeding, such as an employee grievance case. Any changes in such records should be made only through the established procedures for such cases. Further, these provisions are not designed to permit collateral attack upon what has already been the subject of an administrative or quasi-judicial action. For example, an individual may not use this procedure to challenge the final decision on a grievance, but the individual would be able to challenge the fact that such action has been incorrectly recorded in his file.

§ 320.8 Appeal of initial adverse agency determination on correction or amendment.

(a) An individual whose request for amendment of a record pertaining to him may further request a review of such determination in accordance with this section.

(b) Not later than 30 working days following receipt of notification of denial to amend, an individual may file an appeal of such decision with NIMA. The appeal shall be in writing, mailed or delivered to NIMA, ATTN: Mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003. The appeal must identify the records involved, indicate the dates of the request and adverse determination, and indicate the express basis for that determination. In addition, the letter of appeal shall state briefly and succinctly the reasons why the adverse determination should be reversed.

(c) Upon appeal from a denial to amend a record the NIMA Appellate Authority or designee shall make a determination whether to amend the record and must notify the individual of that determination by mail, not later than 10 working days after receipt of such appeal, unless extended pursuant to paragraph (d) of this section.

(1) The Appellate Authority or designee shall also notify the individual of the provisions of the Privacy Act of 1974 regarding judicial review of the NIMA Appellate Authority's determination.

(2) If on appeal the denial to amend the record is upheld, the individual shall be permitted to file a statement setting forth the reasons for disagreement with the Appellate Authority's determination and such statement shall be appended to the record in question.

(d) The Appellate Authority or designee may extend up to 30 days the time period in which to make a determination on an appeal from denial to amend a record for the reason that a fair and equitable review cannot be completed within the prescribed time period.

§ 320.9 Disclosure of record to person other than the individual to whom it pertains.

(a) No officer or employee of NIMA will disclose any record which is contained in a system of records, by any means of communication to any person or agency within or outside the Department of Defense without the request or consent of the individual to whom the record pertains, except as described in to 32 CFR 310.41; Appendix C to part 310 of this chapter; and/or a NIMA Privacy Act system of records notice.

(b) Any such record may be disclosed to any person or other agency only upon written request, of the individual to whom the record pertains.

(c) In the absence of a written consent from the individual to whom the record pertains, such record may be disclosed only provided such disclosure is:

(1) To those officers and employees of the DoD who have a need for the record in the performance of their duties.

(2) Required under the Freedom of Information Act (32 CFR part 286).

(3) For a routine use established within the system of records notice.

(4) To the Bureau of Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13.

(5) To a recipient who has provided the NIMA with adequate advance written assurance that the record will be used solely as a statistical research or reporting record and the record is transferred in a form that is not individually identifiable and will not be used to make any decisions about the rights, benefits or entitlements of an individual.

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government or for evaluation by the Administrator of the General Services Administration or his designee to determine whether the record has such value.

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity authorized by law,

provided the head of the agency or instrumentality has made a prior written request to the Director, NIMA specifying the particular record and the law enforcement activity for which it is sought.

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual.

(9) To either house of Congress, and, to the extent of the matter within its jurisdiction, any committee or subcommittee or joint committee of Congress.

(10) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the GAO.

(11) Under an order of a court of competent jurisdiction.

(12) To a consumer reporting agency in accordance with section 3711(f) of title 31.

(d) Except for disclosures made pursuant to paragraphs (c)(1) and (2) of this section, an accurate accounting will be kept of the data, nature and purpose of each disclosure of a record to any person or agency, and the name and address of the person or agency to whom the disclosure was made. The accounting of disclosures will be made available for review by the subject of a record at his request except for disclosures made pursuant to paragraph (c)(7) of this section. If an accounting of disclosure has been made, any person or agency contained therein will be informed of any correction or notation of dispute made pursuant to section 320.6 of this part.

§ 320.10 Fees.

Individuals may request copies for retention of any documents to which they are granted access to NIMA records pertaining to them. Requesters will not be charged for the first copy of any records provided; however, duplicate copies will require a charge to cover costs of reproduction. Such charges will be computed in accordance with 32 CFR part 310.

§ 320.11 Penalties.

The Privacy Act of 1974 (5 U.S.C. 552a(i)(3)) makes it a misdemeanor subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. The Act also establishes similar penalties for violations by NIMA employees of the Act or regulations established thereunder.

§ 320.12 Exemptions.

(a) *Exempt systems of record.* All systems of records maintained by the NIMA and its components shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and that is required by Executive Order to be withheld in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records, including those not otherwise specifically designated for exemptions herein, which contain isolated items of properly classified information.

(b) [Reserved].

Dated: October 11, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–26072 Filed 10–16–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–182]

RIN 2115–AE47

Drawbridge Operation Regulations:Hutchinson River, Eastchester Creek, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations that govern the operation of the Pelham Parkway Bridge, mile 0.4, across the Hutchinson River in New York. This temporary rule, in effect from November 15, 2001 through May 12, 2002, requires the bridge to open on signal, after a one-hour advance notice is given, between 7 a.m. and 5 p.m., Monday through Friday. This action is necessary to facilitate the safe removal of construction workers and equipment from the moveable bridge structure at times when the bridge must open for vessel traffic.

DATES: This temporary final rule is effective from November 15, 2001 through May 12, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a Notice of proposed rulemaking in the **Federal Register**.

This closure is not expected to have any significant impact on navigation because vessel traffic on the Hutchinson River is mostly commercial vessels that must schedule their transits at or near high tide. The commercial vessels that require openings normally call the bridge in advance when scheduling their transits. The Coast Guard and the bridge owner contacted all the commercial waterway users and facilities and it was determined as a result of that coordination that the one-hour advance requirement would not adversely effect any existing waterway operators since they call the bridge in advance of requested openings normally.

Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed to facilitate necessary electrical and mechanical maintenance at the bridge to insure the continued safe reliable operation of the bridge.

Background and Purpose

The Pelham Parkway Bridge has a vertical clearance of 13 feet at mean high water and 20 feet at mean low water in the closed position. The current operating regulations for the bridge, listed at 33 CFR 117.793, require the bridge to open on signal at all times.

The bridge owner, New York City Department of Transportation (NYCDOT), requested a temporary change to the operating regulations governing the Pelham Parkway Bridge to facilitate the safe evacuation of construction workers and equipment from the bridge when the bridge is required to open for vessel traffic. This temporary final rule will require a one-hour advance notice for openings, 7 a.m. to 5 p.m., Monday through Friday, from November 15, 2001 through May 12, 2002. The Coast Guard believes this temporary change to the drawbridge operation regulations is reasonable and will meet the present needs of navigation based upon coordination

with the operators that use this waterway.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge will continue to open at all times for vessel traffic after a one-hour advance notice is given.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this temporary final rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the bridge will continue to open for vessel traffic at all times after a one-hour advance notice is given.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this temporary final rule.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. From November 15, 2001, through May 12, 2002, § 117.T793 is temporarily amended by adding a new paragraph (d) to read as follows:

§ 117.T793 Hutchinson River (Eastchester Creek).

* * * * *

(d) The Pelham Parkway Bridge, mile 0.4, shall open on signal; except that, from 7 a.m. to 5 p.m., Monday through Friday, the draw shall open on signal after at least a one-hour advance notice is given by calling the number posted at the bridge.

Dated: October 3, 2001.

G.N. Naccara,

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

[FR Doc. 01–26151 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–157]

Drawbridge Operation Regulations: Harlem River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Macombs Dam Bridge, mile 3.2, across the Harlem River in New York City, New York. This deviation from the regulations will allow the bridge to remain in the closed position from November 1, 2001 through December 30, 2001. This temporary deviation is necessary to facilitate necessary repairs at the bridge.

DATES: This deviation is effective from November 1, 2001 through December 30, 2001.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION:

The Macombs Dam Bridge, mile 3.2, across the Harlem River has a vertical clearance in the closed position of 27 feet at mean high water and 32 feet at mean low water. The existing drawbridge operating regulations at 33 CFR 117.789 require the bridge to open on signal from 10 a.m. to 5 p.m. if at least a four-hour notice is given.

The bridge owner, The New York City Department of Transportation (NYCDOT), requested a temporary deviation from the drawbridge operating regulations to facilitate scheduled maintenance, replacement of structural steel and the bridge roadway deck.

This deviation to the operating regulations will allow the bridge to remain in the closed position from November 1, 2001 through December 30, 2001.

This deviation from the operating regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: October 3, 2001.

G.N. Naccara,

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

[FR Doc. 01–26150 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–003]

RIN 2115–AE47

Drawbridge Operating Regulation; Terrebonne Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard is changing the operating schedule for the Howard Avenue bridge across Terrebonne Bayou, mile 35.0, at Houma, Terrebonne Parish, LA. The rule establishes the same operating schedule for this bridge as the Daigleville Bridge, mile 35.5, to facilitate the flow of vehicular traffic during rush hours while still meeting the reasonable needs of navigation. The new schedule will provide a safe, continuous vessel passage through the draws. This action is expected to relieve the bridge owner from the requirement to separately man each bridge by using roving drawtenders to operate the bridges when necessary.

DATES: This rule is effective November 16, 2001.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will be available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, Commander (obc), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard published a notice of proposed rulemaking on March 19, 2001 (66 FR 15373). The proposed rule would have permitted the draws of the S3087 bridge, the Howard Avenue bridge, and the Daigleville bridge to open on signal if at least four hours notice were given, except that, the draw need not open for the passage of vessels Monday through Friday, except Federal holidays, from 6 a.m. to 8 a.m. and 4 p.m. to 6 p.m.

Two letters were received in response to the public notice. The Louisiana Department of Agriculture offered no comments. Mr. Richard Block of the Gulf Coast Mariners Association stated that the changes requested would adversely impact commercial businesses and commercial vessel traffic in the area. Comments received prompted the Coast Guard to reevaluate the proposal. The response letters were forwarded to the Louisiana Department of Transportation and Development (LDOTD) for their reevaluation.

LDOTD responded to the Coast Guard with a new proposal. They determined that the special operating regulations for the S3087 bridge and the Daigleville bridge would remain unchanged and they would only request a change to the operation of the Howard Avenue Bridge. They requested that the Howard Avenue bridge be operated on the same schedule as the Daigleville bridge which is 0.5 miles upstream of the Howard Avenue bridge.

The Coast Guard published a supplemental notice of proposed rulemaking in the **Federal Register** on July 12, 2001 (66 FR 36525). The proposed rule would place this bridge on the same operating schedule as the Daigleville Bridge, mile 35.5, to facilitate the flow of vehicular traffic during rush hours while still meeting the reasonable needs of navigation.

Background and Purpose

The S3087 Bridge, mile 33.9, the newly constructed Howard Avenue Bridge, mile 35.0, and the Daigleville Bridge, mile 35.5 all lie within a 1.6 mile section on Terrebonne Bayou. These three bridges are currently on three different operating schedules, which requires the owner to man them at various times. Due to the close proximity of the bridges to one another and the low volume of waterway traffic, the Department of Transportation and Development (DOTD) for the State of Louisiana has requested that the Coast Guard revise the regulations. 33 CFR 117.505 governs the S3087 and Daigleville Bridges. DOTD wanted to include the Howard Avenue Bridge in a new regulation placing all three bridges under the same operating schedule. Currently, the Howard Avenue Bridge opens on signal at any time for the passage of vessels. Due to a comment in response to the NPRM, DOTD revised their request to have the Howard Avenue bridge placed on the same schedule as the Daigleville bridge. The SR 3087 bridge will remain on its existing schedule.

Discussion of Comments and Changes

Two responses were received for the NPRM. One response was received from the Supplemental Notice of Proposed Rulemaking. The National Marine Fisheries Service offered no comments. No public hearing was requested, none was held and no changes have been incorporated into the Final Rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This rule allows commercial fishing vessels ample opportunity to transit this waterway before and after the peak vehicular traffic period that occurs between 7 a.m. and 8:30 a.m. and 4:30 p.m. and 6 p.m. according to the vehicle traffic surveys.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under the 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121,

we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule would not have implications for federalism under that Order. No comments were received with regards to federalism during the NPRM or SNPRM comment periods.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate. No comments were received with regards to unfunded mandates during the NPRM or SNPRM comment periods.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. No comments were received with regards to the taking of private property during the NPRM or SNPRM comment periods.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. No comments were received with regards to the taking of private property during the NPRM or SNPRM comment periods.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. Bridge Administration Program actions that can be categorically excluded include promulgation of operating regulations or procedures for drawbridges. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. In § 117.505, paragraph (d) is revised to read as follows:

§ 117.505 Terrebonne Bayou.

* * * * *

(d) The draws of the Howard Avenue bridge, mile 35.0, and the Daigleville bridge, mile 35.5, at Houma, shall open on signal; except that, the draws need not open for the passage of vessels Monday through Friday, except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m. From 10 p.m. to 6 a.m., the draws shall open on signal if at least four hours notice is given.

* * * * *

Dated: October 5, 2001.

Roy J. Casto,

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

[FR Doc. 01–26149 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–01–180]

RIN 2115–AE47

Drawbridge Operation Regulations: Harlem River, Newtown Creek, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Willis Avenue Bridge, mile 1.5, and the Madison Avenue Bridge, mile 2.3, both across the Harlem River, and the Pulaski Bridge, mile 0.6, across Newtown Creek in New York City, New York. This temporary final rule allows the bridge owner to close the above three bridges on November 4, 2001, as follows: Willis Avenue and Madison Avenue bridges from 10 a.m. to 5 p.m. and the Pulaski Bridge from 8:30 a.m. to 3 p.m. This action is necessary to facilitate public safety during the running of the New York City Marathon.

DATES: This temporary final rule is effective on November 4, 2001.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after publication in the **Federal Register**. Conclusive information about the New York City Marathon was not provided to the Coast Guard until September 10, 2001, making it impossible to draft or publish a NPRM or a final rule 30 days in advance of its effective date. This closure is not expected to have a significant impact on navigation because vessel traffic on the Harlem River and Newtown Creek is mostly commercial vessels that normally pass under the draws without openings. The commercial vessels that do require openings are work barges that do not operate on Sundays.

Any delay encountered in this regulation's effective date would be unnecessary and contrary to the public interest since immediate action is needed to close the bridge in order to provide for public safety and the safety of marathon participants.

Background and Purpose

The Willis Avenue Bridge, mile 1.5, across the Harlem River has a vertical clearance of 24 feet at mean high water (MHW) and 30 feet at mean low water (MLW) in the closed position. The Madison Avenue Bridge, mile 2.3, across the Harlem River has a vertical clearance of 25 feet at MHW and 29 feet at MLW in the closed position. The Pulaski Bridge across Newtown Creek, mile 0.6, has a vertical clearance of 39 feet at MHW and 43 feet at MLW in the closed position.

The current operating regulations for the Willis Avenue and Madison Avenue bridges, listed at 33 CFR 117.789(c), require the bridges to open on signal from 10 a.m. to 5 p.m., if at least four-hours notice is given. The current operating regulations for the Pulaski Bridge listed at 117.801(g) require it to open on signal if at least a two-hour advance notice is given.

The bridge owner, New York City Department of Transportation (NYCDOT), requested a temporary change to the operating regulations governing the Willis Avenue Bridge, the Madison Avenue Bridge, and the Pulaski Bridge, to allow the bridges to remain in the closed position at different times on November 4, 2001, to facilitate the running of the New York City Marathon. Vessels that can pass under the bridges without bridge openings may do so at all times during these bridge closures.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the requested closures are of short duration and on Sunday when there have been few requests to open these bridges.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612) we considered whether this temporary final rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that the bridge closures are of short duration and on Sunday when there have been few requests to open these bridges.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this temporary final rule.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. On November 4, 2001, from 10 a.m. to 5 p.m., in § 117.789 paragraph (c) is temporarily suspended and a new paragraph (g) is added to read as follows:

§ 117.789 Harlem River.

* * * * *

(g) The draws of the bridges at 103rd Street, mile 0.0, 3rd Avenue, mile 1.9, 145th Street, mile 2.8, Macombs Dam, mile 3.2, 207th Street, mile 6.0, and the

two Broadway Bridges, mile 6.8, shall open on signal if at least four-hours notice is given to the New York City Highway Radio (Hotline) Room. The Willis Avenue Bridge, mile 1.5, and Madison Avenue Bridge, mile 2.3, need not open for vessel traffic.

3. On November 4, 2001, from 8:30 a.m. to 3 p.m., § 117.801 (g) is temporarily suspended and a new paragraph (h) is added to read as follows:

§ 117.801 Newtown Creek, Dutch Kills, English Kills, and their tributaries.

* * * * *

(h) The draw of the Pulaski Bridge, mile 0.6, across Newtown Creek, need not open for vessel traffic. The Greenpoint Avenue Bridge, mile 1.3, across Newtown Creek between Brooklyn and Queens, shall open on signal if at least a two-hour advance notice is given to the New York City Department of Transportation (NYCDOT) Radio Hotline or NYCDOT Bridge Operations Office.

Dated: October 5, 2001.

G.N. Naccara,

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

[FR Doc. 01–26152 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–01–037]

Drawbridge Operating Regulation; Inner Harbor Navigation Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the SR 46 (St. Claude Avenue) bridge across the Inner Harbor Navigation Canal, mile 0.5 (GIWW mile 6.2 East of Harvey Lock) in New Orleans, Orleans Parish, Louisiana. This deviation allows the Board of Commissioners of the Port of New Orleans to close the bridge to navigation from 6 a.m. until midnight on Saturday, October 27, 2001. This temporary deviation is issued to allow for the repair of the riverside operating strut guide of the bridge.

DATES: This deviation is effective from 6 a.m. until midnight on Saturday, October 27, 2001.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), 501 Magazine Street, New Orleans, Louisiana, 70130–3396. The Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, BridgeAdministration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The St. Claude Avenue bascule bridge across the Inner Harbor Navigation Canal, mile 0.5 (GIWW mile 6.2 East of Harvey Lock) in New Orleans, Orleans Parish, Louisiana, has a vertical clearance of 1 foot above high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists mainly of tugs with tows and some ships. The bridge owner requested a temporary deviation from the normal operation of the drawbridge in order to accommodate repair work on the bridge. These repairs are necessary for the continued operation of the bridge.

This deviation allows the draw of the St. Claude Avenue bascule bridge across the Inner Harbor Navigation Canal, mile 0.5 (GIWW mile 6.2 East of Harvey Lock), to remain closed to navigation from 6 a.m. until midnight on Saturday, October 27, 2001.

Dated: October 5, 2001.

Roy J. Casto,

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

[FR Doc. 01–26163 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Jacksonville–01–110]

RIN 2115–AA97

Security Zones; Port of Jacksonville and Port Canaveral, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones 100 yards around all tank vessels, passenger vessels and military pre-positioned ships when these vessels enter, are moored in, or depart the Ports of Jacksonville or Canaveral. These security zones are needed for national security reasons to protect the public and ports from potential subversive acts. Entry into these zones is prohibited, unless specifically authorized by the Captain of the Port, Jacksonville, Florida or his designated representative.

DATES: This regulation becomes effective at 11:59 p.m. on October 3, 2001 and will terminate at 11:59 p.m. on June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of [COTP Jacksonville 01–110] and are available for inspection or copying at Marine Safety Office Jacksonville, 7820 Arlington Expressway, Suite 400, Jacksonville, FL 32211, between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT(jg) Brian G. Knapp, Coast Guard Marine Safety Office Jacksonville, at (904) 232–2957.

SUPPLEMENTARY INFORMATION:

Regulatory Information

A notice of proposed rulemaking (NPRM) for this regulation was not published. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule was issued date would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard will issue a broadcast notice to mariners and place Coast Guard vessels in the vicinity of these zones to advise mariners of the restriction.

Background and Purpose

Based on the September 11, 2001, terrorist attack on the World Trade Center in New York and the Pentagon in Arlington, VA, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Ports Jacksonville or Canaveral, Florida, against tank vessels, cruise ships and military pre-positioned vessels entering, departing and moored within these ports. These temporary security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30°23′35″ N, 81°19′08″ W, when entering the port of Jacksonville, or pass Port Canaveral Channel Entrance Buoys # 3 or # 4, at respective approximate positions 28°22.7′ N, 80°31.8′ W, and

28°23.7′ N, 80°29.2′ W, when entering Port Canaveral. The zone for a vessel is deactivated when the vessel passes these buoys on its departure from port.

Military pre-positioned ships are U.S. commercial ships on long-term charter to the Military Sealift Command. They are utilized to transport military equipment and cargo. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHz) of all active security zones in port by identifying the names of the vessels around which they are centered. There will be Coast Guard and local police department patrol vessels on scene to monitor traffic through these areas. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port, Jacksonville, Florida.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979) because these zones will encompass a small portion of the waterway for a limited time and vessels may be allowed to enter the zones on a case-by-case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic effect upon a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because small entities may be allowed to enter on a case by case basis with the authorization of the Captain of the Port.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implication for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationships between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or use. We have determined that it is not a ''significant energy action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

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

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

PART 165—[Amended]

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

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

2. A new temporary § 165.T07–110 is added to read as follows:

§ 165.T07–110 Security Zones; Ports of Jacksonville and Canaveral, Florida.

(a) *Regulated area.* Temporary moving security zones are established 100 yards around all tank vessels, passenger vessels and military pre-positioned ships during transits entering or departing the ports of Jacksonville and Canaveral, Florida. These moving security zones are activated when the subject vessels pass the St. Johns River Sea Buoy, at approximate position 30°23′35″ N, 81°19′08″ W, when entering the port of Jacksonville, or pass Port Canaveral Channel Entrance Buoys #3 or #4, at respective approximate positions 28°22.7′ N, 80°31.8′ W, and 28°23.7′ N, 80°29.2′ W, when entering Port Canaveral. Temporary fixed security zones are established 100 yards around all tank vessels, passenger vessels and military pre-positioned ships docked in the Ports Jacksonville and Canaveral, Florida.

(b) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into these zones is prohibited except as authorized by the Captain of the Port, or a Coast Guard commissioned, warrant, or petty officer designated by him. The Captain of the Port will notify the public via Marine Safety Radio Broadcast on VHF–FM Marine Band Radio, Channel 22 (157.1 MHz) of all active security zones in port by identifying the names of the vessels around which they are centered.

(c) *Dates.* This section becomes effective at 11:59 p.m. on October 3, 2001 and will terminate at 11:59 p.m. on June 15, 2002.

Dated: September 29, 2001.

M. M. Rosecrans,

Captain, U. S. Coast Guard, Captain of the Port Jacksonville.

[FR Doc. 01–26161 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 01–008]

RIN 2115–AA97

Security Zone; San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the navigable waters of the United States from the entrance to San Francisco Bay out to 12 nautical miles. The need for this security zone is based on recent terrorist actions against the United States. Persons and vessels will be prohibited from entering, transiting through or anchoring within the security zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This security zone will be in effect from 5 p.m. (PDT) on September 13, 2001 to 3:59 p.m. (PDT) March 12, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of docket COTP San Francisco Bay 01–008, and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office, San Francisco Bay, Coast Guard Island, Alameda, CA 94501 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

As authorized by 5 U.S.C. 553, we did not publish a notice of proposed rulemaking (NPRM) for this regulation. In keeping with the requirements of 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and that under 5 U.S.C. 553 (d)(3), good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. Due to the recent terrorist attacks on the United States, a heightened level of security has been established concerning all vessels entering navigable waters of the United States. As a result, this security zone is needed to protect the United States and more specifically the people, ports, waterways, and properties of the San Francisco Bay area. The incidents necessitating this security zone did not allow a 30-day period for publication prior to the issuance of this temporary regulation; publishing an NPRM and delaying the effective date would be contrary to public and national security interests.

Background and Purpose

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism. 33 U.S.C. 1226. Due to the terrorist acts against the United States on September 11, 2001, the Coast Guard is establishing a temporary security zone in the navigable waters of the United States from the entrance to San Francisco Bay out to 12 nautical miles. Under the PWSA, navigable waters of the United States includes all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988. This Presidential proclamation declared that the territorial sea of the United States extends to 12 nautical miles from the baselines of the United States determined in accordance with international law. This security zone will encompass navigable waters within a 12-nautical-mile-arc that is drawn seaward from the following coordinate: latitude 37°48′16″ N and longitude 122°31′09″ W.

Recent terrorist actions against the United States have increased the need for safety and security measures for U.S. ports and waterways. The zone will be in effect from 5 p.m. (PDT) on September 13, 2001 to 3:59 p.m. (PDT) on March 12, 2002.

This temporary security zone is necessary to provide for the safety and security of the United States of America and the people, ports, waterways and properties within the San Francisco Bay area. The security zone extends from the entrance of San Francisco Bay to the limit of the navigable waters of the United States, a distance of 12 nautical miles, and will be enforced by Coast Guard patrol craft. Persons and vessels are prohibited from entering into or transiting through this security zone unless authorized by the Captain of the Port, or his designated representative.

Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 6 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions. Any person who violates this regulation, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years (class C felony).

Regulatory Evaluation

This temporary final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under

section 6 (a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). Due to the recent terrorist actions against the United States the implementation of this security zone is necessary for the protection of the United States and its people.

The size of the zone is the minimum necessary to provide adequate protection for the public, vessels, and vessel crews. Any vessels seeking entry into or movement within the security zone must request permission from the Captain of the Port or his authorized patrol representative. Any hardships experienced by persons or vessels are considered minimal compared to the national interest in protecting the public, vessels, and vessel crews from the further devastating consequences of the aforementioned acts of terrorism, and from potential future sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

This security zone will not have a significant impact on a substantial number of small entities because although the security zone will occupy the entire entrance of San Francisco Bay, vessels will receive authorization to transit into San Francisco Bay by the Captain of the Port on a case-by-case basis. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance For Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Andrew B. Cheney, U.S. Coast Guard Marine Office San Francisco Bay at (510) 437–3073.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation, because we are establishing a security zone. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add new § 165.T11–094 to read as follows:

§ 165.T11–094 Security Zone; Navigable Waters of the United States leading into San Francisco Bay, San Francisco, CA.

(a) *Location.* The security zone will encompass navigable waters within a 12-nautical-mile arc that is drawn seaward from the following coordinate: latitude 37°48′16″ N and longitude 122°31′09″ W.

(b) *Effective dates.* This section will be in effect from 5 p.m. (PDT) on September 13, 2001 to 3:59 p.m. (PDT) on March 12, 2002. If the need for the security zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this security zone and will also announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* This section is also issued under section 7 of the Ports and Waterways Safety Act (33 U.S.C. § 1226). In accordance with the general regulations in § 165.33 of this part, no person or vessel may enter or remain in the security zone established by this temporary section, unless authorized by the Captain of the Port, or his designated representative. All other general regulations of § 165.33 of this part apply in the security zone established by this temporary section.

Dated: September 13, 2001.

L.L. Hereth,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 01–26160 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Honolulu 01–006]

RIN 2115–AA97

Security Zone; Various Areas on the Islands of Oahu, Maui, Hawaii, and Kauai, HI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing security zones in designated waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI for a period of six-months. These security zones are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature during operations and will extend from the surface of the water to the ocean floor. The activation and deactivation of these six-month security zones will be announced by Broadcast Notice to Mariners as required. When the zones are activated, entry into these zones is prohibited unless authorized by the U. S. Coast Guard Captain of the Port Honolulu, HI.

EFFECTIVE DATES: This rule is effective from 6 a.m. HST September 22, 2001, to 4 p.m. HST March 22, 2002.

ADDRESSES: The docket for this rulemaking is maintained by the Commanding Officer, U.S. Coast Guard Marine Safety Office Honolulu, 433 Ala Moana Blvd., Honolulu, Hawaii 96813. Docket material is available for inspection or copying at this location between 7 a.m. and 4:30 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR R. T. Spaulding, U. S. Coast Guard Marine Safety Office Honolulu, Hawaii at (808) 522–8264.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Recent terrorist incidents in New York and Washington, D.C. have called for the implementation of additional measures to protect the national security. These temporary rules are intended to provide for the safety and security of the public, maritime commerce, and transportation, by creating security zones in designated harbors, anchorages, facilities, and adjacent navigable waters of the United States. In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying this action's effective date would be contrary to the public interest since immediate action is needed to protect various areas on the islands of Oahu, Maui, Hawaii, and Kauai, HI, any vessel moored there, and all involved personnel. Details were not available 30 days prior to the event, thus, there was insufficient time to publish a proposed rule in advance of the event or to provide a delayed effective date. Under these circumstances, following normal rulemaking procedures would be impracticable.

Background and Purpose

The Coast Guard is establishing designated security zones in the waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, HI for a period of six-months. These security zones are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature during operations. These security zones extend from the surface of the water to the ocean floor. Entry into these zones is prohibited unless authorized by the U. S. Coast Guard Captain of the Port Honolulu, HI. Representatives of the Captain of the Port Honolulu will enforce these security zones. The Captain of the Port may be assisted by other federal or state agencies.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The U. S. Coast Guard expects the economic impact of this action to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the short duration of the zone and the limited geographic area affected by it.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The U. S. Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities. No small business impacts are anticipated due to the small size of the zone and the short duration of the security zone in any one area.

Assistance for Small Entities

Because we did not anticipate any small business impacts, we did not offer

assistance to small entities in understanding the rule.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520 et seq.).

Federalism

The U. S. Coast Guard has analyzed this rule under Executive Order 13132, and has determined this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The U. S. Coast Guard considered the environmental impact of this action and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. As an emergency action, the environmental analysis requisite regulatory consultations, and categorical exclusion determination, will be prepared and submitted after establishment of this temporary security zone, and will be available for inspection or copying where indicated under addresses.

List of Subjects in 33 CFR Part 165

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

Regulation

For the reasons set out in the preamble, the Coast Guard amends part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

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

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

2. From 6 a.m. September 22, 2001, until 4 p.m. March 22, 2002, a new § 165.T14–058 is added to read as follows:

§ 165.T14–058 Security Zones: Various areas near the islands of Oahu, Maui, Hawaii, and Kauai, HI.

(a) *Location.* The following areas are security zones:

(1) All waters of Honolulu Harbor and entrance channel that are shoreward of the Sea Buoy in position 21°–17.42′ N/157°–52.49′ W.

(2) The waters around the Tesoro Single Point Mooring extending 1,000 yards in all directions from position 21°–16.4′ N/158°–05.5′ W.

(3) The Honolulu International Airport Reef Runway and adjacent waters bounded by a line connecting the following coordinates: Honolulu Harbor entrance light at 21°–17.42′ N/157°–52.06′ W, thence in a northwesterly direction to the reef runway at 21°–18.25′ N/157°–55.5′ W, thence in a southerly direction to 21°–16.9′ N/157°–55.5′ W, thence in an easterly direction to the point of origin.

(4) The waters extending out 500 feet in all directions from cruise ship vessels anchored off Lahaina Small Boat Harbor, Maui.

(5) The Kahului Maui Harbor and Entrance Channel consisting of all waters shoreward of a line drawn between breakwater lights number 3 and number 4.

(6) The waters extending out 500 feet in all directions from cruise ship vessels anchored off Kailua-Kona Small Boat Harbor, Hawaii.

(7) All waters within the Nawiliwili Kauai Harbor shoreward of a line drawn between the breakwater light and Kukil Point.

(8) All waters consisting of Port Allen Kauai Harbor and the entrance channel that are shoreward of Lighted Buoy 1.

(9) Hilo Harbor and Entrance Channel consisting of all waters shoreward of a line drawn between breakwater light and Alealea Pt.

(b) *Designated representative.* A designated representative of the Captain of the Port is any Coast Guard commissioned officer, warrant or petty officer that has been authorized by the Captain of the Port Honolulu to act on his behalf. The following officers have or will be designated by the Captain of the Port Honolulu: The senior Coast Guard boarding officer on each vessel enforcing the security zone.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into these zones is prohibited unless authorized by the Captain of the Port or his designated representatives.

(d) *Effective dates.* This section is effective from 6 a.m. HST September 22, 2001, until 4 p.m. HST March 22, 2002.

Dated: September 20, 2001.

G.J. Kanazawa,

Captain, U. S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. 01–26154 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4145a; FRL–7084–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Seven Individual Sources Located in the Philadelphia-Wilmington-Trenton Area; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of a letter of adverse comment, EPA is withdrawing

the direct final rule approving revisions which establish reasonably available control technology (RACT) requirements for seven major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) located in the Philadelphia-Wilmington-Trenton ozone nonattainment area. In the direct final rule published on September 11, 2001 (66 FR 47078), EPA stated that if it received adverse comment by October 11, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from the Citizens for Pennsylvania's Future (PennFuture). EPA will address the comments received in a subsequent final action based upon the proposed action also published on September 11, 2001 (66 FR 47129). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of October 17, 2001.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 10, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

PART 40—[AMENDED]

§ 52.202 [Amended]

Accordingly, the addition of § 52.2020(c)(179) is withdrawn as of October 17, 2001.

[FR Doc. 01–26090 Filed 10–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4166; FRL–7080–5]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC RACT Determinations for Nine Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for nine major sources of volatile organic compounds (VOC). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 1, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink, (215) 814–2101 or by e-mail at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 21, 1996, October 18, 1996, January 21, 1997, July 1, 1997, March 23, 2001, and April 19, 2001, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several major sources of VOC. This rulemaking pertains to nine of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of operating permits (OPs) issued by PADEP and plan approval and agreement upon consent orders (Consent Orders or COs) issued by the Allegheny County Health Department (ACHD). These nine sources are located in the Pittsburgh area and consist of Armstrong World Industries, Inc., Beaver Falls; Bacharach, Inc.; Bakerstown Container Corporation; Chestnut Ridge Foam, Inc.; Flexsys America L. P. Monongahela Plant; Haskell of Pittsburgh; Three Rivers Aluminum Company; Tuscarora Plastics, Inc.; and Witco Corporation.

On August 24, 2001, EPA published a direct final rule (66 FR 44528) and a companion notice of proposed rulemaking (66 FR 44580) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 28, 2001 (66 FR 49540), we published a timely withdrawal in the **Federal Register** informing the public that the direct final rule did not take effect. We indicated in our August 24, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 44580). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 24, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on twenty proposed rules published by EPA in the **Federal Register** between August 6 and August 24, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Pittsburgh area. PennFuture's letter includes general comments and comments specific to EPA's proposals for certain sources. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term ''RACT,'' and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs*, requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that ''* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources.''

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On August 24, 2001 (66 FR 44578), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Pittsburgh area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Pittsburgh-Beaver area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt).*

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for only three sources located in the Pittsburgh area, namely for Duquesne Light's Elrama, Phillips and Brunot Island stations. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour ''are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to ''numeric emission limitations'' under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with

PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Pittsburgh area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by -case RACT rulemakings for the Pittsburgh area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, ''Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options' (September 1993) and ''Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options'' (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for ''major sources of VOC,'' located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for ''any category of VOC sources'' covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all ''VOC sources'' covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of ''source category'' in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the ''automatic'' selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish ''bright line'' or ''cook-book'' approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions,'' March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to ''all

source categories.'' PennFuture notes that EPA later objected to the $1500 per ton methodology as ''not generically acceptable to EPA'' [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a ''dollar per ton threshold'' is ''inconsistent with the definition of RACT'' [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. The commenter states that PennFuture's review of several of the current DEP evaluations indicate that the Commonwealth applied this standard and provides the examples of Duquesne Light—Elrama (auxiliary boiler); Allegheny Ludlum—Washington (formerly Jessop Steel). PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other ''bright line'' approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions.'' March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton ''Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an ''automatic'' rejection of a control technology as RACT for a source.''

In no instance, including that for Duquesne Light—Elrama (auxiliary boiler) and Allegheny Ludlum—Washington (formerly Jessop Steel), has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a

RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that ''Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT.'' [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC RACT for nine major sources located in the Pittsburgh area. EPA is approving these RACT SIP submittals because ACHD and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. The ACHD and PADEP has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect

the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for nine named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth's source-specific RACT requirements to control VOC from nine individual sources in the Pittsburgh area Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(170) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(170) Revisions pertaining to VOC RACT for major sources, located in the Pittsburgh-Beaver Valley ozone nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on March 21, 1996, October 18, 1996, January 21, 1997, July 1, 1997, March 23, 2001, and April 19, 2001.

(i) *Incorporation by reference.*

(A) Letters dated March 21, 1996, October 18, 1996, January 21, 1997, July 1, 1997, March 23, 2001, and April 19, 2001, submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC RACT determinations.

(B) Operating Permits (OPs) and Plan Approval and Agreement Upon Consent Orders (COs) for the following sources:

(*1*) Armstrong World Industries, Beaver Falls Plant, OP 04–000–108, effective May 29, 1996.

(*2*) Bacharach, Inc., CO 263, effective October 10, 1997, except for condition 2.5.

(*3*) Bakerstown Container Corporation, CO 221, effective May 14, 1996, except for condition 2.5.

(*4*) Chestnut Ridge Foam, Inc., OP 65–000–181, effective December 29, 1995.

(*5*) Flexsys America L.P., Monongahela Plant, OP 63–000–015, effective March 23, 2001, except for the PERMIT TERM.

(*6*) Haskell of Pittsburgh, Inc., CO 224, effective December 19, 1996, except for condition 2.4.

(*7*) Three Rivers Aluminum Company, OP 10–267, effective March 1, 2001.

(*8*) Tuscarora Plastics, Inc., OP 04–000–497, effective April 3, 1996.

(*9*) Witco Corporation, CO 210, effective May 14, 1996.

(ii) *Additional materials.* Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations submitted for the sources listed in paragraph (c)(170)(i)(B) of this section.

[FR Doc. 01–25579 Filed 10–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4173; FRL–7081–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Ten Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for ten major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 1, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink, (215) 814–2104 or by e-mail at *spink.marcia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1997, October 23, 1997, November 4, 1997, December 31, 1997, April 9, 1999, and August 9, 2000, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several sources of VOC and/or NO_X. This rulemaking pertains to ten of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of operating permits, consent orders and/or enforcement orders which impose VOC and/or NO_X RACT requirements for each source. These sources are all located in the Pittsburgh area and consist of Carbidie Corporation; Fansteel Hydro Carbide; Newcomer Products, Inc.; Heinz USA—Pittsburgh; Nabisco Biscuit Company; Aristech Chemical Corporation; Dyno Nobel Inc.—Donora Plant; General Carbide Corp.; Koppers Industries, Inc.; and Pressure Chemical Company.

On August 24, 2001, EPA published a direct final rule (66 FR 44538) and a companion notice of proposed rulemaking (66 FR 44581) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). On September 28, 2001 (66 FR 49540), we published a timely withdrawal in the **Federal Register** informing the

public that the direct final rule did not take effect. We indicated in our August 24, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 44581). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 24, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on twenty proposed rules published by EPA in the **Federal Register** between August 6 and August 24, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Pittsburgh area. PennFuture's letter includes general comments and comments specific to EPA's proposals for certain sources. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term ''RACT,'' and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that ''* * *RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources.''

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On August 24, 2001 (66 FR 44578), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Pittsburgh area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Pittsburgh-Beaver area or (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes

covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt*).

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for only three sources located in the Pittsburgh area, namely for Duquesne Light's Elrama, Phillips and Brunot Island stations. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour ''are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States'' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to ''numeric emission limitations'' under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Pittsburgh area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by-case RACT rulemakings for the Pittsburgh area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, ''Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options'' (September 1993) and ''Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options'' (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations. The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for ''major sources of VOC,'' located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for ''any category of VOC sources'' covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all ''VOC sources'' covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of ''source category'' in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the

Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the ''automatic'' selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish ''bright line'' or ''cook-book'' approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions,'' March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to ''all source categories.'' PennFuture notes that EPA later objected to the $1500 per ton methodology as ''not generically acceptable to EPA'' [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a ''dollar per ton threshold'' is ''inconsistent with the definition of RACT'' [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. The commenter states that PennFuture's review of several of the current DEP evaluations indicate that the Commonwealth applied this standard and provides the examples of Duquesne Light—Elrama (auxiliary boiler); Allegheny Ludlum—Washington (formerly Jessop Steel). PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other ''bright line'' approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions.'' March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton ''Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an ''automatic'' rejection of a control technology as RACT for a source.''

In no instance, including that for Duquesne Light—Elrama (auxiliary boiler) and Allegheny Ludlum—Washington (formerly Jessop Steel), has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment

demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition* to any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that ''Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT.'' [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and NO_X RACT for ten major of sources located in the Pittsburgh area. EPA is approving these RACT SIP submittals because the ACHD and PADEP established and imposed these RACT requirements in accordance with the criteria set forth in SIP-approved RACT regulations applicable to these sources. The ACHD and PADEP have also imposed record keeping, monitoring, and testing requirements on these sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal

Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for ten named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth's source-specific RACT requirements to control VOC and/or NO_X from ten individual sources located in the Pittsburgh-Beaver Valley of Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(178) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(178) Revisions pertaining to VOC and/or NO_X RACT for major sources, located in the Pittsburgh-Beaver Valley ozone nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on July 1, 1997, October 23, 1997, November 4, 1997, December 31, 1997, April 9, 1999 and August 9, 2000.

(i) *Incorporation by reference.*

(A) Letters dated July 1, 1997, October 23, 1997, November 4, 1997, December 31, 1997, April 9, 1999 and August 9, 2000 submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and/or NO_X RACT determinations, in the form of operating permits, consent orders, and enforcement orders.

(B) Operating permits (OP), Consent Orders (CO) and Enforcement Orders (EO) for the following sources:

(*1*) Aristech Chemical Corporation, CO 232, effective December 30, 1996, except for condition 2.6.

(*2*) Heinz USA, EO 211, effective March 8, 1996, except for conditions 1.5, 2.4, and 2.5; and CO 247, effective October 24, 1996, except for conditions 1.11 and 2.7.

(*3*) Koppers Industries, Inc., CO 223, effective August 27, 1996, except for condition 2.5.

(*4*) Nabisco Biscuit Company, CO 246, effective December 19, 1996, except for condition 2.5.

(*5*) Pressure Chemical Company, CO 261, effective June 11, 1997, except for condition 2.8.

(*6*) General Carbide Corporation, OP 65–000–622, effective December 29, 1995, except for the Permit Term.

(*7*) Fansteel Hydro Carbide, OP 65–000–860, effective December 12, 1997.

(*8*) Carbidie Corporation, OP 65–000–720, effective July 31, 1998, except for the Permit Term, and Conditions 4, 5 and 11.

(*9*) Dyno Nobel, Inc., OP 63–000–070, effective March 31, 1999, except for the Permit Term.

(*10*) Newcomer Products, Inc., OP–65–000–851, effective August 7, 1997.

(ii) *Additional materials.* Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations for the sources listed in paragraph (c)(178)(i)(B) of this section.

* * * * *

[FR Doc. 01–25734 Filed 10–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4169; FRL–7081–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for Five Individual Sources in the Pittsburgh-Beaver Valley Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Commonwealth of Pennsylvania's State Implementation

Plan (SIP). The revisions were submitted by the Pennsylvania Department of Environmental Protection (PADEP) to establish and require reasonably available control technology (RACT) for five major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X). These sources are located in the Pittsburgh-Beaver Valley ozone nonattainment area (the Pittsburgh area). EPA is approving these revisions to establish RACT requirements in the SIP in accordance with the Clean Air Act (CAA).

EFFECTIVE DATE: This final rule is effective on November 1, 2001.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Marcia Spink, (215) 814–2104 or by e-mail at *spink.marcia @epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 10, 1996, July 24, 1998, April 9, 1999, February 2, 2001 and April 19, 2001, PADEP submitted revisions to the Pennsylvania SIP which establish and impose RACT for several major sources of VOC and/or NO_X. This rulemaking pertains to five of those sources. The remaining sources are or have been the subject of separate rulemakings. The Commonwealth's submittals consist of plan approvals (PAs) and operating permits (OPs) issued by PADEP. These five sources are located in the Pittsburgh area and consist of BASF Corporation—Monaca Site; Equitrans, Inc.—Hartson Station; Nova Chemicals, Inc.; Ranbar Electrical Materials, Inc.; and Witco Corporation—Petrolia.

On August 21, 2001, EPA published a direct final rule (66 FR 43779) and a companion notice of proposed rulemaking (66 FR 43822) to approve these SIP revisions. On September 7, 2001, we received adverse comments on our direct final rule from the Citizens for Pennsylvania's Future (PennFuture). We published a withdrawal notice in the **Federal Register** informing the public that the direct final rule did not take effect on October 5, 2001. We indicated in our August 21, 2001 direct final rulemaking that if we received adverse comments, EPA would address all public comments in a subsequent final rule based on the proposed rule (66 FR 43822). This is that subsequent final rule. A description of the RACT determination(s) made for each source was provided in the August 21, 2001 direct final rule and will not be restated here. A summary of the comments submitted by PennFuture germane to this final rulemaking and EPA's responses are provided in Section II of this document.

II. Public Comments and Responses

The Citizens for Pennsylvania's Future (PennFuture) submitted adverse comments on twenty proposed rules published by EPA in the **Federal Register** between August 6 and August 24, 2001 to approve case-by-case RACT SIP submissions from the Commonwealth for NO_X and or VOC sources located in the Pittsburgh area. PennFuture's letter includes general comments and comments specific to EPA's proposals for certain sources. A summary of those comments and EPA's responses are provided below.

A. Comment: PennFuture comments that EPA has conducted no independent technical review, and has prepared no technical support document to survey potential control technologies, determine the capital and operating costs of different options, and rank these options in total and marginal cost per ton of NO_X and VOC controlled. In citing the definition of the term ''RACT,'' and the Strelow Memorandum [Roger Strelow, Assistant Administrator for Air and Waste Management, EPA, December 9, 1976, cited in *Michigan* v. *Thomas,* 805 F.2d 176, 180 (6th Cir. 1986) and at 62 FR 43134, 43136 (1997)], PennFuture appears to comment that in every situation, RACT must include an emission rate. PennFuture asserts that EPA should conduct its own RACT evaluation for each source, or at a minimum document a step-by-step review demonstrating the adequacy of state evaluations, to ensure that appropriate control technology is applied. The commenter also believes that EPA's failure to conduct its own independent review of control technologies has resulted in our proposing to approve some RACT determinations that fail to meet the terms of EPA's own RACT standard.

Response: On March 23, 1998 (63 FR 13789), EPA granted conditional limited approval of Pennsylvania's generic RACT regulations, 25 PA Code Chapters 121 and 129, thereby approving the definitions, provisions and procedures contained within those regulations under which the Commonwealth would require and impose RACT. Subsection 129.91, *Control of major sources of NO_X and VOCs,* requires subject facilities to submit a RACT plan proposal to both the Pennsylvania Department of Environmental Protection (DEP) and to EPA Region III by July 15, 1994 in accordance with subsection 129.92, entitled, *RACT proposal requirements.* Under subsection 129.92, that proposal is to include, among other information: (1) A list of each subject source at the facility; (2) The size or capacity of each affected source, and the types of fuel combusted, and the types and amounts of materials processed or produced at each source; (3) A physical description of each source and its operating characteristics; (4) Estimates of potential and actual emissions from each affected source with supporting documentation; (5) A RACT analysis which meets the requirements of subsection 129.92 (b), including technical and economic support documentation for each affected source; (6) A schedule for implementation as expeditiously as practicable but not later than May 15, 1995; (7) The testing, monitoring, recordkeeping and reporting procedures proposed to demonstrate compliance with RACT; and (8) any additional information requested by the DEP necessary to evaluate the RACT proposal. Under subsection 129.91, the DEP will approve, deny or modify each RACT proposal, and submit each RACT determination to EPA for approval as a SIP revision.

The conditional nature of EPA's March 23, 1998 conditional limited approval did not impose any conditions pertaining to the regulation's procedures for the submittal of RACT plans and analyses by subject sources and approval of case-by case RACT determinations by the DEP. Rather, EPA stated that ''* * * RACT rules *may not merely be procedural rules* (emphasis added) that require the source and the State to later agree to the appropriate level of control; rather the rules must identify the appropriate level of control for source categories or individual sources.''

On May 3, 2001 (66 FR 22123), EPA published a rulemaking determining that Pennsylvania had satisfied the conditions imposed in its conditional limited approval. In that rulemaking, EPA removed the conditional status of its approval of the Commonwealth's generic VOC and NO_X RACT regulations on a statewide basis. EPA received no public comments on its action and that final rule removing the conditional status of Pennsylvania's VOC and NO_X

RACT regulations became effective on June 18, 2001. As of that time, Pennsylvania's generic VOC and NO_X RACT regulations retained a limited approval status. On August 24, 2001 (66 FR 44578), EPA proposed to remove the limited nature of its approval of Pennsylvania's generic RACT regulation in the Pittsburgh area. EPA received no public comments on that proposal. Final action converting the limited approval to full approval shall occur once EPA has completed rulemaking to approve either (1) the case-by-case RACT proposals for all sources subject to the RACT requirements currently known in the Pittsburgh-Beaver area *or* (2) for a sufficient number of sources such that the emissions from any remaining subject sources represent a de minimis level of emissions as defined in the March 23, 1998 rulemaking (63 FR 13789).

EPA agrees that it has an obligation to review the case-by-case RACT plan approvals and/or permits submitted as individual SIP revisions by Commonwealth to verify and determine if they are consistent with the RACT requirements of the Act and any relevant EPA guidance. EPA does not agree, however, that this obligation to review the case-by-case RACT determinations submitted by Pennsylvania necessarily extends to our performing our own RACT analyses, independent of the sources' RACT plans/analyses (included as part of the case-by case RACT SIP revisions) or the Commonwealth's analyses. EPA first reviews this submission to ensure that the source and the Commonwealth followed the SIP-approved generic rule when applying for and imposing RACT for a specific source. Then EPA performs a thorough review of the technical and economic analyses conducted by the source and the state. If EPA believes additional information may further support or would undercut the RACT analyses submitted by the state, then EPA may add additional EPA-generated analyses to the record.

While RACT, as defined for an individual source or source category, often does specify an emission rate, such is not always the case. EPA has issued Control Technique Guidelines (CTGs) which states are to use as guidance in development of their RACT determinations/rules for certain sources or source categories. Not every CTG issued by EPA includes an emission rate. There are several examples of CTGs issued by EPA wherein equipment standards and/or work practice standards alone are provided as RACT guidance for all or part of the processes covered. Such examples include the CTGs issued for Bulk gasoline plants, Gasoline service stations—Stage I, Petroleum Storage in Fixed-roof tanks, Petroleum refinery processes, Solvent metal cleaning, Pharmaceutical products, External Floating roof tanks and Synthetic Organic Chemical Manufacturing (SOCMI)/polymer manufacturing. (The publication numbers for these CTG documents may be found at *http://www.epa.gov/ttn/catc/dir1/ctg.txt).*

EPA disagrees with PennFuture's general comment that our failure to conduct our own independent review of control technologies for every case-by-case RACT determination conducted by the Commonwealth has resulted in our proposing to approve some RACT determinations that fail to meet the terms of our own RACT standard. PennFuture submitted comments specific to the case-by-case RACT determinations for only three sources located in the Pittsburgh area, namely for Duquesne Light's Elrama, Phillips and Brunot Island stations. EPA summarizes those comments and provides responses in the final rule pertaining to those sources.

B. Comment: PennFuture comments that when EPA reviewed Pennsylvania's RACT program, it noted that Pennsylvania coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour ''are some of the largest NO_X emitting sources in the Commonwealth and in the Northeast United States'' [63 FR 13789, 13791 (1998)] and as such should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93) to guarantee that sources would achieve quantifiable emissions reductions under the RACT program. PennFuture goes on to comment that because EPA has not conducted and documented a technical review of Pennsylvania case-by case RACT submissions, EPA has not demonstrated that these large boilers are subject to ''numeric emission limitations'' under RACT. EPA must conduct a thorough RACT evaluation or review for each such source, and must document the application of numeric emission limits and quantifiable reductions for each coal-fired boiler with a rated heat input of over 100 million Btu per hour.

Response: Circumstances may exist wherein a state could justify otherwise, however, in general, EPA agrees with PennFuture that coal-fired boilers with a rated heat input of equal to or greater than 100 million Btu per hour should have numeric emission limitations imposed as RACT whether or not they install presumptive RACT (under 25 Pa.Code 129.93).

As provided in the response found in II. A, EPA does not agree that it must conduct its own technical analysis of each of the case-by-case RACT determinations submitted for each RACT source in order to document that its RACT requirements include numeric emission limitations. That determination can be made by EPA when it reviews the plan approval, consent order, or permit issued to such a source as submitted by the Commonwealth as SIP revision. PennFuture's comment did not point to a specific instance where a RACT plan approval, consent order or permit imposing RACT on a coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour did, in fact, lack a numerical emission limitation(s). Nonetheless, pursuant to PennFuture's comment, EPA has re-examined all of the case-by-case RACT SIP submissions made by the Commonwealth for such sources located in the Pittsburgh area. That re-examination, combined with information provided by the Commonwealth, indicates that each case-by-case RACT plan approval, consent order and/or permit for each coal-fired boiler with a rated heat input of equal to or greater than 100 million Btu per hour includes a numeric emission limitation. A listing of each source, its plan approval, consent order and/or permit number and its numerical emission limitation has been placed in the Administrative Records for the case-by -case RACT rulemakings for the Pittsburgh area.

C. Comment: PennFuture asserts that the Commonwealth has not adopted and submitted category RACT rules for all VOC source categories for which federal control technique guidelines (CTGs) have been issued. The commenter refers to Appendix 1 of the Technical Support Document (dated May 14, 2001), prepared by EPA in support of its proposed rule to redesignate the Pittsburgh-Beaver Valley Ozone Nonattainment Area (66 FR 29270), to assert that EPA has failed to require the Commonwealth to submit VOC RACT rules for certain categories of sources. PennFuture specifically names source categories such as equipment leaks from natural gas/gas processing plants, coke oven batteries, iron and steel foundries, and publically owned treatment works and asserts that the Commonwealth has neglected a statutory requirement to adopt category RACT regulations for these and 14 other unnamed VOC source categories.

Response: EPA has not issued CTGs for coke oven batteries, iron and steel foundries and publically owned treatment works. The Appendix 1, referred to by the commenter, lists CTG covered categories as well as source categories taken from two STAPPA/ALAPCO documents entitled, ''Meeting the 15-Percent Rate-of-Progress Requirement Under the Clean Air Act—A Menu of Options'' (September 1993) and ''Controlling Nitrogen Oxides Under the Clean Air Act—A Menu of Options'' (July 1994). The categories referenced by PennFuture are not VOC categories for which EPA has issued CTGs, but were included in Appendix A as examples of some of the types of sources that could be subject to Pennsylvania's generic RACT regulations.

The Commonwealth is under no statutory obligation to adopt RACT rules for source *categories* for which EPA has not issued a CTG. In fact, CTGs do not exist for all but one of the categories to which the commenter explicitly refers.

The Act requires that states adopt regulations to impose RACT for ''major sources of VOC,'' located within those areas of a state where RACT applies under Part D of the Act [182(b)(2)(C)]. This is referred to as the non-CTG VOC RACT requirement. Moreover, EPA disagrees that there is a statutory mandate that a state adopt a source category RACT regulation even for a source category where EPA has issued a CTG. There are two statutory provisions that address RACT for sources covered by a CTG. One provides that states must adopt RACT for ''any category of VOC sources'' covered by a CTG issued prior to November 15, 1990 [182(b)(2)(A)]. The other provides that states must adopt VOC RACT for all ''VOC sources'' covered by a CTG issued after November 15, 1990 [182(b)(2)(B)]. EPA has long interpreted the statutory RACT requirement to be met either by adoption of category-specific rules or by source-specific rules for each source within a category. When initially established, RACT was clearly defined as a case-by-case determination, but EPA provided CTG's to simplify the process for states such that they would not be required to adopt hundreds or thousands of individual rules. See Strelow Memorandum dated December 9, 1976 and 44 FR 53761, September 17, 1979. EPA does not believe that Congress' use of ''source category'' in one provision of section 182(b)(2) was intended to preclude the adoption of source-specific rules.

Thus, where CTG-subject sources are located within those areas of a state where RACT applies under Part D of the Act, the state is obligated to impose RACT for the same universe of sources covered by the CTG. However, that obligation is not required to be met by the adoption and submittal of a source category RACT rule. A state may, instead, opt to impose RACT for such sources in permits, plan approvals, consent orders or in any other state enforceable document and submit those documents to EPA for approval as source-specific SIP revisions. This option has been exercised by many states, and happens most commonly when only a few CTG-subject sources are located in the state. The source-specific approach is generally employed to avoid what can be a lengthy and resource-intensive state rule adoption process for only a few sources that may have different needs and considerations that must be taken into account.

As stated earlier, there is one source category explicitly included in PennFuture's comment for which EPA has issued a CTG, namely natural gas/gas processing plants. The Commonwealth made a negative declaration to EPA on April 13, 1993, stating that as of that date there were no applicable sources in this category. Therefore, the Commonwealth did not adopt a category RACT regulation for natural gas/gas processing plants.

D. Comment: PennFuture cites EPA correspondence [letter from Marcia Spink, EPA, to James Salvaggio, DEP, December 15, 1993] to the Commonwealth which states that establishing any dollar figure in RACT guidance will not provide for the ''automatic'' selection or rejection of a control technology or emission limitation as RACT for a source or source category. With regard to the Pennsylvania DEP's intent to finalize a NO_X RACT Guidance Document for implementation of its NO_X RACT regulation, EPA's 1993 letter stated that the document could improperly be used to establish ''bright line'' or ''cook-book'' approaches, particularly for a regulation applicable to many source categories and suggested that if the guidance document must include dollar figures/ton, it provide approximate ranges by source category. PennFuture comments that DEP issued its ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions,'' March 11, 1994, and on pp. 8–9 states that the acceptable threshold is $1500 per ton, and that this figure applies to ''all source categories.'' PennFuture notes that EPA later objected to the $1500 per ton methodology as ''not generically acceptable to EPA'' [letter from Thomas Maslany, EPA, to James Salvaggio, DEP, June 24, 1997] and further stated in a **Federal Register** notice that a ''dollar per ton threshold'' is ''inconsistent with the definition of RACT'' [62 FR 43134, 37–38 (1997)].

PennFuture comments that EPA is proposing to approve RACT determinations based on a cost per ton method that EPA had previously rejected, and according to its own clearly expressed standard, EPA must not approve RACT determinations by Pennsylvania DEP that apply this $1500 per ton threshold. The commenter states that PennFuture's review of several of the current DEP evaluations indicate that the Commonwealth applied this standard and provides the examples of Duquesne Light—Elrama (auxiliary boiler); Allegheny Ludlum—Washington (formerly Jessop Steel). PennFuture asserts EPA must reject all Pennsylvania RACT determinations applying the standard of $1500 per ton, or any other ''bright line'' approach, as failing to follow EPA procedures established for Pennsylvania RACT.

Response: EPA still takes the position that a single cost per ton dollar figure may not, in and of itself, form the basis for rejecting a control technology, equipment standard, or work practice standard as RACT. The Technical Support Document prepared by EPA in support of its March 23, 1998 rulemaking [63 FR 13789] clearly indicates that the Commonwealth's document, ''Guidance Document on Reasonably Available Control Technology for Sources of NO_X Emissions.'' March 11, 1994, had not been included as part of the SIP submission of the Commonwealth's generic regulation and, therefore, had not been approved by EPA. EPA further notes that the Administrative Record of the March 23, 1998 rulemaking [63 FR 13789], in addition to the correspondence cited by PennFuture, also includes correspondence from DEP to EPA [letter from James Salvaggio, DEP to David Arnold, EPA, September 10, 1997] stating that DEP's RACT guidance document does not establish a maximum dollar per ton for determining the cost effectiveness for RACT determinations and notes that the DEP's $1500 per ton cost effectiveness is a target value and not an absolute maximum. For example, in its analyses of the cost effectiveness of RACT control options submitted by DEP as part of the case-by-case SIP revision for Peoples Natural Gas (PNG) Valley Compressor Station's turbo charged lean burn IC engine (see the Administrative Record for 66 FR 43492), the Commonwealth included DEP interoffice memoranda (Thomas Joseph to Krishnan

Ramamurthy, July 14, 1994 and Krishnan Ramamurthy to Thomas McGinley, Babu Patel, Ronald Davis, Richard Maxwell, and Devendra Verma, July 15, 1994) which spoke directly to the $1500/ton dollar figure as being a guideline and not an upper limit. These memoranda explain that although PNG initially proposed intermediate original equipment manufacturer (OEM) combustion controls which would have reduced NO_X emissions from 254.7 tons per year to 115 tons per year (by 55%) at a cost of $1355 per ton reduced, DEP required the installation of an OEM lean combustion modification that reduced NO_X emissions from 254.7 tons per year to 76 tons per year (by 69%) at a cost of $1684 per ton reduced. The DEP's July 15, 1994 interoffice memorandum says of the PNG RACT determination which exceeded the cost effectiveness screening level of $1500 per ton '' Tom's (Joseph) insistence for the next more stringent level of control than the company's chosen level in the case of PNG was consistent with EPA Region III's sentiment that establishing any dollar figure in RACT guidance will not provide for an ''automatic'' rejection of a control technology as RACT for a source.''

In no instance, including that for Duquesne Light—Elrama (auxiliary boiler) and Allegheny Ludlum—Washington (formerly Jessop Steel), has EPA proposed to approve a RACT determination submitted by the Commonwealth which was based solely on a conclusion that controls that cost more than $1500/ton were not required as RACT. As explained in the response provided in section II. A. of this document, EPA conducts its review of the entire case-by-case RACT SIP submittal including the source's proposed RACT plan and analyses, Pennsylvania's analyses and the RACT plan approval, consent order or permit itself to insure that the requirements of the SIP-approved generic RACT have been followed. These analyses not only evaluate and consider the costs of potential control options, but also evaluate their technological feasibility.

E. Comment: PennFuture comments that any emission reduction credits (ERCs) earned by sources subject to RACT must be surplus to all applicable state and federal requirements. Under Pennsylvania law, ERCs must be surplus, permanent, quantified, and Federally enforceable. 25 Pa.Code 127.207(1). As to the requirement that ERCs be surplus, the Pennsylvania Code states: ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emission limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology, BACT and permit or plan approval emissions limitations or another emissions limitation required by the Clean Air Act or the [Air Pollution Control Act] may not be used to generate ERCs. 25 Pa.Code 127.207(1)(i). To be creditable, ERCs must surpass not only RACT requirements but a host of other possible sources of emission limits. PennFuture comments that some of the RACT evaluations at issue in the current EPA notices purport to establish RACT as a baseline for future ERCs. PennFuture does acknowledge that EPA notes in its boilerplate for the notices, that Pennsylvania and EPA have established a series of NO_X-reducing rules, including the recent Chapter 145 rule, to reduce NO_X at large utility and industrial sources. See, for example, 66 FR 42415, 16–17 (August 13, 2001). Because any ERCs must be surplus to the most stringent limitation applicable under state or federal law as described in the Pennsylvania Code provision set forth above, DEP and EPA must not approve ERCs unless they surpass all such limitations in addition to any limits set by RACT.

Response: EPA agrees with this comment by PennFuture. The approval of a case-by-case RACT determination, in and of itself, does not establish the baseline from which further emission reductions may be calculated and assumed creditable under the Commonwealth's SIP-approved NSR and ERC program. Moreover, EPA's review of the Pennsylvania DEP's implementation of its approved SIP-approved NSR and ERC program indicates that the Commonwealth calculates and credits ERCs in accordance with the SIP-approved criteria for doing so as outlined in PennFuture's comment. No source for which EPA is approving a case-by-case RACT determination should assume that its RACT approval alone automatically establishes the baseline against which it may calculate creditable ERCs.

F. Comment: PennFuture comments that as in the case with Pennsylvania Power—Newcastle, EPA should compare RACT proposals to applicable acid rain program emission limits and control strategies. PennFuture contends that EPA previously disapproved a RACT proposal for the Pennsylvania Power—Newcastle plant [62 FR 43959 (1997); 63 FR 23668 (1998)] and that EPA did so on the basis that the acid rain program requires more stringent emission limits. PennFuture asserts that while EPA had originally proposed to approve this proposal, an analysis of comparable boilers and, especially, a comparison to Phase II emission limits under the acid rain program led EPA to conclude that the RACT proposal emission limits were too lenient. [62 FR at 43961]. Therefore, PennFuture contends that for sources subject to the acid rain program, EPA should consider emissions and control strategies for compliance with acid rain emission limits when evaluating proposals for compliance with RACT.

Response: Title IV of the Act, addressing the acid rain program, contains NO_X emission requirements for utilities which must be met *in addition to* any RACT requirements (see NO_X Supplement to the General Preamble at 57 FR 55625, November 25, 1992). The Act provides for a number of control programs that may affect similar sources. For example, new sources may be subject to new source performance standards (NSPS), best available control technology (BACT), and lowest achievable emission rate (LAER). Other controls, under such programs as the acid rain program or the hazardous air pollutant program may also apply to sources. However, the applicability of these other requirements, which are often more stringent than RACT, do not establish what requirements must apply under the RACT program. While these programs may provide information as to the technical and economic feasibility of reduction programs for RACT, there is no presumption that acid rain controls should be mandated as RACT.

EPA stated in the final disapproval of the NO_X RACT determination for PPNC [63 FR at 23669], that the discussion concerning average emission rates for boilers with respect to the acid rain program requirements were included in order to provide a context for EPA's proposed disapproval. EPA made clear in its August 18, 1997 proposed disapproval of Pennsylvania Powers'—Newcastle (PPNC) RACT determination, that the basis for disapproval was a comparison between PPNC's boilers and other similar combustion units, not acid rain limits. In fact, EPA stated in the August 18, 1997 proposed disapproval that ''Without additional knowledge or information, it would be erroneous and premature to conclude that the limits in the acid rain permit are RACT.'' [62 FR at 43961]. EPA clearly stated in the final disapproval for PPNC that it did not use acid rain permit limits, or Pennsylvania's participation in any other NO_X control program, to determine PPNC RACT approvability [63 FR at 23670]. Nor has EPA intended

to use participation in NO_X control programs including acid rain, in determining RACT for PPNC or any other subject sources. EPA also stated that the April 30, 1998, PPNC disapproval was based on the absence of pertinent information regarding a computerized combustion optimization system through an enforceable permit, not comparison of acid rain permit limits.

III. Final Action

EPA is approving the revisions to the Pennsylvania SIP submitted by PADEP to establish and require VOC and NO_X RACT for five major sources located in the Pittsburgh area. EPA is approving these RACT SIP submittals because PADEP established and imposed these RACT requirements in accordance with the criteria set forth in the SIP-approved RACT regulations applicable to these sources. PADEP has also imposed record-keeping, monitoring, and testing requirements on these sources sufficient to determine compliance with the applicable RACT determinations.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 **note**) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability establishing source-specific requirements for five named sources.

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 17, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the Commonwealth's source-specific RACT requirements to control VOC and NO_X from five individual sources in Pennsylvania may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 3, 2001.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(173) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(173) Revisions pertaining to VOC and NO_X RACT for major sources, located in the Pittsburgh-Beaver Valley ozone nonattainment area, submitted by the Pennsylvania Department of Environmental Protection on January 10, 1996, July 24, 1998, April 9, 1999, February 2, 2001 and April 19, 2001.

(i) *Incorporation by reference.*

(A) Letters dated January 10, 1996, July 24, 1998, April 9, 1999, February 2, 2001 and April 19, 2001 submitted by the Pennsylvania Department of Environmental Protection transmitting source-specific VOC and NO_X RACT determinations.

(B) Plan Approvals (PAs) and Operating Permits (OPs) for the following sources:

(*1*) Equitrans, Inc., OP 63–000–642, effective July 10, 1995, except for the Permit Term.

(*2*) Witco Corporation, Petrolia Facility, PA 10–037, effective June 27, 1995.

(*3*) Ranbar Electrical Materials, Inc., OP 65–000–042, effective February 22, 1999, except for the Permit Term and conditions 11, 12, 13 and 14.

(*4*) Nova Chemicals, Inc., OP 04–000–033 (Permit No. 04–0033), effective as reissued January 24, 2001, except for the Permit Term and conditions 8, 9, and 10.

(*5*) BASF Corporation, OP 04–000–306, effective March 23, 2001.

(ii) *Additional materials.* Other materials submitted by the Commonwealth of Pennsylvania in support of and pertaining to the RACT determinations submitted for the sources listed in paragraph (c)(173)(i)(B) of this section.

* * * * *

[FR Doc. 01–25733 Filed 10–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4152a; FRL–7084–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for 14 Individual Sources Located in the Philadelphia-Wilmington-Trenton Area; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of a letter of adverse comment, EPA is withdrawing the direct final rule approving revisions which establish reasonably available control technology (RACT) requirements for fourteen major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) located in the Philadelphia-Wilmington-Trenton ozone nonattainment area. In the direct final rule published on September 10, 2001 (66 FR 46953), EPA stated that if it received adverse comment by October 10, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from the Citizens for Pennsylvania's Future (PennFuture). EPA will address the comments received in a subsequent final action based upon the proposed action also published on September 10, 2001 (66 FR 46971). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of October 17, 2001.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 10, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

PART 40—[AMENDED]

§ 52.2020 [Amended]

Accordingly, the addition of § 52.2020(c)(185) is withdrawn as of October 17, 2001.

[FR Doc. 01–26088 Filed 10–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA–4135a; FRL–7084–4]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; VOC and NO_X RACT Determinations for 14 Individual Sources Located in the Philadelphia-Wilmington-Trenton Area; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of a letter of adverse comment, EPA is withdrawing the direct final rule approving revisions which establish reasonably available control technology (RACT) requirements for fourteen major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) located in the Philadelphia-Wilmington-Trenton ozone nonattainment area. In the direct final rule published on September 6, 2001 (66 FR 46525), EPA stated that if it received adverse comment by October 9, 2001, the rule would be withdrawn and not take effect. EPA subsequently received adverse comments from the Citizens for Pennsylvania's Future (PennFuture). EPA will address the comments received in a subsequent final action based upon the proposed action also published on September 6, 2001 (66 FR 46573). EPA will not institute a second comment period on this action.

DATES: The direct final rule is withdrawn as of October 17, 2001.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford at (215) 814–2108.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 10, 2001.

James W. Newsom,

Acting Regional Administrator, Region III.

PART 40—[AMENDED]

§ 52.2020 [Amended]

Accordingly, the addition of § 52.2020(c)(169) is withdrawn as of October 17, 2001.

[FR Doc. 01–26089 Filed 10–16–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2237; MM Docket No. 01–149; RM–10173, RM–10175]

Radio Broadcasting Services; Savoy, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 66 FR 37633 (July 19, 2001) this document allots Channel 297A to Savoy, Texas and provides Savoy with its first local aural transmission service. The coordinates for Channel 297A at Savoy are 33–42–58 North Latitude and 96–24–09 West Longitude.

DATES: Effective November 13, 2001.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–149, adopted September 19, 2001, and released September 28, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room

CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202 863–2893. Facsimile 202 863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

1.The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Savoy, Channel 297A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–26061 Filed 10–16–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2317; MM Docket No. 01–87; RM–10092]

Television Broadcasting Services; International Falls and Chisholm, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of Channel 11, License, Inc., permittee of Station KRII, Channel 11, International Falls, Minnesota, the Commission reallots Channel 11 from International Falls to Chisholm, Minnesota, as that community's first local television transmission service and modifies the authorization for Station KRII (File No. BPCT–19960709KR) accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. See 66 FR 20224, April 20, 2001. The DTV Table contained in Section 73.622(b) of the Commission's Rules is not affected by the requested reallotment as there is no paired DTV channel for Station KRII's authorization. Coordinates used for Channel 11 at Chisholm are 47–51–39 NL and 92–56–43 WL. Additionally, as Chisholm is located within 400 kilometers (250 miles) of the U.S.-Canada border, concurrence of the Canadian government to this allotment was requested but has not been received. Therefore, the allotment of Channel 11 at Chisholm is conditioned on concurrence of the Canadian government in accordance with the 1994 U.S.-Canada TV Agreement. With this action, this docketed proceeding is terminated.

DATES: Effective November 19, 2001.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–87, adopted September 26, 2001, and released October 5, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 425 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Television broadcasting.

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

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under Minnesota, is amended by adding Chisholm, Channel 11, and removing Channel 11 at International Falls.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–26065 Filed 10–16–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[I.D. 100901D]

Whaling Provisions: Aboriginal Subsistence Whaling Quotas

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

ACTION: Notification of aboriginal subsistence whaling quota.

SUMMARY: NMFS announces the aboriginal subsistence whaling quota for bowhead whales, and other limitations deriving from regulations adopted at the 1997 Annual Meeting of the International Whaling Commission (IWC). For 2001, the quota is 75 bowhead whales struck. This quota and other limitations will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission (AEWC).

DATES: Effective October 17, 2001.

ADDRESSES: Office of Protected Resources, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Chris Yates, (301) 713–2322.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (16 U.S.C. 916 *et seq.*), which requires the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 1997 Annual Meeting of the IWC, the Commission set quotas for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead quota was based on a joint request by the United States and the Russian Federation, accompanied by documentation concerning the needs of 2 Native groups: Alaska Eskimos and Chukotka Natives in the Russian Far East.

This action by the IWC thus authorized aboriginal subsistence whaling by the AEWC for bowhead whales. This aboriginal subsistence harvest is conducted in accordance with a cooperative agreement between NOAA and the AEWC.

The IWC set a 5-year block quota of 280 bowhead whales landed. For each

of the years 1998 through 2002, the number of bowhead whales struck may not exceed 67, except that any unused portion of a strike quota from any year, including 15 unused strikes from the 1995–1997 quota, may be carried forward. No more than 15 strikes may be added to the strike quota for any 1 year. The 2000 strike quota was 75. At the end of the 2000 harvest, there were 15 unused strikes available for carry-forward, so the combined strike quota for 2001 is also 82 (67 + 15).

The United States and the Russian Federation have concluded an arrangement to ensure that the total quota of bowhead whales landed and struck in 2001 will not exceed the quotas set by the IWC. Under that arrangement, the Russian natives may use no more than 7 strikes, and the Alaska Eskimos may use no more than 75 strikes.

NOAA is assigning 75 strikes to the Alaska Eskimos. The AEWC will allocate these strikes among the 10 villages whose cultural and subsistence needs have been documented in past requests for bowhead quotas from the IWC, and will ensure that its hunters use no more than 75 strikes.

Other Limitations

The IWC regulations, as well as the NOAA rule at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA rules (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here. Only licensed whaling captains or crew under the control of those captains may engage in whaling. They must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization. The aboriginal hunters must have adequate crew, supplies, and equipment. They may not receive money for participating in the hunt. No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native handicrafts. Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: October 11, 2001.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01–26172 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 010112013-1013-01; I.D. 101201A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the seasonal allowance of the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 13, 2001, until 2400 hrs, A.l.t., December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone 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. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Within any fishing year under harvest or over harvest of a seasonal allowance of pollock may be added to or subtracted from the subsequent seasonal allowances of pollock in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that a revised seasonal allowance does not exceed 30 percent of the annual TAC apportionment (§ 679.20(a)(5)(ii)(C)). The annual 2001 pollock TAC in the combined Central and Western GOA is 87,180 mt and 30 percent of this amount is 26,154 mt (66 FR 7276, January 22, 2001, and 66 FR 37167, July 17, 2001). This is the maximum amount of TAC that may harvested in any season, in this case the D season. Pollock TACs in the Western and Central Regulatory Areas in the C and D seasons are apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of biomass as determined by the four most recent NMFS summer surveys. These amounts are 42.05 percent, 25.03 percent, and 32.92 percent respectively (66 FR 7276, January 22, 2001 and 66 FR 37167, July 17, 2001). In Statistical Area 610 this translates to a maximum TAC for the D season of 10,998 mt (26,154 mt x 0.4205). The Regional Administrator has determined that 11,666 mt of the original pollock TAC remains in Statistical Area 610. In accordance with § 679.20(a)(5)(ii)(C), the Regional Administrator hereby increases the original D season pollock TAC of 9,165 mt by 1,833 mt. The revised D season allowance of pollock TAC in Statistical Area 610 is 10,998 mt.

In accordance with § 679.20(d)(1)(i), the Regional Administrator, has determined that the D season allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 10,798 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. Consequently in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the seasonal allocation of pollock in Statistical Area 610 constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B)

and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to prevent exceeding the seasonal allocation of pollock in Statistical Area 610 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 12, 2001.

Bruce C. Morehead,

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

[FR Doc. 01–26174 Filed 10–12–01; 4:04 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 66, No. 201
Wednesday, October 17, 2001

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 381 and 441

[Docket No. 01–030N]

RIN 0583–AC87

Announcement of and Request for Comment on Industry Petition to Postpone the Effective Date of Regulations Limiting and Requiring Labeling for Retained Water in Raw Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Opportunity to comment.

SUMMARY: The Food Safety and Inspection Service (FSIS) is requesting comment on a petition that asks FSIS to postpone until August 1, 2004, the effective date of new regulations that limit water retained by raw meat and poultry products from post-evisceration processing to the amount that is unavoidable in meeting applicable food safety requirements, such as the pathogen reduction requirements for *Salmonella*, and require labeling for the amount of water retained. The regulations were published in the final rule ''Retained Water in Raw Meat and Poultry Products; Poultry Chilling Requirements,'' in the **Federal Register** on January 9, 2001.

The petitioners, four trade associations representing the meat and poultry industries, assert that the postponement is necessary because affected companies will not be able to comply with the regulations until they have completed several steps for which the Agency did not allow sufficient time. The petitioners maintain that: Because of the time necessary to obtain Agency review of industry data collection protocols for determining minimum retained water in products, some companies will not be able to begin data collection under the protocols until late in 2001; because of insufficient laboratory capacity in the industry and because of the need to determine seasonal variation in moisture content of poultry and the relation between water retention controls and *Salmonella* levels on raw product, data collection on water absorbed during chilling processes, and then on water retention in individual raw products at packaging, cannot be completed until early 2003; and once retained water levels have been determined, changes to plates for printing labels and the labeling of the many products affected by the final rule cannot be completed until mid-2004. The petitioners elaborate on these points in their petition and supporting documentation. Finally, they argue that if no extension were granted, the economic consequences would be severe. Much of the industry would have to shut down because of the inability to ship product that is not misbranded.

DATES: Comments must be received on or before November 16, 2001.

ADDRESSES: Submit one original and one copy of written comments to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250. Please refer to docket number 01–030N in your comments. All comments submitted in response to this proposal, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 1 p.m., and 2 p.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel L. Engeljohn, Director, Regulations and Directives Development Staff, OPPDE, FSIS, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 720–3219.

SUPPLEMENTARY INFORMATION:

Background

For many years, meat and poultry slaughtering establishments have conducted carcass-chilling operations differently. In livestock slaughtering establishments, carcasses undergo a final wash after slaughter and dressing to remove remaining consumer protection defects before being air-chilled in large coolers. In the coolers, a water mist is typically applied to the carcasses to minimize shrinkage and promote rapid heat loss. Water mist systems must be operated in a manner that does not result in meat carcasses weighing more than their pre-chilled weight.

Most poultry processors chill poultry using the water immersion chilling method, which is faster and more cost efficient than air chilling, but results in absorption and retention of water both in the skin and in the tissue under the skin. Because immersion chilling is considered an efficient way to lower the internal temperature of poultry, FSIS has permitted the retention of some water in poultry. But because a product containing excessive water may be considered adulterated, FSIS has consistently required that the retention of water in meat and poultry be minimized and has enforced regulations limiting the retained water percentage in the carcasses.

In 1994, a group of poultry consumers and red meat producers sued the USDA in U.S. District Court (*Kenney, et al.* v. *Glickman*), alleging that poultry products containing absorbed water were both economically adulterated and misbranded within the meaning of the Poultry Products Inspection Act (PPIA). They also disputed the differences in regulations concerning water retention by meat and poultry.

In July 1997, the Court found that the presence of absorbed water in poultry did not mean that the product was necessarily economically adulterated or misbranded under the PPIA. However, the Court set aside the regulations specifying water absorption and retention limits for whole poultry. The court noted that the record of the rulemaking in which those levels were established did not explain how the particular water retention levels were determined, why water retention in poultry cannot be reduced below current levels, or why meat and poultry levels should be treated differently.

In September 1998, responding to the Court's ruling and rulemaking petitions filed with the Agency by several livestock industry associations, FSIS issued a proposed rule that would restrict the amount of water that could be retained by raw meat and poultry carcasses and parts. Specifically, the Agency proposed revising the moisture absorption and retention regulations by limiting the amount of water retained by

raw meat and poultry carcasses and parts as a result of post-evisceration processing to the amount unavoidable in achieving a food safety objective.

FSIS also proposed revisions to the poultry chilling regulations to improve consistency with the Agency's Pathogen Reduction/Hazard Analysis and Critical Control Points (PR/HACCP) regulations, eliminate ''command-and-control'' features, and reflect current technological capabilities and good manufacturing practices. Some of the regulatory provisions that were to be eliminated or replaced with performance standards were those specifying the manner in which opening cuts are to be made in poultry before evisceration, chilling equipment features, fresh water replenishment rates for continuous chillers, the type of giblet wrap to be used, and the method for thawing frozen poultry to be used in further processed products.

On January 9, 2001, FSIS published a final rule in the **Federal Register** (66 FR 1750) promulgating regulations that limit the amount of water that could be retained by raw, single-ingredient, meat and poultry products as a result of post-evisceration processing, such as carcass washing and chilling. Under the regulations (codified at 9 CFR 441.10), which become effective January 9, 2002, raw livestock and poultry carcasses and parts will not be permitted to retain water resulting from post-evisceration processing unless the establishment preparing those carcasses and parts demonstrates to FSIS, with data collected under a written protocol, that any water retained in the carcasses and parts is an inevitable consequence of the process used to meet applicable food safety requirements. The protocol and data collected under it must be available for review by FSIS. The labels of products covered by the rule must bear statements on their labels indicating the maximum percentage of retained water in the products. The final rule also revises the poultry chilling regulations (in 9 CFR 381.65, 381.66) as proposed, with technical adjustments made in response to comments. On June 29, 2001, FSIS issued instructions to its personnel (FSIS Notice 22–01) on procedures, including those for review of data collection protocols, that are to be followed during the period before the new water retention regulations become effective.

Since publication of the final rule, FSIS has met on several occasions with representatives of the regulated industry, has responded to requests for clarifications and further information, and has exchanged correspondence with the industry on various matters relating to the final rule. During this time, some industry representatives have consistently expressed doubts about the ability of companies to comply with the provisions for retained water minimization by the effective date.

In a July 16, 2001, letter to the Secretary of Agriculture, the National Cattlemen's Beef Association (NCBA) stated that NCBA had been informed by representatives of the poultry industry that they were considering seeking an extension of the implementation deadline. Citing the chronicle of litigation, industry petitions, and regulatory proposals on retained water from 1994 till the present, NCBA characterized the process leading to the final rule as ''painfully slow.'' NCBA maintained that the beef industry had worked hard to bring fairness to the issue and was ready for the meat and poultry industry to comply with the new regulations, and that the association could not support an extension.

Petition

FSIS received a petition dated August 17, 2001, signed by the following organizations: The American Meat Institute, National Chicken Council, National Food Processors Association, and the National Turkey Federation. The petition requests that FSIS postpone until August 1, 2004, the effective date of the new regulations that limit and require labeling for the amount of water retained by raw meat and poultry products from post-evisceration processing (9 CFR 441.10).

The petitioners assert that postponement of the effective date is necessary because affected companies will not be able to comply with the regulations until they complete several steps for which the Agency allowed insufficient time. First, the petitioners state that the time necessary to obtain Agency review of industry data collection protocols for determining minimum retained water in products will mean that some companies will not be able to begin data collection under the protocols until late in 2001. Second, they state that, because of insufficient laboratory capacity in the industry, data collection on water absorbed during chilling processes and then on water retention in individual products at the time of packaging, cannot be completed until early in 2003. In this connection, they note that a one-year data collection period will be necessary to determine seasonal variation in the moisture content of poultry and the relation between water retention controls and *Salmonella* prevalence on raw products. Finally, they state that changes to plates for printing labels and the labeling of the many products affected by the final rule cannot be completed until mid-2004.

The petitioners elaborate on these points in their petition and supporting documentation. They present an ''optimistic timeline'' that begins with the submission of industry protocols for FSIS review by September 15, 2001, and ends with the printing of all new retained-water labels by August 1, 2004, cautioning that the timeline assumes no significant problems at any stage that would introduce delays. ''Given the realities associated with this optimistic timeline,'' they say, ''it is critical that the agency adjust the effective date to allow for a realistic implementation of the new labeling requirement.'' They say it is possible that some establishments or labels will not be in compliance with an August 1, 2004, implementation date, and that the Agency should invoke the regulatory provisions for temporary label approvals (9 CFR 381.132(f)) in that eventuality.

The petitioners conclude their petition by forecasting an extremely severe economic impact if an extension is not granted because of the inability of the poultry industry to avoid shipping product that is misbranded under the PPIA. Misbranded product cannot bear the mark of inspection and thus cannot be shipped (21 U.S.C. 457(d), 458(a)(2)). An establishment that cannot ship product is closed, for practical purposes. ''In fact,'' the petitioners emphasize, ''if no extension is granted, industry would simply have to cease production, throwing thousands of people out of work and resulting in the bankruptcy of virtually all companies.''

The petitioners do not address the technical revisions of the poultry chilling regulations. FSIS therefore assumes that they do not object to the January 9, 2002, effective date for those revised regulations.

Questions

FSIS is seeking public comment on the industry petition. To help in deciding this matter, FSIS would appreciate any additional information not already made available to the Agency. In particular, responses to the following questions relating to the petition would be appreciated:

1. Did the Agency allow the regulated industry sufficient time—one year from publication of the final rule—to prepare for implementation? Explain why the time for implementation was adequate or inadequate.

2. Is available laboratory capacity sufficient or insufficient to enable the

industry to comply with the new regulations by the effective date?

3. Is there additional information on the time necessary to produce new labels for retained-water products that the Agency should consider?

4. Would postponement of the effective date be fair or unfair to anyone and, if so, how?

5. Would postponement of the effective date of the new retained water regulations (9 CFR 441.10) affect consumers and, if so, how?

Text of the Petition

Citizen's Petition to Extend the Effective Date of 9 CFR 441.10.

The undersigned associations, on behalf of their members, respectfully submit this Citizen's Petition to extend the effective date of the Food Safety and Inspection Service's (FSIS or the agency) final regulation entitled ''Retained Water in Raw Meat and Poultry Products: Poultry Chilling Requirements,'' 66 FR 1479 (January 9, 2001) (to be codified at 9 CFR 441.10).

This regulation is scheduled to become effective on January 9, 2002. Simply put, it is impossible for our members to comply with the regulation by that date. This petition sets before the agency the obstacles preventing January 2002 compliance, obstacles which are out of our members' control. Even with the smoothest of implementations, the earliest date for compliance is August 1, 2004.

A. Action Requested

We respectfully request that the effective date of the moisture regulation be extended until August 1, 2004.

B. Statement of Grounds

To achieve compliance with the regulation, establishments need to complete four separate tasks—tasks that must be done consecutively, not concurrently:

1. The establishment has to determine the amount of absorbed moisture that is an unavoidable consequence of meeting a food safety requirement. To determine this level, the regulation requires that the establishment develop a protocol. Until FSIS accepts a protocol, an establishment cannot begin to collect the data.

2. After receiving a ''No Objection'' letter from the agency, an establishment would initiate the procedure to determine the unavoidable amount of absorbed moisture.

3. Once the establishment has validated the amount of moisture that is unavoidable, there remains the matter of ascertaining the amount of moisture retained by product at time of packaging.

4. Finally, the establishment must work with its suppliers to obtain new packages bearing the required declaration.

Only after these four steps have been completed can there be compliance. Unfortunately, each step poses a variety of difficulties that simply cannot be overcome to meet the effective date set by FSIS, even if companies act in the most expeditious manner.

1. Protocol Approval

Upon publication of the final rule, we immediately began a complete review of the new requirements and planned for the ambitious undertaking of converting labels to be in compliance with the new required label declaration. Following extensive industry technical meetings, it became apparent that there were significant questions not addressed by the final rule for which clarification is necessary before implementation can commence. We have, and will continue to work closely with the agency to ensure compliance with the final rule.

The first task is to develop the protocol to ascertain the amount of moisture unavoidably absorbed by the product as a consequence of a process used to meet food safety standards. As promulgated, the regulation imposes the ''command and control'' requirement that such protocols must be submitted to FSIS. Only protocols receiving a ''No Objection'' letter could be used to ascertain the moisture absorption.

In light of this requirement, we contacted FSIS as soon as the regulation was published to obtain guidance on what would be required in such protocols. A meeting, prompted by significant questions raised by industry as to practical compliance with the new rule, was held at the FSIS Technical Service Center in February. There were a host of issues surrounding the protocols, as well as general regulatory compliance with the rule. Many of these issues have been resolved, such as what food safety standard would be appropriate to use in determining unavoidability. However, several key issues remain unresolved, such as the use of thighs to determine compliance. We hope that, with further dialogue, industry and the agency will work to a cooperative and timely resolution of these issues, thereby paving the way for complete implementation.

Having discussed the agency's expectations regarding the protocol in February, we agreed to submit generic protocols for agency review and comment in order to obtain guidance on what the agency wanted in the protocol. On May 21, 2001, four generic protocols were submitted to FSIS. (Attachment 1). Notwithstanding the good faith efforts to submit protocols in compliance with the regulatory requirements, FSIS responded on July 5, stating: ''None of the protocols fully addressed the data collection and information required by the regulations.'' Letter from Phillip S. Derfler, Deputy Administrator, FSIS. (Attachment 2). In lieu of comments on the draft protocols, FSIS developed its own model protocol. Unfortunately, we have unresolved questions with the model. Believing it is more expedient to resolve any uncertainties before having our members submit protocols, we submitted a request for clarification on August 3, 2001. (Attachment 3). That request is still pending.

Assuming the agency responds promptly to our request for clarification (e.g. September 1, 2001), our members can begin to draft the protocols. We estimate that such drafting will be relatively simple once the outstanding questions are resolved. Assuming two weeks for drafting and submission, FSIS will begin receiving protocols from the majority of the industry on or about September 15th.[1]

Under the regulation, FSIS has 30 days to review and comment on a protocol. However, we respectfully submit that the agency lacks adequate resources to review the estimated number of protocols in a timely manner. The National Chicken Council estimates that its members will submit at least 265–300 protocols and the National Turkey Federation estimates approximately 80 protocols. This number does not include protocols from poultry slaughter establishments that may not be a member of either association. Likewise, it does not include any protocols submitted by red meat companies. We do not know how much staff time FSIS has allocated to the review, but we anticipate that completion of the review of approximately 400 protocols will take over thirty days.[2]

Although the regulation provides for passive ''approval'' of the protocols (i.e., if no objection is raised within the 30 days, the agency cannot subsequently raise an objection), we respectfully disagree that this will be how the matter will be implemented in the field. In this regard, we direct your attention to FSIS Notice 22–01; specifically, the Retained

[1] We understand that some companies have already submitted protocols that have been reviewed by the agency. However, the majority of broiler establishments and almost all turkey establishments have not yet done so.

[2] We note that it took FSIS six weeks to review four generic protocols and develop one of its own.

Moisture Checklist for IICs.[3] Item 2 on this checklist requires the IIC to identify the date of the FSIS No Objection Letter. If 30 days have passed and no letter has been received, we believe many, if not most, IICs will not permit the establishment to proceed in light of the instructions contained in the Notice. Moreover, we remain concerned that the agency may indeed suggest changes to a protocol after the thirty-day period has passed. Hence, some legal counsel have advised members not to initiate any protocol until a No Objection letter has actually been received.

We can only speculate as to the time it will take for FSIS to complete the review. Assuming that FSIS anticipated 300 protocols (because it estimated there are approximately 300 establishments covered by the rule, 66 Fed. Reg at 1,768, colt 3) and established a 30 day review period, it seems that 400 protocols would take 40 days. Adding five days for mail delivery, the earliest time for all establishments to have received the No Objection letter is November 1, 2001.

2. Collection and Analysis of Data

a. Laboratory Capacity

Once the establishment receives its No Objection letter, the second task is to conduct the protocol. Although the establishment should be ready to commence the study within 30 days (e.g. December 1, 2001), the sheer volume of the sampling will cause bottleneck delays at the laboratories—delays beyond an establishment's control.

Assuming all establishments follow the Model Protocol[4] contained in the FSIS July 5 letter, the establishment is to select five groups of 10 carcasses to determine moisture absorption during the chilling process. In addition, under section 7.2 of the Model, the establishment is to randomly select five groups of 10 carcasses from the flocks selected for moisture absorption testing. This latter sample set is to be analyzed for *Salmonella.* The *Salmonella* sampling and analysis is to be done for each of the four variations in chiller factors; in other words, 200 samples are to be analyzed for *Salmonella* that week. Moreover, under the Model Protocol, there must be three replicates of the testing for different processing days. Thus, the draft proposal calls for 600 *Salmonella* samples to be analyzed per protocol. If 400 protocols are ultimately submitted, this means 240,000 *Salmonella* tests are to be conducted by the industry. To put this number in context, in the first two years of HACCP implementation, FSIS only conducted 44,272 *Salmonella* analyses[5] or approximately 18% of the total FSIS expects the industry to conduct before the January 9, 2002, effective date.

Put bluntly, there is insufficient laboratory capacity to handle such a sampling and testing overload. We have spoken with several of the major private laboratories that can perform *Salmonella* analyses. According to Dr. Paul Gerhardt of the National Food Laboratories, his laboratory can handle 700 samples per week at the current time (or 36,400 per year, about 15% of the total required). To be sure, existing laboratory capacity could be increased, but this would take six months lead-time and ''contractual assurance of testing.'' (Attachment 5.) Dr. Gerhardt's conclusion is supported by other private laboratories with which we have spoken.

Dr. William Brown of ABC Research, one of the major laboratories analyzing meat and poultry products, estimated that his laboratory could handle approximately 150 additional samples per day or 39,000 in 12 months. Dr. Brown also cautioned that such a massive testing program could result in a shortage of laboratory supplies, thereby increasing cost of these materials and the analyses themselves. (Attachment 6.)

Mr. Kurt Westmoreland of Silliker Laboratories Group, one of the largest laboratories, commented that, even though Silliker has eleven laboratories, the volume of tests required ''would be very difficult to complete within the time frame.'' Moreover, this additional *Salmonella* testing would displace ''other much needed food safety based testing.'' Although Mr. Westmoreland did not anticipate higher costs for the supplies given his laboratory's buying power, he too was concerned as to the availability of testing supplies. (Attachment 7.)

Beyond private laboratories, several of our members with their own laboratories have estimated the time it would take to analyze the additional *Salmonella* samples generated by the Model Protocol. According to Dr. Neal Apple, Vice President of Tyson Corporate Laboratory and Research Services, it would take his laboratory approximately 10.5 months to conduct the 42,000 *Salmonella* analyses his company anticipates would be required under the Model Protocol, ''[b]arring any sample submission or testing problems.'' Even this would ''generate a considerable amount of overtime for our laboratory group and contribute to decreasing the technical flexibility that the laboratory currently has.'' Statement of Dr. Neal Apple. (Attachment 8.)[6]

Dr. Lee G. Johnson, Chief Microbiologist, ConAgra Refrigerated and Prepared Foods, anticipates it will take six months at the very least, with eight months being more realistic, to complete the analysis for its establishments. Statement of Dr. Lee G. Johnson. (Attachment 9.) Dr. Johnson also raises the issue of whether there will be enough testing reagents and supplies available to conduct the analyses. A shortage of these materials caused by excess demand would delay the analyses even further.

Mr. Jason Tisch, Assistant Manager, Deibel Laboratories (Cargill) frankly admitted his laboratory would be forced to contract out the additional volume generated by the protocols and it would still likely take 10.5 months to complete the necessary analysis. In addition, the added tests ''will limit the amount of research and development currently being conducted'' by the laboratory. Statement of Jason Tisch. (Attachment 10.)

Obviously, the above does not even address the significant testing costs.[7]

As the statements of the laboratory managers demonstrate, available laboratory resources, private or corporate, cannot handle in an expeditious fashion the workload generated by the *Salmonella* testing requirement. It is a matter of capacity. Moreover, available capacity cannot easily be expanded: Not all laboratories are structured to conduct pathogen testing; the laboratories may be in the plant (with exposure to other raw product and cross contamination); or, the employees may not be trained in handling such biological hazards. As Dr. Gerhardt pointed out (Attachment 5), not only will it take time to significantly expand capacity, but laboratories would expect ''contractual assurances of future testing,'' assurances that may not be forthcoming given that the testing here would be a one time occurrence. Nor, as Mr. Westmoreland cautioned, is it advisable to shift existing resources from current pathogen testing currently

[3] This Notice, issued June 29. 2001, also codified the agency's position on many issues discussed at the February meeting in Omaha. (Attachment 4.).

[4] The FSIS Model Protocol was an enclosure to the July 5th Derfler letter (our Attachment 2).

[5] http://www.fsis.usda.gov/ophs/haccp/salmcomp.htm.

[6] Interestingly, this company would be required to analyze approximately the same number of samples as FSIS analyzed in all of 1998 and 1999.

[7] At approximately $30 per sample for *Salmonella,* the costs are $7.2 million, assuming the costs of the reagents/supplies do not increase, a potential problem noted by Dr. Brown (Attachment 6).

used to maintain and enhance food safety. Hence, the new requirement can only be fulfilled through excess capacity which will result in longer turnaround times.

In short, barring any problems whatsoever we estimate it will take the majority of establishments approximately 12 months from the time a ''No Objection'' letter is issued, to complete the required data collection to determine the amount of absorbed moisture unavoidably occurring as a consequence of the process used to meet a food safety requirement. This brings us to December 1, 2002, as the best case scenario.[8]

b. Seasonality

Even though the above demonstrates the impossibility of conducting all the necessary analyses in less than one year, there is another factor which supports conducting the analysis over a year's time—seasonal variation.

i. Naturally occurring, variability in moisture. On the issue of moisture variation, as FSIS has recognized, there may be ''more than one level of naturally occurring water'' based on seasonal differences. Notice 22–01, section X (Attachment 4). Although an establishment may choose to have different declarations based on seasonal variation, it is essential that, in determining the appropriate moisture level to declare on the labels, the establishment know what the maximum amount will be, regardless of what time of year it occurs.

To confirm the FSIS conclusion as to seasonal moisture variability, we have received some data from our members concerning moisture levels. Because we do not have data on moisture levels per se, our members have provided us with data comparing the live weight of the birds to the finished yield. As the attached data (Attachment 11) show, the yield was low during the summer months, even though bird weight remained constant. In the winter months the bird weight varied, but yield remained constant. A likely cause of this variability in yield during the summer (without a corresponding variation in weight) is that moisture content of the birds is low in the summer. When the temperature cools, the moisture content is no longer a variable and the establishment can control yield better, notwithstanding fluctuations in live weight.

An extension of the effective date to permit a one year collection period would enable establishments to ensure that the moisture level declarations placed on labels will be valid no matter what seasonal variations there are in moisture.

ii. Salmonella incidence variability. To better ensure compliance with the agency's performance standards, several of our members conduct their own Salmonella testing. Based on the data provided to us by establishments, it is clear that even at establishments with an overall low *Salmonella* incident rate, the incidence rate is not consistent throughout the year. For some establishments there is a higher incident rate in the summer months. Indeed, the data forms a rough bell curve when plotted by months. (Attachment 10). However, we have received data from other establishments that show *Salmonella* incidence rises in the fall/winter. (Attachment 13).

The amount of unavoidable moisture is tied to achieving a food safety requirement; specifically, the Salmonella performance standard. If Salmonella incidence varies during the year, it is important to ensure that controls on the moisture levels do not restrict the establishment's ability to achieve compliance with this food safety standard.

In sum, a data collection period of one year will assist us in better ascertaining the amount of moisture absorption that is an unavoidable consequence of the process used to meet a food safety standard. However, we wish to re-emphasize that a one-year data collection period is unavoidable in any event due to the restrictions imposed by laboratory capacity.

3. Determining Amount of Moisture Retained in Products

Once the establishment has determined the amount of moisture absorption that is unavoidable, it will proceed to the third task—to determine how much moisture is retained at time of packaging. For all items, the amount retained will be less than the amount absorbed and, in many cases, significantly less.

This calculation will be done by taking representative samples of whole birds and parts to determine the average naturally occurring moisture, such as with the oven drying method. The establishment must then conduct similar sampling and analysis on the product as it will be packaged. An establishment would not conduct this sampling until it has determined which chiller method results in the lowest absorption; otherwise, it would be required to conduct this sampling/analysis for each of the four variations, increasing costs and straining laboratory capacity.

We conservatively estimated the number of moisture retention tests that must be conducted. In that regard, we multiplied the number of estimated protocols submitted (400) by the number of major raw products.[9] We then multiplied the resulting number (3,600) by the number of samples in a set (we estimate that 10 samples would be the minimum amount to provide statistically significant results). This total of 36,000 was doubled (because an establishment must ascertain the naturally occurring moisture and the moisture content before packaging) and then multiplied by three repetitions (which we took from the FSIS model protocol for absorption). This results in a total of 216,000 moisture samples. Although many of our members will conduct the analysis in house, we expect it will take at least two, if not three, months to conduct the sampling and analyze the data. This process brings us to February, 2003, at the very earliest.

4. Labeling Implementation

According to the above time line, it will be February of 2003 before all establishments will know the amount of retained moisture, as contemplated by the regulation. Only then can establishments begin their fourth and final task, to make label changes. There are two steps in implementing any label change: New plates have to be created and the actual labeled packages have to be printed/shipped.[10] The majority of the labels are printed on the film package and not affixed by sticker.[11] This is because the processing and storage of the products, such as frozen turkeys, makes it impossible for an adhesive to remain on the film. Based upon an informal survey of our members, we estimate more than 6,500 labels (5,600 broiler labels and 950 turkey labels) will need to be revised to declare moisture. See Statements of Stephen Pretanik (attachment 14—broiler labels) and J. Roy Escoubas (attachment 15—turkey labels). To estimate the necessary time to perform such modifications, Mr. Escoubas contacted the principal packaging

[8] Please note, this does not factor in any additional time for data analysis. Nor does it account for the possibility that additional tests may need to be conducted.

[9] Whole birds; halves; quarters; breast (with and without skin); wings; legs: drumsticks; and ground.

[10] During the data collection period, our members could work on redesigning labels to expedite the process. However, until the retained moisture level is ascertained, the plates cannot be tooled.

[11] The discussion herein will focus on obtaining retail labeled packages. Labels of products intended for institutions and/or further processing are normally printed on the shipping container or affixed by a sticker. These labels will not pose the difficulties generated by retail product.

suppliers to the industry. The suppliers estimated that they have a capacity to design and tool a maximum of 450 new product labels per month. See Escoubas Statement. (Attachment 15). Taking the total number of labels and dividing by the excess capacity of 40, we estimate it will take 14.4 months before the plates have even been tooled. This means actual printing could not begin on all labels until April 1, 2004.

Finally, at this point, labels bearing the required declaration will be printed. Recognizing that there can be a ''rolling'' plate change/printing schedule, where labels are printed as soon as plates are ready, there would clearly need to be some period for printing after the last plate has been finalized. We estimate four months. Accordingly, as a matter of printing capacity, labels bearing the moisture declaration will not appear on all products until August 1, 2004.

Summary

As established by the above discussion and supporting documentation, it is simply impossible for companies to be in compliance with the moisture regulation until August 1, 2004. The time line once again:

- Protocols submitted by September 15, 2001
- Protocols receive No Objection letters by November 1, 2001
- Data collection on absorption started by December 1, 2001
- Data collection on absorption completed by December 1, 2002
- Data collection on moisture retention, by item, completed by February 1, 2003
- All plates changed by April 1, 2004
- All labels printed by August 1, 2004

Given the realities associated with this optimistic timeline, it is critical that the agency adjust the effective date to allow for a realistic implementation of the new labeling requirement.

Margin of Error

We cannot overemphasize that the above timeline presumes no significant problems. For example, if FSIS objects to many of the protocols, there will be delay as the agency and the establishments work to resolve any differences. There may also be delay in gathering the data at some establishments given the FSIS policy decision not to permit experimentation if the establishment has failed its most recent Salmonella performance standard series. Notice 22–01, section XII (Attachment 4). There may also be delay in obtaining new labels if FSIS mandates any new labeling requirement, such as mandatory nutritional labeling for single ingredient products, so as to require additional revisions of the labels after companies have begun printing the labels in compliance with the moisture regulation. It may be advisable to provide some margin for error in the revised effective date.

Obviously, we hope that the vast majority of labels would be in compliance by August 1, 2004. However, for the reasons discussed above, and for other unforeseen difficulties, there is a strong possibility that some establishments and/or product labels will not be in compliance by the revised date.[12] Accordingly, we respectfully request that FSIS acknowledge this potential and indicate that the provisions of 9 C.F.R. § 381.132(f) dealing with temporary label approvals would apply in such circumstances.

C. Environmental Impact

Petitioners are unaware of any adverse environmental impact that would result from an extension of an effective date for a mandatory label requirement. We do note that a viable effective date would minimize the amount of film labels that will have to be discarded.[13]

D. Economic Impact

Up until this point, we have not focused on the economic impact on the industry to comply with the regulation by the current effective date. Obviously, an impossibly short effective date could have an extremely adverse economic impact. In fact, if no extension is granted, industry would simply have to cease production, throwing thousands of people out of work and resulting in the bankruptcy of virtually all companies.

The closure of a company constitutes irreparable injury.[14]

E. Certification

The undersigned certifies that, to the best knowledge and belief, this petition includes all information and views on which the petition relies, and that it includes representative data and other information known to the petitioners which are unfavorable to the petitioners.

Respectfully submitted

The American Meat Institute
The National Chicken Council
The National Food Processors Association
The National Turkey Federation

Submitted August 17, 2001

Description of Attachments

As mentioned, the petition is accompanied by 14 attachments, which are available for viewing in the FSIS Docket Clerk's Office at the location indicated in **ADDRESSES.** The attachments are as follows:

Attachment 1—May 21, 2001, letter to Mr. Philip S. Derfler, Deputy Administrator, OPPDE/FSIS, from National Turkey Federation and National Chicken Council, enclosing 2 proposed protocols for evaluating moisture retention in poultry products

Attachment 2—July 5, 2001, letter from Mr. Philip S. Derfler, Deputy Administrator, OPPDE/FSIS, to Mr. Stephen Pretanik, National Chicken Council, enclosing FSIS-amended generic protocol for evaluating retained water in single-ingredient poultry products

Attachment 3—August 3, 2001, letter to Mr. Philip S. Derfler, Deputy Administrator, OPPDE/FSIS, from Mr. Stuart E. Proctor, Jr., National Turkey Federation, and Mr. Steve Pretanik, National Chicken Council.

Attachment 4—FSIS Notice 22–01, 6/29/01, ''Procedures for FSIS Personnel during Pre-implementation Period for 'Retained Water in Raw Meat and Poultry Products; Poultry Chilling Requirements' ''

Attachment 5—August 14, 2001, letter from Paul N. M. Gerhardt, Ph.D. National Food Laboratory, Inc., ''to whom it may concern,'' on laboratory capacity limitations affecting microbiological testing of poultry product samples

Attachment 6—August 14, 2001, electronic mail message from William L. Brown, Ph.D., President, ABC Research Corporation, ''to whom it may concern,'' on laboratory capacity for microbiological testing of meat samples

Attachment 7—August 15, 2001, electronic message from Kurt Westmoreland, Silliker Laboratories Group, Inc., to Mr. Steve Pretanik, National Chicken Council, on laboratory capacity for

[12] This may be especially true for turkey products, many of which are sold during the holidays in November and December, only three months after the earliest possible compliance date.

[13] Our members have informed us that approximately $8 million of label inventory would have to be destroyed if the effective date is unchanged.

[14] From a legal perspective, a product is misbranded if its label does not bear all mandatory information. Section 4(h)(12) of the Poultry Products Inspection Act. Upon the effective date of the moisture regulation, a moisture declaration is mandatory. Accordingly, any product whose label does not bear this information is misbranded. Misbranded product cannot bear the mark of inspection, and cannot be shipped. Sections 8(d) & 9(a)(2). If an establishment cannot ship product, it is, for all intents and purposes, closed.

microbiological testing of poultry product samples
Attachment 8—July 27, 2001, letter from Dr. Neal Apple, Vice President of Tyson Corporate Laboratory and Research, Tyson Foods, Inc., ''to whom it may concern,'' on laboratory capacity for microbiological testing of poultry product samples
Attachment 9—August 2, 2001, letter from Lee G. Johnson, Chief Microbiologist, Con Agra Refrigerated and Prepared Foods, ''to whom it may concern,'' on laboratory capacity for microbiological testing of product samples
Attachment 10—August 16, 2001, letter from Jason Tisch, Assistant Manager, Deibel Laboratories, on laboratory capacity for microbiological testing of poultry product product samples
Attachment 11—Line graphs showing monthly percentage variation of turkey pre-baste yield and monthly variation of poultry live weight yield in pounds
Attachment 12—Chart showing monthly variability in *Salmonella* incidence on poultry carcasses at some establishments
Attachment 13—Chart showing monthly variability in *Salmonella* incidence on poultry carcasses at some establishments, other than those represented the chart in Attachment 12
Attachment 14—Letter from Mr. Stephen Pretanik, Director of Science and Technology, National Chicken Council, ''to whom it may concern,'' reporting results of membership survey on labels affected by the retained water rule
Attachment 15—Letter from J. Roy Escoubas, Ph.D., Technical Enhancements, Inc., to Mr. Stuart Proctor, President, National Turkey Federation, reporting on number of new printing plates and labels needed to bring turkey processors in compliance with retained water regulations

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done, at Washington, D.C.: October 12, 2001.

Thomas J. Billy,

Administrator.

[FR Doc. 01–26168 Filed 10–16–01; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AC07

Availability of Official Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations on availability of official records in three areas. The proposed rule would require those who submit documents claimed to contain proprietary or other confidential information to mark the information as specified to decrease the chances of inadvertent public release of the information by the NRC, codify NRC's current practices delineating the circumstances under which the agency will not return confidential documents that have been submitted to the NRC, and clarify that the NRC will make as many copies of copyrighted material submitted to the agency as it needs to perform its mission. The proposed rule is necessary to conform the NRC's regulations regarding the availability of official records to existing case law and agency practice.

DATES: The comment period expires December 31, 2001. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

Comments also may be submitted via the NRC's interactive rulemaking Website (http://ruleforum.llnl.gov). This site provides the ability to upload comments as files (any format) if your Web browser supports that function. For information about the interactive rulemaking Website, contact Ms. Carol Gallagher, 301–415–5905 (e-mail *CAG@nrc.gov*). Comments received also may be viewed and downloaded electronically via this interactive rulemaking Website.

Except for restricted information, documents created or received at the NRC after November 1, 1999, also are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Catherine M. Holzle, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1560, email CMH@NRC.GOV.

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Comments
III. Discussion
IV. Plain Language
V. Voluntary Consensus Standards
VI. Environmental Impact: Categorical Exclusion
VII. Paperwork Reduction Act Statement
VIII. Regulatory Analysis
IX. Regulatory Flexibility Certification
X. Backfit Analysis

I. Background

The NRC first published 10 CFR 2.790 on March 22, 1976 (41 FR 11810). This regulation established procedures governing the submission of proprietary information to the NRC. The regulation provided that material determined to be proprietary generally would be protected by the NRC and would not be released to the public. The agency then

set forth the procedures that submitters could use to challenge an NRC determination that material was not proprietary, or a decision by the agency to release proprietary information to the public. As part of this procedure, the regulation addressed the circumstances under which the agency would (or would not) return a document containing proprietary information to the submitter. The regulation did not address the right of the NRC to make copies of copyrighted material submitted to it.

On December 23, 1992 (57 FR 61013), the Commission published proposed amendments to § 2.790 which would have: standardized the markings on proprietary documents submitted to the NRC; expanded the circumstances under which the NRC would not return proprietary information to the submitter; and made clear that the agency will make copies of copyrighted material submitted to it, as necessary to carry out its mission. These changes were proposed in an effort to update the regulations to reflect judicial decisions on public availability of information, as well as agency practice, to facilitate document handling, and to reflect the status of international copyright law. The proposed changes were not directed toward modification of agency policy or practice regarding the public disclosure of proprietary or other confidential information submitted to the NRC.

The NRC received six comments in response to the request for comments. It became apparent that the commenters' central concern was the potential for increased public disclosure of proprietary submittals, because of the linking in the regulation of the withdrawal procedures with the proprietary determination procedures. The proposed rule has been revised to clarify the separation between these procedures and make the regulation easier to understand. In view of the passage of time since the rule change was proposed in 1992, as well as the need for additional changes and clarifications, we are again seeking public comment before promulgating a final rule. We also are taking this opportunity to propose additional changes to 10 CFR 2.790, which we describe below.

II. Public Comments

The comments received on the 1992 proposed rule were from a public interest organization, a law firm (on behalf of its nuclear power plant clients), a nuclear industry association, and three NRC licensees. One commenter supported the proposed amendments *in toto.* Another commenter did not address the proposed amendments, but raised a general concern regarding the potential for disclosure of proprietary information under § 2.790. The other four commenters were supportive in part, but also raised various concerns regarding the need for, and the appropriateness of, the changes in the proposed regulations, and in some cases suggested alternatives. Most commenters suggested that no change was necessary to the ''long-standing and effectively operating Commission regime governing the submission, review and protection of proprietary information.''

The Commission grouped the comments into 13 general issue areas. For each area, a summary of the comments received and their proposed resolution has been included. Most of the commenters regarded the document marking procedures as cumbersome and unnecessary but considered the copyright procedures reasonable. Some commenters recommended certain fundamental changes to the existing regulation, most notably, the adoption of presubmission procedures for determination of whether documents could be considered to contain proprietary or other confidential information. Some commenters urged determination review deadlines and introduction of an absolute right of document return. Some of the commenters challenged old (preexisting) portions of the regulation, e.g., suggesting elimination of the requirement that proprietary material that forms the basis of a rulemaking cannot be withheld from the public.

The common concern throughout the comments appeared to be, not with document return per se, but with the document disclosure aspect of the rule and the perceived likelihood that the proposed changes would whittle away the protection for proprietary information currently available under § 2.790. This is understandable, in that both the current version of § 2.790(c), and the one proposed in 1992, connect the procedure for requesting document return to an agency denial of a request to withhold a document from public disclosure. Neither version addressed a situation involving a document return request outside these circumstances, wherein the agency might retain a document to satisfy some aspect of its official responsibilities but not necessarily release it to the public.

Therefore, the Commission is reframing the proposed rule to differentiate between the two discrete determinations of document withholding and document return. The proposed rule would add a new and separate paragraph (d) for the document return request procedure that detaches it from the procedure on document withholding. This new paragraph incorporates the additional ''exceptions'' to the document return rule. No changes are proposed to document withholding criteria. The Commission is providing responses to the comments received on the 1992 proposed rule, even though the NRC is issuing a new proposed rule for comment, since some of the revisions to the proposed rule resulted from consideration of the comments. The Commission's responses to these comments should provide additional insight into the bases for the revised proposed rule. A discussion of the comments received follows.

III. Discussion

Currently, 10 CFR 2.790 grants a limited right of withdrawal for proprietary documents submitted to the NRC, provided the information was not submitted in a rulemaking proceeding and did not subsequently form the basis for a final rule. One of the proposed changes to this regulation would modify the regulation to provide specific guidance for marking information the submitter seeks to have withheld from public disclosure on the basis of proprietary content or other confidential information, e.g., to protect personal privacy. This would reduce the Commission's burden in identifying portions of document submittals asserted to be confidential. Also, the use of standardized document marking procedures is expected to decrease the potential for inadvertent release of confidential information that could be caused by oversight, mistake, or confusion about alternative markings.

The Commission's regulations need to be updated to reflect more accurately legal restrictions on the NRC's ability to permit document withdrawal for documents that it must retain to properly conduct its official responsibilities. Part of this responsibility is to maintain the necessary records to document the NRC's actions. For example, during the course of an investigation, the NRC Office of Investigations may obtain documentary evidence, submitted voluntarily or through compelled process, for consideration by NRC and Department of Justice decision makers, which information cannot be returned. Thus, the second proposed change would revise the regulations to clarify the fact that document withdrawal will not be available when the information contained in it forms part of the basis of

any official agency decision, including but not limited to, a rulemaking proceeding or licensing activity, and to reflect the addition of four more exceptions to the submitter's right to withdraw such information, reflecting existing case law and agency practice. These exceptions are when information:

(1) Is contained in documents made available to or prepared for an NRC advisory committee;

(2) Has been revealed or relied upon at an open Commission meeting held in accordance with 10 CFR part 9, subpart C;

(3) Is subject to a request under the Freedom of Information Act (FOIA); or

(4) Has been obtained during the course of an investigation by NRC's Office of Investigations.

The refusal to return documents under § 2.790 does not necessarily mean the information will be disclosed to the public; application of these exceptions would be separate from a disclosure determination on the underlying information. However, it remains that the Commission may balance the public interest in access to the information against the demonstrated concern for protecting legitimate private interests. In some cases, disclosure may be appropriate. Nonetheless, release is not made under this section without affording the submitter notice and an opportunity to object. While the proposed changes do not affect agency standards for withholding information from public disclosure, the proposed rule has been revised to reduce confusion between withdrawal and withholding procedures. The withdrawal procedure has been separated from the other material and placed into a new paragraph (d).

Finally, the third proposed change addresses the NRC reproducing copyrighted material contained in submittals to the Commission. The Commission has received increasing numbers of copyrighted submittals in recent years. Most of the agency's concerns in this area have been handled through *ad hoc* copyright license agreements, or under fair use exceptions to Federal copyright law. However, handling copyrighted material on a case-by-case basis is inefficient because the NRC routinely needs to reproduce copyrighted material to conduct its business. Thus, this proposed change would explicitly state the authority of the NRC to reproduce copyright material, rather than address this authority on a case-by-case basis.

Document Marking

1. Comment. On the proposed document marking changes, two commenters stated that the wording proposed for marking submitted material is unnecessarily prescriptive. The main complaint was that this requirement would result in wasted time and effort. These commenters considered it unnecessary to prescribe explicit document marking language because submitters will have an affirmative interest in making sure proprietary information is clearly marked. One commenter observed that the Commission's goal could be accomplished by using more general language, and noted that other agencies offer alternatives in their regulations regarding document marking. It was suggested that the NRC adopt marking requirements similar to those used by other agencies and allow for variation in the marking language.

Response. The Commission does not believe that requiring standardized language will result in any particular hardship on submitters, especially since it intends to use standardized marking language as a processing tool and not as a means of limiting access to the withholding request procedure. The NRC's intent in prescribing document marking language was to remove the guesswork for employees handling document intake, processing and distribution, primarily at the NRC Document Control Desk. This is expected to reduce the risk of processing errors by administrative personnel who may not recognize unfamiliar markings and consequently, might fail to accord materials the proprietary treatment desired.

This requirement would be established for the protection of the submitter and also to ease the administrative burden on the agency that would result from the necessity of individually interpreting an assortment of legends that might otherwise be received. Moreover, without the prescriptive language, there may be ambiguity about whether a submitter intended to request proprietary treatment. Unnecessary delays can result from the need to refer documents for examination or inquiry to determine the precise intent of the submitter and appropriate handling. Potential burdens associated with applying standardized language are considered to be worth the mutual effort to reduce the risk of inadvertent disclosure.

2. Comment. For the proposed document marking changes, two commenters noted that the proposed rule did not specify the consequences of failing to use the exact wording in the regulation when marking documents containing proprietary information. These commenters claimed that forfeiture of proprietary status for not using the exact words prescribed in the regulation would be overly harsh.

Response. The NRC would not impose a penalty for failure to use the precise wording prescribed. In the preamble of the earlier proposed rule, the Commission did state that it ''would not be accountable for the public release of a document that is not marked in accordance with the Commission's regulations.'' This does not imply forfeiture of proprietary status, nor impose any other penalty for failure to follow the precise format. It is meant only to convey notice that the Commission does not assume responsibility for any unintended consequences resulting from a submitter's failure to comply with the regulatory standards. Naturally, the NRC would not intentionally release such documents, but there is a heightened possibility of potential inadvertent disclosure for proprietary information that is not adequately identified. Language substantially similar to that prescribed would be equally acceptable. The point is not to enforce a standard rigidly for its own sake, but to afford appropriate protection to submitters' confidential information, as economically and efficiently as possible. The NRC would work with submitters, as it always has, to resolve any discrepancies of which it was aware within a particular request.

Document Return

3. Comment. The one comment that was virtually universal concerned the proposed additional exceptions limiting document withdrawal because the existing rule and the original proposed rule seemed to associate document retention directly with document disclosure. Commenters were overwhelmingly concerned with the potential negative impact of document disclosure on affected parties' competitive positions within the nuclear power industry, domestic and international. Specifically, the thrust of comments in this category was that the proposed revision would reduce the protections against the release of proprietary information, increasing the risk that proprietary information would be disclosed. Commenters objected that this would undermine important public policy interests expressed in some of the underlying statutory authority for 10 CFR 2.790.

Some commenters asserted that the proposed changes would have the effect of limiting the availability of technical information to the NRC and thereby impair the Commission's review process. In addition, these commenters

contended that the proposed changes would discourage private research and development and hinder voluntary reporting to the Commission. Some of these commenters mentioned concern over a potential adverse effect on the national security interest underlying technology transfer constraints in 10 CFR part 810, issued by the Department of Energy.

Response. The additional proposed exceptions to the right of withdrawal will not result in reduced protection for proprietary information. The proposed rule does not narrow the criteria for qualifying information as proprietary, which is the threshold for withholding information from public disclosure under applicable law. Information that currently qualifies as proprietary still would qualify as proprietary after the rule is revised and would face no greater risk of disclosure than it did before. If anything, the advent of broader criteria for proprietary information, under the ''voluntary'' submittal standard of *Critical Mass*, may mean that increasing amounts of information might be afforded protection from disclosure. *Critical Mass Energy Project* v. *NRC*, 975 F. 2d 871 (D.C. Cir. 1992), cert. denied, 507 U.S. 984 (1993).

The NRC recognizes the competing public policy tensions inherent in balancing the economic interests of private businesses against the public's right to be informed of the basis for official government actions. Qualifying information will continue to receive protection, except, as has always been the case, where the Commission makes a determination that the right of the public to be ''fully apprised as to the bases for and effects of a proposed action outweighs the demonstrated concern for protection of a competitive position'' (10 CFR 2.790(b)(5)(i)). It is noted, however, that based on past history, the Commission has rarely disclosed information over the objection of a submitter. The NRC is confident that the additional proposed exceptions to the return of submitted documents will neither result in a reduction in the quantity and quality of technical information it receives from outside, nor impact private research and development, since the exceptions do not affect the proprietary determination process. Consequently, the Commission would not expect its review process to be impaired, nor does it believe implementation of the additional exceptions will hinder voluntary reporting. Indeed, the Commission's support of voluntary reporting in the *Critical Mass* case has ensured the continued vitality of that practice.

Regarding the observation about a potential adverse effect on the national security interest underlying technology transfer constraints in 10 CFR 810.10, this provision relates to the production of special nuclear material by ''all persons subject to the jurisdiction of the United States who engage directly or indirectly in the production of special nuclear material outside the United States.'' By its own terms, the Department of Energy rule, 10 CFR 810.2(d), does not apply to exports licensed by the NRC. Although 10 CFR 810.10(b) provides for consultation with the NRC, among others, on the question of approving an application for specific authorization under Part 810, the determination is made by the Secretary of Energy. Thus, the issue of potential adverse affect on the national security interest underlying the technology transfer constraints of 10 CFR Part 810 is neither within the purview of 10 CFR 2.790, nor the jurisdiction of the NRC, and is not relevant to this rulemaking. We note, however, that the proposed changes will not affect our ability to engage in a free exchange of views with DOE or other agencies.

4. Comment. Some of the commenters declared that the proposed exceptions exceed governing law, are not based on corresponding changes in statutory language, and are not reflected in other agencies' regulations. Two commenters stated that the ''FOIA capture'' exception expressed in the proposed rule should not be adopted because the proposed exception was not mandated by the FOIA statute. These commenters contended that the law in this area was ambiguous, and that the Commission's reliance upon *General Electric Co.* v. *NRC*, 750 F. 2d 1394 (7th Cir. 1984), was therefore misplaced. Finally, these commenters asserted that the NRC itself argued opposite positions regarding a submitter's right to withdrawal of proprietary information in *General Electric* and in *Westinghouse Electric Corp.* v. *NRC*, 555 F. 2d 82 (3d Cir. 1977).

Response. This comment suggests that the Commission may not limit return of documents without an explicit statutory mandate. But it is appropriate to consider relevant case law when promulgating regulations bearing on the administrative functioning of the agency. We emphasize that the agency must retain possession of documents under certain circumstances, such as when they are subject to an FOIA request. The Supreme Court articulated the legal principle that a document constitutes an agency record subject to the FOIA when it meets a two-part test: (1) the document is created or obtained by the agency; and (2) it is under agency control at the time of the FOIA request. *U.S. Department of Justice* v. *Tax Analysts*, 492 U.S. 136 (1989). Accordingly, the second part of this test (the timing of receipt of the request) is critical to determining the status of the document as an agency record that must be handled in accordance with statutory requirements. When read together with the *Spannaus* decision, which sets forth the statute of limitations for appealing the denial of information requested under FOIA, these decisions obligate the Commission to preserve and retain the records for the duration of that period in the event of legal action. *Spannaus* v. *Department of Justice*, 643 F. Supp. 698 (D.D.C. 1986), *aff'd*, 824 F. 2d 52 (D.C. Cir. 1987). The effect of this proposed rule change is to give clearer notice to persons contemplating submittals to the NRC of the potential limitations on the agency's ability to honor certain requests for return of documents.

The Commission disagrees with the commenters' characterization of the agency's position in *General Electric* and *Westinghouse Electric Corp* and with the suggestion that the two cases created ambiguity in the law. In fact, the cases decided different issues. The *General Electric* case concerned the issue of document return when the document had been captured by an FOIA request, whereas the *Westinghouse* case involved the issue of proprietary information disclosure. In *General Electric*, the NRC argued that the right of withdrawal by the submitter was inapplicable in the face of an FOIA request for the document. This position, that the right to document return is inapplicable once an FOIA request is received, was upheld by the court in *General Electric Co.*, 750 F. 2d 1394, 1399 (7th Cir. 1984). Therefore, contrary to the commenter's assertion, the Commission's reliance on *General Electric Co.* v. *NRC* is well-placed, in that the *General Electric* opinion is squarely on point with the Commission's action in limiting the right of withdrawal when a document is subject to an FOIA request.

The *Westinghouse* case dealt with the agency's authority to amend its rules of practice under 10 CFR 2.790 setting forth tests for discretionary disclosure of proprietary information. The court upheld the NRC's establishment of these disclosure criteria. That judicial decision did not address the ''FOIA capture'' issue and thus is not relevant to the resolution of these comments.

Finally, the Commission is not persuaded that its regulations need to be based on the rules of other agencies, nor that it should act only after other

agencies have promulgated similar rules. The Commission, as part of its commitment to be a transparent regulator, will continue to provide notice of its practices by modifying its regulations when appropriate.

5. Comment. One commenter charged that the proposed changes make no distinction between documents that the Commission requires applicants, licensees, or others to submit, which are subject to the disclosure criteria set forth in *National Parks.* A suggestion was made that the rule be revised to distinguish between voluntary and ''mandatory'' submittals to reflect the dichotomy in standards applied to the proprietary determination for these documents.

Response. FOIA exemption 4 authorizes agencies to withhold from public disclosure ''trade secrets and commercial or financial information obtained from a person and privileged or confidential'' (5 U.S.C. 552(b)(4)). Until the *Critical Mass* case, the test for whether information could be withheld as confidential under exemption 4 was two-pronged: disclosure had to be likely either to impair the Government's ability to obtain information in the future or to cause substantial harm to the competitive position of the submitter. *National Parks & Conservation Association* v. *Morton,* 498 F. 2d 765 (D.C. Cir. 1974). In *Critical Mass,* the court established a new and broader standard of categorical protection for information voluntarily submitted to an agency. For such information, the court found that there is a governmental interest to be protected, namely that of maintaining the continued and full availability of the information to the agency. In addition, the court held that the exemption also recognizes the submitter's interest in protecting information that ''for whatever reason, 'would customarily not be released to the public by the person from whom it was obtained'.'' *Id.* at 878 (citing *Sterling Drug, Inc.* v. *FTC,* 450 F. 2d 698, 709 (D.C. Cir. 1971)). Thus, the court found that there was broad protection for voluntarily submitted information, provided it is not customarily disclosed to the public by the submitter.

The Commission does not consider it necessary to incorporate a specific standard for voluntarily submitted information because the proposed changes do not purport to alter the standards for withholding proprietary information. Moreover, the regulatory basis for withholding is whether information is determined to be proprietary, by whatever legal criteria that may be applicable. Section 2.790 is written in such a way as to accommodate the applicable legal criteria. The fundamental premise that proprietary information may be withheld from public disclosure would remain valid under the proposed rule. The information required of submitters requesting confidentiality, under affidavit, addresses all matters the Commission must consider in making the determination of whether information is entitled to proprietary status, under the applicable legal standard, whether the submittal is voluntary or mandatory. Any information provided by the submitter that adequately supports a withholding request under the existing rule will easily satisfy the ''voluntary'' standard, which is less demanding. All the information required to be addressed in the affidavit is relevant to the Commission's consideration of the withholding request. Consequently, the Commission believes it is reasonable to have a rule that does not connect itself excessively to particular criteria, as any changes in the criteria would then necessitate further revisions to the rule.

6. Comment. One commenter noted that the regulations should incorporate the predisclosure notification procedures required by Executive Order (E.O.) 12600.

Response. E.O. 12600 on Predisclosure Notification Procedures for Confidential Commercial Information provides submitters certain procedural rights in potential ''reverse'' FOIA situations, i.e., where an individual seeks to prevent an agency from publicly disclosing submitted information. E.O. 12600 requires Federal agencies to establish certain predisclosure notification procedures, including affording submitters an opportunity to object to disclosure of the affected material. Again, the proposed changes do not purport to alter the standards for withholding or disclosing information. Thus, this issue is not pertinent to the proposed rule change. We note, however, that the Commission has had such procedures in place for some time. While the E.O. does not mandate incorporation of these procedures into agencies' regulations, paragraph (c) of both the currently codified requirements in 10 CFR 2.790 and this proposed rule incorporate notice provisions and contemplate opportunity to object, as well as provide for explanation of reasons for a Commission decision to deny a withholding request.

In addition, the NRC includes ''special procedures for processing records containing proprietary information'' in its FOIA Handbook under NRC Management Directive 3.1, ''Freedom of Information Act.'' These procedures require the NRC staff to notify submitters of proposed disclosures and afford an opportunity to object, as well as provide a written explanation of the Commission's decision, in the event of a disagreement between submitters and the NRC. Thus, the Commission implemented the notification provisions of E.O. 12600 by incorporating such procedures into regulations and its internal guidance.

7. Comment. Some commenters objected to the potential for disclosure of proprietary information based on an NRC balancing test. The commenters claimed that balancing is not within the Commission's authority once a determination is made that the submitted information is proprietary and falls within exemption 4 of FOIA. Rather, the commenters asserted, the balance has already been struck by Congress in favor of the protection of proprietary information.

Response. The prerogative of balancing a proprietary interest against the public's interest in understanding the Commission's actions is a right already reserved to the Commission in § 2.790(b)(5) of the regulation. The Commission is not proposing any changes to this section. Current regulations provide for this authority and it has not been enhanced or expanded by the proposed changes. Thus, this is not at issue in the proposed rule change. However, there is nothing in the FOIA statute, FOIA case law, or the Trade Secrets Act, 18 U.S.C. section 1905, that prohibits a balancing of this type.

Moreover, the proprietary determination decisionmaking process provides several opportunities for the submitter to make a case for withholding information from public disclosure. As a practical matter, the final determination may be the outcome of a series of exchanges between the agency and the submitter, usually resulting in protecting the truly sensitive and confidential portions of the material, while making available enough of the rest to inform the public adequately of the vital details that the public needs to understand and inquire into the Commission's actions. Ultimately, if submitters desire official agency consideration of their voluntarily submitted material, they must operate under rules that are applied consistently to all, including information availability. Again, the Commission rarely has released proprietary information over the objection of a submitter.

8. Comment. Two commenters urged that, to protect proprietary information adequately, the NRC should implement presubmission review procedures during which a document would not be considered an ''agency record'' under the FOIA, the Federal Advisory Committee Act (FACA), or the Sunshine Act. The purpose of the procedure would be to allow submitters an absolute right to withdraw documents for which proprietary protection is denied during the ''presubmission'' period. These commenters noted that other agencies, namely the Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA), allow for presubmission review of requests for confidential treatment of proprietary information in their regulations and thus, provide precedent for such a regime.

One commenter stated that the proposed changes accentuate a problem on the timing of proprietary determinations by the Commission. Specifically, the concern was that neither the existing regulation nor the 1992 proposed version of the regulation contains a provision requiring that proprietary determinations be made before the information is circulated within the Commission. According to the commenter, this lack of an explicit timing requirement is more significant in the proposed changes, since the amendments will further reduce the right of submitters to withdraw documents. This commenter considers the lack of a timing requirement to expose the industry to long periods of uncertainty regarding submitted proprietary information, which could lead some parties to be more reluctant to submit information voluntarily to the NRC. Therefore, this commenter suggested that the NRC include definite time limits in its regulations for proprietary determinations with the option for the submitter to retrieve documents denied protection before they are circulated within the Commission.

Response. These comments seek a period of delay before a submitted document would have legal status as an agency record. The proposed changes do not purport to alter the definition of ''agency record,'' so this comment is outside the scope of the proposed changes. In the Commission's view, however, the scheme suggested by the comments would imply that documents may be tendered to the Commission on an informal basis, and a decision deferred about whether to submit them for official action pending the outcome of the proprietary review process, including a Commission determination on whether to grant the withholding request.

The Commission does not believe that implementing presubmission review procedures would produce the commenters' desired legal effect of forestalling a document becoming an agency record. The EPA and FDA regulations referenced in these comments do not provide absolute protection during the presubmission period. The EPA regulations specifically provide for ''capture'' by an FOIA request. *See* 40 CFR 2.206(d). The FDA regulations suggest that, for qualifying voluntary submittals, disclosure only will be made pursuant to court order, but this rule implies that the document will remain in the hands of the agency, in order to allow compliance with any applicable court order. *See* 21 CFR 20.44. This corresponds to the requirement established by FOIA case law that records within the physical custody and control of the agency constitute ''agency records.'' *Tax Analysts* v. *DOJ,* 492 U.S. 136, 146 (1989); *Wolfe* v. *HHS,* 711 F. 2d, 1077, 1079–1082 (D.C. Cir. 1983). (This presumes that the document has not been withdrawn before it is otherwise subject to the jurisdiction of the court, as when official demand is made for the document, in which event it becomes the subject of an FOIA request while in the agency's custody.) Even for these agencies, the presubmission review procedures are limited to voluntary submittals.

The proposition that the ''capture'' of documents as ''agency records'' would be alleviated by adoption of presubmission procedures also misses a point already tested in court: at least one court has held that an agency may not exclude documents from the legal ambit of the FOIA through presubmission procedures. *Teich* v. *Food and Drug Administration*, 751 F. Supp. 243 (D.D.C. 1990). If presubmission procedures were seen as an attempt to evade or circumvent FOIA, the Commission would not expect them to survive judicial scrutiny. In fact, the court discredited procedures similar to those proposed by the commenter, stating that ''presubmission review is nothing more than an attempt to get around the FOIA.'' *Id.* at 248. This alone would be enough to reject this comment. Further, implementation of deliberate obstacles to public information access would erode confidence in the NRC.

Agency timeliness in reviewing submittals and the imposition of time limits on the agency's proprietary determination process are not within the scope of this rulemaking. Nonetheless, it is the Commission's expectation that the staff will promptly address requests for either withholding or return of proprietary documents. Moreover, if proprietary protection is to be denied, the submitter will be so informed before the document is made available to the public. Such documents may be withdrawn in some circumstances, as provided in the regulations. However, this does not extend to submitters any right to withdraw documents whose return is restricted.

9. Comment. For the Commission meeting exception restricting return of documents, two commenters stated that there is no need for the exception because provisions of the Sunshine Act allow for meetings to be closed, should proprietary information be discussed in the meeting.

Response. The Commission does not take issue with the fact that the Sunshine Act permits closed meetings for discussion of proprietary information and for appropriate protection of material exempted from disclosure under the statute. Commission procedures acknowledge the need to provide a confidential forum for the discussion of proprietary information. (As noted in the Supplementary Information of the 1992 proposed rule,10 CFR 9.104 provides for meetings to be closed where proprietary information is discussed.) The pertinent exception in the proposed changes, however, addresses materials used for open meetings. Presumably, if the meeting were open, the information in question (or at least the fact of its existence) already will have been disclosed there. This proposed change is merely to conform the regulations with existing Commission practice, because, as with the FOIA and FACA withdrawal exceptions, the agency is obligated to preserve the records of its official transactions. Thus, it is not an issue of document protection but of document retention. The Commission is not minimizing the concerns manifested by the comments about the need to protect proprietary information and Commission regulations do provide for protection of proprietary information.

10. Comment. Some commenters stated that, for the proposed Advisory Committee exception, the ''absolute bar'' to the return of documents submitted to an Agency Advisory Committee is not required by the FACA, in that the FACA recognizes the FOIA exemptions and procedures. One commenter suggested that the regulations explicitly provide that proprietary documents used by

Commission Advisory Committees will not be disclosed to the public.

Response. The FACA provides for meetings to be open to the public and for the opportunity to appear before or file statements with the committee, as well as for filing detailed records of each meeting, including minutes, complete and accurate discussion of matters discussed and conclusions reached, and copies of all reports received, issued or approved. (5 U.S.C. App. 2, section 10.) By its own terms, FACA sets up a requirement for public access to committee deliberations, including the records of those meetings and documents submitted for use in those meetings. Thus, the FACA clearly imposes an obligation on the Commission for retention of committee records and for public access to those documents not exempt from disclosure. Indeed, the language supports the Commission's position that it may refuse to return documents it considers itself bound to retain.

In addition, the FACA provides that all papers or materials ''made available to or prepared for or by each advisory committee shall be made available for public inspection and copying,'' subject to the FOIA and the exemptions therein. (5 U.S.C. app. 2, section 10(b).) Hence, the comment that FACA recognizes the FOIA certainly is correct; however, it does not follow that application of FOIA exemptions to withhold documents from public disclosure equates to the freedom to return the documents at will. While the FOIA does not contain an express prohibition against return of documents, fundamental FOIA principles developed through case law do limit the agency's ability to return documents subject to an FOIA request. This was explained in response to an earlier comment, i.e., the situation when the Commission is precluded from returning documents captured by an FOIA request. Under the FOIA, the Commission is required to preserve records through the potential period for administrative appeals, and court litigation, should they arise. *Spannaus* v. *Department of Justice*, 643 F. Supp. 698 (D.D.C. 1986), *aff'd,* 824 F. 2d 52 (D.C. Cir. 1987). Ultimately, the Commission must work within the legal framework of the statutes and pertinent case law for the handling and treatment of agency records.

It should be stressed that this exception has no bearing on the nature or quality of documents subject to ultimate protection from public disclosure, only on the question of which documents are subject to withdrawal. Even then, the demonstration (and acceptance by the Commission) of the proprietary character of information carries heavy weight in the Commission's decision whether to make information publicly available. The Commission does not override proprietary determinations lightly or without due deference to the private interests at stake.

11. Comment. For the Commission meeting exception, two commenters stated that the wording in the proposed changes was narrower than the discussion of this exception in the **SUPPLEMENTARY INFORMATION.** The commenters suggested that the description in the **SUPPLEMENTARY INFORMATION** is too vague and confusing, in that it refers to documents considered ''in connection with'' an open meeting versus the information actually discussed at an open Commission meeting. Thus, they sought clarification of the Commission's intent regarding this exception.

Response. This comment highlights a discrepancy between the intent expressed in the **SUPPLEMENTARY INFORMATION** and the actual text of the earlier proposed changes. The text for the earlier version of this exception adopted language directly from the Sunshine Act in an effort to employ the standards set for information availability under that statute, which provides basic rights of public observation in open meetings and procedures for documentation of information withheld under its exemptions. The statutory phrase ''considered in connection with any [Commission] action,'' however, applies to the identification of information withheld under Sunshine Act exemptions for documenting closed Commission meetings. 5 U.S.C. section 552b (f)(1). Detailed procedures for such documentation are found in the agency's regulations at 10 CFR, Subpart C of Part 9 and are not within the scope of this proposed revision.

The NRC's intent was to apply this withdrawal exception to documents being actively addressed or made available in open Commission meetings, subject to the same openness requirements as the meetings themselves. Thus, borrowing the statutory phrase ''considered in connection with'' for the **SUPPLEMENTARY INFORMATION** may have been misleading, was, at the least, ambiguous, and did not capture the Commission's true objective. The Commission's goal was to place workable parameters on the retention requirement by establishing the exception for documents whose contents were revealed in an open meeting or upon which the Commission relied during an open meeting. Thus, the new proposed exception eliminates the inconsistency of the earlier version and reflects the actual intent of the Commission by adoption of a standard that is not excessively broad but captures the requirement for open meetings, since the availability of those documents must be consistent with the statutory requirements of the Sunshine Act.

Material Subject to Copyright Protection

12. Comment. Those commenters who addressed the proposed addition of a copyright provision supported its intent as explained in the preamble of the proposed rule. However, two of the commenters observed that the intent explained in the preamble was not reflected in the actual wording of the proposed rule, particularly with respect to subsequent reproduction of copyrighted documents outside the agency, copyright permission notice on the face of documents, or limitation on the number of copies distributed in response to a request. These commenters stated that, unless modified to comport with the preamble statements, the language of the proposed rule appeared to violate the Federal Copyright Act. Finally, one of the commenters asserted that the proposed rule was ambiguous and difficult to understand.

Response. The Commission acknowledges that copyright matters can be complex. It has attempted to address the issue in a straightforward manner and establish a comprehensible rule. Additionally, the Commission acknowledges that the regulation is not directed toward each and every matter mentioned in the preamble, but it does not find it necessary to include this level of detail in the regulation. In particular, the preamble portion of the proposed rule stated that:

> [t]he proposed regulation authorizes only the NRC to copy and distribute the document and does not extend these rights to other persons receiving copies from NRC. The proposed rule provides that if the document bears a copyright notice or is accompanied by an explicit statement that the document is protected under the copyright law, a notice would be placed on the document indicating that the NRC has the authority to copy the document; however, all copyright markings contained on the submitted document would be retained. * * *
>
> * * * [W]ith respect to the distribution of documents to the public, only one copy per request will be made of documents bearing a copyright notice or documents accompanied by an explicit statement indicating that the document is protected under the copyright law.

The Commission deemed it important that the preamble set forth certain matters of document processing handled under internal administrative procedures, to explain its rationale for the underlying regulation and to reassure submitters that it would not run roughshod over the rights of copyright holders. However, while the preamble may reflect additional details about the subject that are relevant to the process, it does not amount to a legal requirement imposed by the regulation. Moreover, the internal procedures have no effect on the legal rights or responsibilities of any party outside the NRC. They neither purport to expand or restrict the rights of non-NRC parties vis-a-vis copyright holders.

These comments may reflect the mistaken impression that incorporation in the regulation would somehow enhance copyright enforceability or assist in the prosecution of infringement actions. But, under copyright law, reproduction permission comes from the copyright holder; the Commission cannot extend authority for subsequent reproduction of copies without the express permission of the copyright holder. The legal basis for this limitation is independent of the Commission's statement in the preamble. Including this provision in the regulation will make it no more nor less legally binding than it already is by operation of law. (Under the Berne Convention Implementation Act of 1988, P.L. 100–568, materials created after March 1, 1989, no longer require a copyright notice to be protected by copyright law.) Thus, rather than contravening the Federal Copyright Act, the language of the regulation is fully consistent with applicable legal requirements.

13. Comment. One commenter who supported the proposed changes on copyright observed that objections to these changes might signal a desire to ''discourage public scrutiny and * * * public participation in the design certification process.'' This commenter also thought the NRC should consider declaring copyrighted materials used as exhibits in NRC proceedings to be a ''fair use'' for copyright purposes.

Response. This comment demonstrates the basic tension between the public's expectation of access to information in the hands of government and the submitter's desire to control access to information contained in the documents. The main purpose of this proposed change is to reconcile the Commission's regulatory responsibilities, including adequate public notice of the basis for its decisions, with the fact that submittals to the Commission increasingly have been accompanied by notice of copyright restrictions. However, there seems to be some confusion about restricting access to information through copyright authority. Copyright authority does not limit release or dissemination of the material in question; essentially, it only restricts reproducing the material. It is not an appropriate tool to attempt to shield information from disclosure. That is the separate and independent purpose of the withholding request procedure that occupies most of the coverage of 10 CFR 2.790.

As to fair use: under copyright law, protection extends to various items, including ''literary works,'' a term defined to include ''works * * * expressed in words, numbers or other verbal or numerical symbols * * * regardless of the * * * material objects * * * in which they are embodied'' (17 U.S.C. section 101). Among other rights, the copyright holder has the exclusive right to copy the work and the exclusive right to display the work (17 U.S.C. section 106). However, the owner of a lawful copy has the right to display the work to persons present where the copy is located (17 U.S.C. section 109). There are a number of other protections afforded to copyright holders and a large number of other specific grants of authority to holders of copies of the material, including, most notably, the ''fair use'' exception (17 U.S.C. section 107). The specific determination whether a particular use constitutes ''fair use'' is very subjective; however, it may include reproduction for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. ''Fair use'' is determined by considering four statutory factors:

- The purpose and character of the use, such as commercial nature versus non-profit educational purposes;
- The nature of the copyrighted work;
- The amount and substantiality of the portion used compared to the copyrighted work as a whole; and
- The effect upon the potential market for, or value of, the copyrighted work.

The Commission's exercise of its responsibility to reproduce sufficient copies of a document to carry out its regulatory mission and public information obligations is a reasonable application of the ''fair use'' limitation on exclusive rights under Federal copyright law. However, the Commission has no authority to establish the sort of entitlement requested by the commenter to the detriment of copyright holders. The sort of blanket authorization advocated by the commenter would require a legislative amendment of Federal copyright law to expand the borders of ''fair use,'' because fair use is established by statute, as interpreted by case law. Only the Congress can make a categorical exemption for a particular application and it has not done this. That is not to say that the fair use doctrine would not be available to support the application described for exhibits in NRC proceedings, but this would need to be supported by its own facts on a case-by-case basis and justified under applicable legal standards, as in any other situation.

Document Release

The Commission proposes to change, in the revised subsection 2.790(c), the time period for release of documents whose request for withholding was denied from not less than thirty days from notification of denial of withholding to a ''reasonable time''. The Commission has found through past experience that more flexibility in this area is needed. In some instances, the public interest is best served by a more expeditious release of documents. The Commission expects that it will continue to provide a thirty-day waiting period for most documents, but altering the rule will allow the Commission the flexibility to release documents more expeditiously should, for example, the submitter consent to an earlier release date or the Commission determine that an earlier release date is needed to fulfill the Commission's public health and safety mandate. In all cases the time period will be long enough to allow a submitter to seek judicial relief.

IV. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Federal government's writing be in plain language (63 FR 31883; June 10, 1998). The NRC specifically requests comments on this proposed rule with respect to the clarity and effectiveness of the language used. Such comments may be sent to the NRC as indicated under the **ADDRESSES** heading.

V. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In the proposed rule the Commission is codifying its practices regarding the treatment of proprietary

information and copyrighted material. This action does not constitute the establishment of a standard that establishes generally applicable requirements, and the use of a voluntary consensus standard is not applicable.

VI. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment, and therefore, no environmental justice issues are raised.

VII. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VIII. Regulatory Analysis

This proposed rule seeks to bring NRC's regulations concerning the availability of official records into conformance with existing case law and current Commission practice. The current regulations provide submitters of proprietary information the limited right to have documents returned upon request. This proposed rule informs the public of document marking requirements for submitted information, of four additional exceptions to a submitter's limited right to withdraw submitted information, and of current Commission practice concerning the reproduction and distribution of submitted copyright material. The proposed rule reflects current Commission administrative and procedural practice and would have only minor impact on the benefits or costs associated with the Commission's regulations. Some submitters currently mark documents consistent with the requirements in this proposed rule. For others, this proposed rule would shift some responsibility to the submitter for ensuring that its confidential material is identified and protected. It also codifies the Commission's practices regarding its dissemination of copyrighted material.

IX. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would advise of new document marking requirements for submitted information, clarify the right of the submitter of information to have certain information returned on request, and provide notice of Commission practice concerning the reproduction and distribution of copyrighted material. The proposed rule does not impose any obligation or have any financial impact on entities, including any regulated entities that may be ''small entities,'' as defined by the Regulatory Flexibility Act (5 U.S.C. 601(3)), or under the Size Standards adopted by the NRC in 10 CFR 2.810.

X. Backfit Analysis

The NRC has determined that a backfit analysis is not required for this proposed rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR Chapter 1.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)), sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–1373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. Section 2.790 is amended by revising the introductory text of paragraph (a); adding introductory text to paragraph (b); revising paragraphs (b)(1) and (c); redesignating paragraph (e) as paragraph (f); and adding new paragraph (e), to read as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (c), (d), (e), and (f) of this section, final NRC records and documents, including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rulemaking proceeding subject to this part shall not, in the absence of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, except for matters that are:

* * * * *

(b) The procedures in this section must be followed by anyone submitting a document to the NRC who seeks to have the document, or a portion of it, withheld from public disclosure because it contains trade secrets, privileged or confidential commercial or financial information, or personal privacy information.

(1) The submitter shall request withholding at the time the document is

submitted and shall comply with the document marking and affidavit requirements set forth in this paragraph. The NRC has no obligation to review documents not so marked to determine whether they contain information eligible for withholding under paragraph (a) of this section. Any documents not so marked may be made available to the public at the NRC Website, *http://www.nrc.gov.*

(i) The submitter shall ensure that the document containing information sought to be withheld is marked as follows:

(A) The top of the first page of the document and the top of each page containing such information must be marked ''Confidential Information Submitted Under 10 CFR 2.790,'' to indicate it contains information the submitter seeks to have withheld.

(B) Each page containing information sought to be withheld from public disclosure must indicate, adjacent to the information, or at the top if the entire page is affected, the basis (i.e., trade secret, personal privacy, etc.) for proposing that the information be withheld from public disclosure under paragraph (a) of this section.

(ii) The request for withholding must be accompanied by an affidavit that—

(A) Identifies the document or part sought to be withheld;

(B) Identifies the official position of the person making the affidavit;

(C) Declares the basis for proposing the information be withheld, encompassing considerations set forth in § 2.790(a);

(D) Includes a specific statement of the harm that would result if the information sought to be withheld is disclosed to the public; and

(E) Indicates the location(s) in the document of all information sought to be withheld.

(iii) In addition, an affidavit accompanying a withholding request based on paragraph (a)(4) of this section must contain a full statement of the reason for claiming the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate paper. The affiant must designate with appropriate markings information submitted in the affidavit as a trade secret, or confidential or privileged commercial or financial information within the meaning of § 9.17(a)(4) of this chapter, or confidential information within the meaning of § 9.17(a)(6) of this chapter, and such information shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

* * * * *

(c) The Commission either may grant or deny a request for withholding under this section.

(1) If the request is granted, the Commission will notify the submitter of its determination to withhold the information from public disclosure.

(2) If the Commission denies a request for withholding under this section, it will provide the submitter with a statement of reasons for that determination. This decision will specify the date, which will be a reasonable time thereafter, when the document will be available at the NRC Website, *http://www.nrc.gov.* The document will not be returned to the submitter.

(3) Whenever a submitter desires to withdraw a document from Commission consideration, it may request return of the document, and the document will be returned unless the information—

(i) Forms part of the basis of an official agency decision, including but not limited to, a rulemaking proceeding or licensing activity;

(ii) Is contained in a document that was made available to or prepared for an NRC advisory committee;

(iii) Was revealed, or relied upon, in an open Commission meeting held in accordance with 10 CFR part 9, subpart C;

(iv) Has been requested in a Freedom of Information Act request; or

(v) Has been obtained during the course of an investigation conducted by the NRC Office of Investigations.

* * * * *

(e) Submitting information to NRC for consideration in connection with NRC licensing or regulatory activities shall be deemed to constitute authority for the NRC to reproduce and to distribute sufficient copies to carry out the Commission's official responsibilities. The Commission may waive the requirements of this paragraph on request, or on its own initiative, in circumstances the Commission deems appropriate.

(1) Any person submitting information shall—

(i) Be deemed to represent to the NRC that he or she has legal authority to submit the document and to permit NRC to reproduce and distribute the document; and

(ii) Hold the Commission harmless from damages that result from the Commission's reproduction or distribution of the documents.

(2) Documents will be returned to the submitter and will not be considered by the Commission in the absence of a waiver of this regulation in the following types of situations:

(i) A document bearing a copyright notice not accompanied by a statement authorizing the Commission to make copies of the material in accordance with this section;

(ii) A document containing or accompanied by a statement restricting the copying of the material; or

(iii) A document that bears or is accompanied by a statement representing that the submitter lacks authority to permit NRC to copy and distribute the document.

* * * * *

Dated at Rockville, Maryland, this 11th day of October, 2001.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 01–26114 Filed 10–16–01; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 40

[Notice No. 931]

RIN 1512–AC32

Elimination of Application To Remove Tobacco Products From Manufacturer's Premises For Experimental Purposes (2000R–353P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule eliminates the requirements that manufacturers of tobacco products apply to ATF to remove tobacco products from their factories in bond for experimental purposes and maintain the approved applications for their records. In place of these requirements, manufacturers of

tobacco products will prepare and maintain records of tobacco products removed from their factories in bond for experimental purposes. In addition, this proposed rule defines ''experimental purposes'' under section 5704(a) of Title 26 of the United States Code.

DATES: Written comments must be received on or before December 17, 2001.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, Room 5003, 650 Massachusetts Avenue, NW., Washington, DC 20226, (Attention: Notice Number 931). See the Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226; (202) 927–8210; or alctob@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

1. Background

Elimination of Application

We are proposing to eliminate the applications that manufacturers of tobacco products are required to submit for removing tobacco products in bond from their factories for experimental purposes. We believe that these applications are not necessary to protect the revenue. ATF will continue to conduct selected examinations and audits of manufacturers of tobacco products, including those who remove tobacco products in bond for experimental purposes.

In addition, manufacturers of tobacco products will continue to report the kind and amounts of tobacco products removed in bond for experimental purposes for use off factory premises. This reporting is done every month on ATF Form 5210.5 as a separate item and provides ATF an invaluable tool to monitor the operations of tobacco manufacturers in respect to such removals. Overall, this proposed rule allows greater flexibility and choice in managing our limited government resources.

The amount of taxes involved in such removals for experimental purposes is not significant. The total potential tax liability at the present tax rates for such shipments is estimated to be no more than $500,000. This potential tax liability is not significant when compared to the total excise tax collections for tobacco products. It is less than 0.001 percent of the total excise taxes collected from tobacco products. In addition, ATF has not had any significant tax losses associated with such removals. Also, ATF has rarely, if ever, denied an application submitted by a manufacturer for removing tobacco products in bond for experimental purposes.

This notice of proposed rulemaking eliminates the burdens imposed on the manufacturer to prepare and file applications and on ATF to take action on such applications. A manufacturer typically spends about 30 minutes to prepare, send and file each application. ATF typically spends a similar amount of time acting upon, sending and filing each application. ATF estimates that 100 of these applications are received each year.

Definition of Experimental Purposes

This notice of proposed rulemaking defines ''experimental purposes'' under section 5704(a) of Title 26 of the United States Code and provides additional examples of uses for such experimental purposes. However, the proposed rule retains the examples that are not considered experimental.

2. Public Participation

Who May Comment on This Notice?

ATF requests comments on the proposed regulations from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practicable to do so. However, assurance of consideration can only be given if comments are received on or before the closing date.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. Comments may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comment. We may also disclose the name of any person who submits a comment.

Can I Review Comments Received?

Yes. You may view and copy written comments on this project during normal business hours in the ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, telephone (202) 927–8480. For information on filing a Freedom of Information Act request for a copy of the comments, please call (202) 927–8480, FAX (202) 927–8866 or E-mail: FOIAMail@atfhq.atf.treas.gov. (ATF cannot accept FOIA requests via E-mail).

How Do I Send Facsimile Comments?

You may submit comments of not more than three pages of facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible;
- Be 8½″ × 11″ in size;
- Contain a legible written signature; and
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Comments by E-mail?

If you send an e-mail, you must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address;
- Contain the word ''Notice'' and its number in the subject or reference line of the e-mail;
- Contain your company or association affiliation, if pertinent to your comment;
- Contain your reason for commenting (manufacturer, importer, consumer, etc.);
- Be legible when printed in a 8½″ x 11″ size (no special characters or symbols); and
- Be addressed to *nprm@atfhq.atf.treas.gov.*

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

Can I Request a Public Hearing?

If you desire the opportunity to comment orally at a public hearing on this proposed regulation, you must submit a request in writing to the Director within the 60-day comment period. The Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

3. Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

It is certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities (see the following discussion concerning the Paperwork Reduction Act. Accordingly, a regulatory flexibility analysis is not required. Pursuant to 26 U.S.C. 7805(f), this proposed regulation was submitted

to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received.

Does the Paperwork Reduction Act Apply to This Proposed Rule?

Yes. The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection(s) of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (ATF), Office of Information and Regulatory Affairs, Washington, D.C., 20503, with copies to the Chief, Document Services Branch, Room 3450, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226. Comments are specifically requested concerning:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Alcohol, Tobacco and Firearms, including whether the information will have practical utility;
- The accuracy of the estimated burden associated with the proposed collection of information;
- How the quality, utility, and clarity of the information to be collected may be enhanced; and
- How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology.

The collection of information in this proposed regulation is contained in 27 CFR 40.232(e). ATF uses this information to verify the kind and amount of tobacco products removed in bond from the premises of manufacturers for experimental purposes. In addition, ATF may use this information to determine that the persons to whom such removals are made are using the tobacco products for legitimate experimental purposes and that the tobacco products are properly destroyed or returned to the premises of a manufacturer following their experimental use. If such tobacco products are not destroyed or returned to the premises of a manufacturer, ATF will use this information to collect the taxes due.

The collection of information is mandatory. The likely respondents may include small businesses or organizations. The estimated annual burden per respondent will vary depending on the number of shipments that manufacturers of tobacco products remove from their premises in bond for experimental purposes. Estimated total annual recordkeeping burden under this proposed rule is 1 hour since the records to be maintained are customary and usual for private and business purposes. Estimated average annual burden per respondent and/or recordkeeper is less than 1 hour. The estimated number of recordkeepers is 165.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

''Plain Language'' Changes

During the revision of the regulations in this document, we also tried to simplify and clarify the language of the affected section of the regulations. Any suggestions for improving the readability of these regulations may be submitted as comments to the cross-referenced notice of proposed rulemaking.

4. Drafting Information

The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of ATF and the Treasury Department participated in developing the document.

List of Subjects in 27 CFR Part 40

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

Authority and Issuance

We propose to amend Title 27 of the Code of Federal Regulations as follows:

PART 40—MANUFACTURERS OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Paragraph 1. The authority citation for part 40 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Section 40.232 is revised to read as follows:

§ 40.232 Experimental purposes.

A manufacturer of tobacco products may use tobacco products without determination and payment of tax as set forth in this section.

(a) *What are experimental purposes?* Experimental purposes are operations or tests carried out under controlled conditions to discover an unknown scientific principle or to gather facts about an existing scientific principle. Examples of experimental purposes are:

(1) Use by manufacturers to determine scientific facts relating to tobacco products, such as content of certain chemicals;

(2) Use by producers of machines designed to package such products for testing and experimenting in the operation of these machines; and

(3) Use in laboratories, hospitals, medical centers, institutes, colleges, and universities, for scientific, technical, or medical research.

(b) *What purposes are not experimental?* Tobacco products used for advertising or consumer testing outside the factory premises, or as salesmen's or customers' samples are not experimental purposes.

(c) *Use in factory.* A manufacturer of tobacco products may use tobacco products without determination and payment of tax for experimental purposes in a factory.

(d) *Use outside factory.* A manufacturer may remove tobacco products in bond for experimental purposes outside a factory. When tobacco products are shipped for experimental purposes outside the factory, the proprietor of the factory remains liable for the taxes imposed by 26 U.S.C. 5701 until the occurrence of one of the following events:

(1) The tobacco products are returned to the premises of the factory from which they were shipped; or

(2) The tobacco products are destroyed during or after the use of such products for experimental purposes.

(e) *Record of use.* In addition to the records prescribed by § 40.183, a manufacturer who removes tobacco products in bond for experimental purposes outside a factory must prepare and maintain a record containing the following information:

(1) Name and address of the consignee;

(2) Kind and quantity of tobacco products removed;

(3) Description of packaging, if any, of the tobacco products removed;

(4) Description of how and when the consignee will use the tobacco products; and

(5) Disposition of any remaining tobacco products after the consignee's use.

(Approved by the Office of Management and Budget under Control Number 1512–) (72 Stat. 1418, as amended; 26 U.S.C. 5704)

Signed: August 28, 2001.

Bradley A. Buckles,

Director.

Approved: September 12, 2001.

Timothy E. Skud,

Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 01–25843 Filed 10–16–01; 8:45 am]

BILLING CODE 4810–31–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2236; MM Docket No. 01–254; RM–10264; MM Docket No. 01–255; RM–10265; MM Docket No. 01–256; RM–10266; MM Docket No. 01–257; RM–10267; MM Docket No. 01–258; RM–10268; MM Docket No. 01–259; RM–10269; MM Docket No. 01–260; RM–10270; MM Docket No. 01–261; RM–10271]

Radio Broadcasting Services; Atoka; OK; Wright City, OK; Benavides, TX; Bad Axe, MI; Bearden, AR; Grandin, MO; Pawhuska, OK; and Early, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes new allotments to Atoka, OK; Wright City, OK; Benavides, TX; Bad Axe, MI; Bearden, AR; Grandin, MO; Pawhuska, OK; and Early, TX. The Commission requests comments on a petition filed by Maurice Salsa, proposing the allotment of Channel 290A at Atoka, OK, as that community's second local FM transmission service. Channel 290A can be allotted to Atoka at a restricted site located 1.8 kilometers southeast of the community, utilizing coordinates 34–22–25 NL and 96–06–57 WL. *See* Supplementary Information, *infra.*

DATES: Comments must be filed on or before November 19, 2001, and reply comments on or before December 4, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Maurice Salsa, 5616 Evergreen Valley Drive, Kingwood, TX 77345 (petitioner for Atoka, OK; Wright City, OK; and Pawhuska, OK); Jeraldine Anderson, 1702 Cypress Drive, Irving, TX 75061 (petitioner for Benavides, TX; and Early, TX); Charles Crawford, 4553 Bordeaux Ave., Dallas, TX 75205 (petitioner for Bad Axe, MI; Bearden, AR; and Grandin, MO).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–254; MM Docket No. 01–255; MM Docket No. 01–256; MM Docket No. 01–257; MM Docket No. 01–258; MM Docket No. 01–259; MM Docket No. 01–260; and MM Docket No. 01–261, adopted September 19, 2001, and released September 28, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

In addition to the above, the Commission requests comments on a petition filed by Maurice Salsa proposing the allotment of Channel 226A at Wright City, Oklahoma, as that community's first local aural transmission service. Channel 226A requires a site restriction 5.0 kilometers northeast of the community, utilizing coordinates 34–05–58 NL and 94–58–34 WL.

The Commission further requests comments on a petition filed by Jeraldine Anderson proposing the allotment of Channel 282A at Benavides, Texas, as that community's second local FM transmission service. Channel 282A requires a site restriction 5.3 kilometers south of the community, utilizing coordinates 27–32–59 NL and 98–25–11 WL. Additionally, as Benavides is located within 320 kilometers of the U.S.–Mexico border, concurrence of the Mexican government will be requested for this allotment.

The Commission further requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 231A at Bad Axe, Michigan, as that community's second local FM transmission service. Channel 231A can be allotted to Bad Axe at city reference coordinates 43–48–12 NL and 83–00–00 WL. However, as Bad Axe is located within 320 kilometers of the U.S.–Canada border, concurrence of the Canadian government will be requested for this allotment.

The Commission further requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 224A at Bearden, Arkansas, as that community's first local aural transmission service. Channel 224A can be allotted to Bearden at city reference coordinates 33–43–24 NL and 92–36–54 WL.

The Commission further requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 283A at Grandin, Missouri, as that community's first local aural transmission service. Channel 283A can be allotted to Grandin at city reference coordinates at 36–49–45 NL and 90–49–22 WL.

The Commission further requests comments on a petition filed by Maurice Salsa proposing the allotment of Channel 233A at Pawhuska, Oklahoma, as that community's second local FM transmission service. Channel 233A can be allotted to Pawhuska at a restricted site located 11.7 kilometers north of the community, utilizing coordinates 36–46–16 NL and 96–21–39 WL.

The Commission further requests comments on a petition filed by Jeraldine Anderson proposing the allotment of Channel 294A at Early, Texas, as that community's first local aural transmission service. Channel 294A can be allotted to Early at city reference coordinates 31–44–31 NL and 98–56–43 WL.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Bearden, Channel 224A.

3. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 231A at Bad Axe.

4. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Grandin, Channel 283A.

5. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 290A at Atoka; Channel 233A at Pawhuska; and Wright City, Channel 226A.

6. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 282A at Benavides; and Early, Channel 294A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–26062 Filed 10–16–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2263; MM Docket No. 01–269, RM–10249; MM Docket No. 01–270, RM–10277; MM Docket No. 01–271, RM–10278; MM Docket No. 01–272, RM–10279; MM Docket 01–273, RM–10284; MM Docket No. 01–274; RM–10286]

Radio Broadcasting Services; Antlers, OK; Matador, TX; Post, TX; Turkey, TX; Eldorado, TX; and Richland Springs, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes six allotments to Antlers, Oklahoma, Matador, Texas; Post, Texas; Turkey, Texas; Eldorado, Texas; and Richland Springs, Texas. The Commission requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 284A at Antlers, Oklahoma as the community's third local FM transmission service. Channel 284A can be allotted to Antlers in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.0 miles) north to avoid a short-spacing to the proposed site for Channel 282C3 at Boswell, Oklahoma. The coordinates for Channel 284A at Antlers are 34–17–16 North Latitude and 95–36–14 West Longitude. *See* Supplementary Information, *infra.*

DATES: Comments must be filed on or before November 19, 2001, and reply comments on or before December 4, 2001.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Charles Crawford, 4553 Bordeaux Ave., Dallas, Texas 75205 (Petitioner for Antlers, Oklahoma); Katherine Pyeatt, 6655 Aintree Circle, Dallas Texas 75214 (Petitioner for Matador, Post and Turkey, Texas); and Linda Crawford, 3500 Maple Ave., #1320, Dallas, Texas (Petitioner for Eldorado and Richland, Texas).

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–269; MM Docket No. 01–270; and MM Docket No. 01–271, MM Docket No. 01–272; MM Docket No. 01–273; and MM Docket No. 01–274; adopted September 19, 2001, and released September 28, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Quatex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

The Commission requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 221C2 at Matador, Texas, as the community's first local aural transmission service. Channel 221C2 can be allotted to Matador in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.3 kilometers (12.6 miles) east to avoid a short-spacing to the application site for Channel 220C1 at Morton, Texas. The coordinates for Channel 221C2 at Matador are 34–03–56 North Latitude and 100–36–43 West Longitude.

The Commission requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 249C2 at Post, Texas, as the community's second local FM transmission service. Channel 249C2 can be allotted to Post in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.8 kilometers (9.8 miles) east to avoid a short-spacing to the construction permit site for Station KHDY(FM), Channel 247C1, Plainview, Texas. The coordinates for Channel 249C2 at Post are 33–14–22 and North Latitude 101–13–06 West Longitude.

The Commission requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 244C2 at Turkey, Texas, as the community's first local aural transmission service. Channel 244C2 can be allotted to Turkey in compliance with the Commission's minimum distance separation requirements with a site restriction of 27.1 kilometers to avoid a short-spacing to the licensed site of Station KMML–FM, Channel 245C1, Amarillo, Texas. The coordinates for Channel 244C2 at Turkey are 34–10–06 North Latitude and 100–46–46 West Longitude.

The Commission requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 258C1 at Eldorado, Texas, as the community's second local FM transmission service. Channel 258C1 can be allotted to Eldorado in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.8 miles) south to avoid a short-spacing to the licensed site of Station KYZZ(FM), Channel 261C2, San Angel, Texas. The coordinates for Channel 258C1 at Eldorado are 30–47–49 North Latitude and 100–37–29 West Longitude. Since Eldorado is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

The Commission requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 252A at Richland Springs, Texas, as potentially the community's second local FM transmission service. Channel 252A can be allotted to Richland Springs in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 252A at Richland Springs are 31–16–10 North Latitude and 98–56–41 West Longitude. Since Richland Springs is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested.

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

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex*

parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2.Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Channel 284A at Antlers.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Matador, Channel 221C2; by adding Channel 249C2 at Post; by adding Turkey, Channel 244C2; by adding Channel 258C2 at Eldorado; and by adding Richland Springs, Channel 252A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–26060 Filed 10–16–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 01–2318, MM Docket No. 01–280, RM–10291]

Radio Broadcasting Services; Benjamin, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 237C3 at Benjamin, Texas. The coordinates for Channel 237C3 at Benjamin are 33–44–27 and 99–48–54. There is a site restriction 17.5 kilometers (10.09 miles) north of the community.

DATES: Comments must be filed on or before November 26, 2001, and reply comments on or before December 11, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Katherine Pyeatt, 6655 Aintree Circle, Dallas, Texas 75214.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 01–280, adopted September 26, 2001, and released October 5, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

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

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

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Benjamin, Channel 237C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–26066 Filed 10–16–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01–2324; MM Docket No. 01–282, RM–10293; MM Docket No. 01–283, RM–10294; MM Docket No. 01–284, RM–10295; MM Docket No. 01–285, RM–10296]

Radio Broadcasting Services; Taos, NM; McCamey, TX; Dickens, TX; and Hamlin, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes four allotments in Taos, NM, McCamey, TX, Dickens, TX, and Hamlin, TX. The Commission requests comment on a petition filed by Linda Crawford proposing the allotment of Channel 228A at Taos, New Mexico, as potentially the community's fifth local aural broadcast service. Channel 228A can be allotted to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.5 km (7.1 miles) northeast of Taos. The coordinates for Channel 228A at Taos are 36–28–20 North Latitude and 105–28–22 West Longitude. *See* Supplementary Information infra.

DATES: Comments must be filed on or before November 26, 2001, and reply comments on or before December 11, 2001.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Linda Crawford, 3500 Maple Avenue, #1320, Dallas, Texas 75219.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Mass Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket Nos. 01–282, 01–283, 01–284, and 01–285; adopted October 3, 2001 and released October 5, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Commission further requests comment on a petition filed by Linda Crawford proposing the allotment of Channel 233C3 at McCamey, Texas, as the community's second aural broadcast transmission service. Channel 233C3 can be allotted to McCamey in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.9 km (12.4 miles) east of McCamey. The coordinates for Channel 233C3 at McCamey are 31–11–56 North Latitude and 102–01–42 West Longitude. The proposed allotment will require concurrence by Mexico because it is located within 320 kilometers (199 miles) of the Mexican border.

The Commission further requests comments on a petition filed by Linda Crawford, proposing the allotment of Channel 240A at Dickens, Texas, as the community's first local aural broadcast service. Channel 240A can be allotted to Dickens in compliance with the Commission's minimum distance separation requirements at center city coordinates without site restriction. The coordinates for Channel 240A at Dickens are 33–37–18 North Latitude and 100–50–10 West Longitude.

The Commission further requests comment on a petition filed by Linda Crawford proposing the allotment of Channel 283C2 at Hamlin, Texas, as the community's second FM transmission service. Channel 283C2 can be allotted to Hamlin in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.5 km (13.4 miles) northwest of Hamlin. The coordinates for Channel 283C2 at Hamlin are 33–01–16 North Latitude and 100–17–23 West Longitude.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 228A at Taos.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 233C3 at McCamey, by adding Dickens, Channel 240A, and by adding Channel 283C2 at Hamlin.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 01–26067 Filed 10–16–01; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 66, No. 201

Wednesday, October 17, 2001

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

Natural Resources Conservation Service

Horseshoe Run Natural Stream Restoration Demonstration Project, Tucker County, WV

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Horseshoe Run Natural Stream Restoration Demonstration Project, Tucker County, West Virginia.

FOR FURTHER INFORMATION CONTACT: William J. Hartman, State Conservationist, Natural Resources Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, telephone (304) 284–7545.

SUPPLEMENTAL INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, William J. Hartman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is to restore natural channel geometry and profile to an impaired segment of Horseshoe Run in Tucker County, West Virginia, and to provide the interested public the opportunity to observe techniques utilized and results obtained.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting William J. Hartman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(*This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials.)

William J. Hartman,

State Conservationist.

[FR Doc. 01–26167 Filed 10–16–01; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in the National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: Notice is hereby given of the intention of the Natural Resources Conservation Service (NRCS) to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include: Dam, Diversion; Hedgerow Planting; Prescribed Grazing; Recreation Land Grading and Shaping; Recreation Trail and Walkway; Wastewater Treatment Strip; and Water and Sediment Control Basin. The procedures are used to convey national guidance in developing Field Office Technical Guide Standards used in the States. NRCS State Conservationists and Directors for the Pacific Basin and Caribbean areas who choose to adopt these guidelines for use within their States will incorporate them into Section IV of their Field Office Technical Guide. These practices may be used in resource management systems that treat highly erodible land or on land determined to be wetland.

EFFECTIVE DATES: Comments will be received for a 60-day period starting on the date of this publication. This series of new or revised conservation practice standards will be adopted after the close of the 60-day period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from NRCS-CED in Washington, DC. Submit individual inquiries and return any comments in writing to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890; telephone: (202) 720–5023. The standards are also available and can be downloaded from the Internet at: http://www.ftw.nrcs.usda.gov/practice__stds.html.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996, requires NRCS to make available for public review and comment proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days, NRCS will receive comments on the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Signed in Washington, D.C., on September 24, 2001.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service.

[FR Doc. 01–26166 Filed 10–16–01; 8:45 am]

BILLING CODE 3410–16–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Public Rights-of-Way Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Public Rights-of-Way Access Advisory Committee (Committee) to assist the Board in developing a proposed rule on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. This document announces the next meeting of the technical assistance sub-committee of that Committee, which will be open to the public.

DATES: The meeting of the sub-committee is scheduled for November 8 through 9, 2001, beginning at 9:00 a.m. and ending at 5:00 p.m. each day.

ADDRESSES: The meeting will be held at the Imperial Palace Hotel, 3535 Las Vegas Blvd. South, Las Vegas, NV 89109.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–5434 extension 125 (Voice); (202) 272–5449 (TTY). E-mail *windley@access-board.gov*. This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet Site (*http://www.access-board.gov/prowmtg.htm*).

SUPPLEMENTARY INFORMATION: On October 20, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice appointing members to a Public Rights-of-Way Access Advisory Committee (Committee). 64 FR 56482 (October 20, 1999). The objectives of the Committee include providing recommendations for developing a proposed rule addressing accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968, recommendations regarding technical assistance issues, and guidance for best practices for alterations in the public rights-of-way.

On January 10, 2001, the Committee presented its recommendations on accessible public rights-of-way in a report entitled ''Building a True Community''. The report is available on the Access Board's website at www.access-board.gov or can be ordered by calling the Access Board at (800) 872–2253 (voice) or (800) 993–2822 (TTY).

At its November meeting, the technical assistance sub-committee will address the development and format of technical assistance materials relating to public rights-of-way. The sub-committee meeting will be open to the public and interested persons can attend the meeting and communicate their views. Members of the public will have an opportunity to address the sub-committee on issues of interest to them and the sub-committee during the public comment period at the beginning of each meeting day. Members of the public may participate on subcommittees of the Committee. Additionally, all interested persons will have the opportunity to comment when the proposed accessibility guidelines for public rights-of-way are issued in the **Federal Register** by the Access Board.

Individuals who require sign language interpreters or real-time captioning systems should contact Scott Windley by October 26, 2001. Notices of future meetings will be published in the **Federal Register**.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 01–26068 Filed 10–16–01; 8:45 am]

BILLING CODE 8150–01–P

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: U.S. Census Bureau.

Title: Survey of Business Owners and Self-Employed Persons (SBO) Pretest.

Form Number(s): SBO–1, SBO–2.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 2,500 hours.

Number of Respondents: 10,000.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau requests Office of Management and Budget approval to conduct a pretest of the 2002 Survey of Business Owners and Self-Employed Persons (SBO), previously known as the Survey of Minority-Owned Business Enterprises and the Survey of Women-Owned Business Enterprises (SMOBE/SWOBE). The SBO is conducted as part of the economic census program which is required by law to be taken every 5 years under Title 13 of the United States Code, Sections 131 and 193. The 2002 SBO will collect data on the race, gender, and ethnicity for the person(s) owning the majority of rights, equity, or interest in businesses which reported any business activity on any one of the following Internal Revenue Service tax forms: 1040 (Schedule C), Profit or Loss from Business (Sole Proprietorship); 1065, U.S. Partnership Return of Income; or any one of the 1120 corporate tax forms. These data are needed to evaluate the extent and growth of business ownership by minorities and women in order to provide a framework for assessing and directing Federal, state, and local government programs designed to promote the activities of disadvantaged groups.

The pretest is needed to test several significant changes to the questionnaire since previously conducted and the impact these changes will have on the estimates. The pretest is critical to assuring that the form can be completed by business owners with minimal burden and that the survey will provide meaningful, useful information.

Affected Public: Businesses or other for-profit.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 131 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–26111 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1195]

Approval for Expanded Manufacturing Authority (Agricultural Chemical Products); Within Foreign-Trade Subzone 82E, Syngenta Crop Protection, Inc., Mobile County, AL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of Mobile, Alabama, grantee of Foreign-Trade Zone 82, has applied to expand the scope of manufacturing authority for FTZ Subzone 82E (Syngenta Crop Protection, Inc. facilities near Bucks, Mobile County, Alabama) to include production of the agricultural chemical Mesotrione (a broadleaf herbicide) under FTZ procedures (FTZ Doc. 41–2000; filed 7–21–2000);

Whereas, notice inviting public comment was given in **Federal Register** (65 FR 47375, 8–2–2000); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including section 400.28.

Signed at Washington, DC, this 27th day of September 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman,Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–26130 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1188]

Grant of Authority for Subzone Status; Atlantic Marine, Inc., (Shipbuilding), Jacksonville, FL

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, an application from the Jacksonville Port Authority, grantee of FTZ 64, for authority to establish special-purpose subzone status for the shipbuilding facility of Atlantic Marine, Inc., in Jacksonville, Florida, was filed by the Board on December 5, 2000, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 68–2000, 65 FR 77850, 12–13–2000); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were given subject to the standard shipyard restriction on foreign steel mill products;

Now, Therefore, the Board hereby grants authority for subzone status at the shipbuilding facility of Atlantic Marine, Inc., in Jacksonville, Florida (Subzone 64A), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following special conditions:

1. Any foreign steel mill product admitted to the subzone, including plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to Customs duties in accordance with applicable law, unless the Executive Secretary determines that the same item is not then being produced by a domestic steel mill.

2. In addition to the annual report, Atlantic Marine, Inc., shall advise the Board's Executive Secretary (§ 400.28(a)(3)) as to significant new contracts with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the subzone primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

3. All foreign-origin quota-class merchandise must be admitted to the subzone under privileged domestic status (19 CFR 146.43(a)(2)).

Signed at Washington, DC, this 25th day of September 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman,Foreign-Trade Zones Board.

[FR Doc. 01–26133 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1187]

Grant of Authority for Subzone Status; Roper Corporation, (Home Appliances), LaFayette, GA

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 26, has made application to the Board for authority to establish special-purpose subzone at the home appliance manufacturing and warehousing facilities of the Roper Corporation, located in LaFayette, Georgia (FTZ Docket 5–2001, filed 1/22/01);

Whereas, notice inviting public comment was given in the **Federal Register** (66 FR 8194, 1/30/01); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the

Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the home appliance manufacturing and warehousing facilities of the Roper Corporation, located in LaFayette, Georgia (Subzone 26G), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 25th day of September 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 01–26132 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1192]

Grant of Authority for Subzone Status; ISP Chemicals, Inc. (Specialty Chemicals) Calvert City, KY

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, has made application to the Board for authority to establish a special-purpose subzone at the specialty chemicals manufacturing and warehousing facilities of ISP Chemicals, Inc., located in Calvert City, Kentucky (FTZ Docket 2–2001, filed 1/9/01);

Whereas, notice inviting public comment was given in the **Federal Register** 66 FR 3984, 1–17–01); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the specialty chemicals manufacturing and warehousing facilities of ISP Chemicals, Inc., located in Calvert City, Kentucky (Subzone 29H), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 27th day of September 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–26126 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1194]

Expansion of Foreign-Trade Zone 47 Boone County, KY

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Cincinnati Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 47, submitted an application to the Board for authority to expand FTZ 47 to include an additional site (Site 2) at the Park West International Industrial Park, within the Cincinnati Customs port of entry area (FTZ Docket 15–2001; filed 3/12/01);

Whereas, notice inviting public comment was given in the **Federal Register** (66 FR 16037, 3/22/01) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 47 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of September 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–26128 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1186]

Grant of Authority for Subzone Status; Astrazeneca Manufacturing Plant (Pharmaceutical Products), Westborough, MA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for " * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved; and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Massachusetts Port Authority, grantee of Foreign-Trade Zone 27, has made application to the Board for authority to establish special-purpose subzone status at the pharmaceutical product manufacturing plant of AstraZeneca LP, located in Westborough, Massachusetts (FTZ Docket 65–2000, filed November 28, 2000);

Whereas, notice inviting public comment has been given in the **Federal Register** (65 FR 77559, 12/12/00); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the pharmaceutical product manufacturing

plant of AstraZeneca LP, located in Westborough, Massachusetts, (Subzone 27L), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this day of September 25th 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–26131 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1196]

Grant of Authority for Subzone Status; Sony Technology Center—Pittsburgh (Televisions, Specialty Chemicals, Thermal Transfer Ribbon), Mt. Pleasant, PA

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for " * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of Foreign-Trade Zone 33, has made application to the Board for authority to establish a special-purpose subzone at the television manufacturing and warehousing facilities (televisions, specialty chemicals and thermal transfer ribbon) of the Sony Technology Center-Pittsburgh, located in Mt. Pleasant, Pennsylvania (FTZ Docket 18–2001, filed 4/23/01);

Whereas, notice inviting public comment was given in the **Federal Register** 66 FR 21740, 5–1–01); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the television manufacturing and warehousing facilities of the Sony Technology Center-Pittsburgh, located in Mt. Pleasant, Pennsylvania (Subzone 33C), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28. The scope of authority includes the manufacture of finished and unfinished televisions and television tubes as described in the **Federal Register** notice initiating the review (66 FR 21740, 5/1/01) and in the examiner's report.

Signed at Washington, DC, this 27th day of September 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–26129 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1189]

Expansion of Foreign-Trade Zone 35, Philadelphia, PA, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Philadelphia Regional Port Authority, grantee of Foreign-Trade Zone 35, submitted an application to the Board for authority to expand FTZ 35 to include the jet fuel storage and distribution system at the Philadelphia International Airport in Philadelphia and Tinicum Township, Pennsylvania (Site 8), within the Philadelphia Customs port of entry (FTZ Docket 20–2001; filed 5/1/01);

Whereas, notice inviting public comment was given in the **Federal Register** (66 FR 23001, 5/7/01) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 35 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 25th day of September 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 01–26134 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1193]

Expansion of Foreign-Trade Zone 77; Memphis, TN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of Memphis, Tennessee, grantee of Foreign-Trade Zone 77, submitted an application to the Board for authority to expand and reorganize FTZ 77 by including a new site (Site 4) at the Memphis Depot Business Park and deleting Parcel 1 of Site 2 and Parcel 1 of Site 3 from the zone project, within the Memphis Customs port of entry area (FTZ Docket 13–2001; filed 2/27/01);

Whereas, notice inviting public comment was given in the **Federal Register** (66 FR 13878, 3/8/01) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 77 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of September 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–26127 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1191]

Grant of Authority for Subzone Status; ISP Technologies, Inc. (Specialty Chemicals), Texas City, TX

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Texas City Foreign-Trade Zone Corporation, grantee of Foreign-Trade Zone 199, has made application to the Board for authority to establish a special-purpose subzone at the specialty chemicals manufacturing and warehousing facilities of ISP Technologies, Inc., located in Texas City, Texas (FTZ Docket 66–2000, filed 11/28/00);

Whereas, notice inviting public comment was given in the **Federal Register** (65 FR 77559, 12–12–00); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the specialty chemicals manufacturing and warehousing facilities of ISP Technologies, Inc., located in Texas City, Texas (Subzone 199E), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 27th day of September 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–26125 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1190]

Grant of Authority for Subzone Status International Resistive Company, Inc.; (Electronic Resistors), Corpus Christi, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Port of Corpus Christi Authority, grantee of Foreign-Trade Zone 122, has made application for authority to establish special-purpose subzone status at the electronic resistor manufacturing plant of International Resistive Company, Inc., located in Corpus Christi, Texas (FTZ Docket 8–2001, filed 2–6–2001);

Whereas, notice inviting public comment was given in the **Federal Register** (66 FR 10010, 2–13–2001); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the electronic resistor manufacturing plant of International Resistive Company, Inc., located in Corpus Christi, Texas (Subzone 122O), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 25th day of September 2001.

Faryar Shirzad,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 01–26135 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for an Export Trade Certificate of Review

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 the 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 December 17, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at MClayton@doc.gov.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Mary Michael, Office of Export Trading Company Affairs, Service Industries and Finance, Room 1800,14th Constitution Ave, NW, Washington, DC 20230; phone: (202) 482–5131, and fax: (202) 482–1790.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title III of the Export Trading Company Act of 1982 (Pub. L. No. 97–290, 96 Stat. 1233–1247), requires the

Department of Commerce to establish a program to evaluate applications for an Export Trade Certificate of Review (antitrust preclearance for joint export related activities), and with the concurrence of the Department of Justice, issue such certificates where the requirements of the Act are satisfied. The Act requires that Commerce and Justice conduct economic and legal antitrust analyses prior to the issuance of a certificate. The collection of information is necessary to conduct the required economic and legal antitrust analyses. Without the information, there could be no basis upon which a certificate could be issued.

In the Department of Commerce, the economic and legal analyses are performed by the Office of Export Trading Company Affairs and the Office of the General Counsel, respectively. The Department of Justice analyses will be conducted by its Antitrust Division. The purpose of such analyses is to make a determination as to whether or not to issue an Export Trade Certificate of Review.

A certificate provides its holder and the members named in the certificate (a) immunity from government actions under state and Federal antitrust laws for the export conduct specified in the certificate; (b) some protection from frivolous private suits by limiting their liability in private actions from treble to actual damages when the challenged activities are covered by an Export Certificate of Review. Title III was enacted to reduce uncertainty regarding the application of U.S. antitrust laws to export activities—especially those involving actions by domestic competitors. Application for an export trade certificate of review is voluntary.

II. Method of Collection

Form ITA–4093P is sent by request to U.S. firms.

III. Data

OMB Number: 0625–0125.

Form Number: ITA–4093P.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit; Not-for-profit institutions and State, local or Tribal Government.

Estimated Number of Respondents: 30.

Estimated Time Per Response: 32 hours.

Estimated Total Annual Burden Hours: 960.

Estimated Total Annual Costs: The estimated annual cost for this collection is $344,400 ($260,000 government and $134,400 respondents).

IV. Request for Comments

Comments are invited (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

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

Dated: October 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–26112 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Marketing Data Form; Proposed Collection; Comment Request

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

DATES: Written comments must be submitted on or before December 17, 2001.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at MClayton@doc.gov.)

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: John Klingelhut, U.S & Foreign Commercial Service, Export Promotion Services, Room 2810, 14th & Constitution Avenue, NW, Washington, DC 20230; Phone number: (202) 482–4231, and fax number: (202) 482–0115.

SUPPLEMENTARY INFORMATION

I. Abstract

Information about U.S. Exhibition, Trade Mission and Matchmaker Trade Delegation participants and their products is an absolute necessity in order to publicize and promote their participation in these export promotion events. The Marketing Data Form (MDF) provides information necessary to produce export promotion brochures and directories, and to arrange, on behalf of participants, appointments with key prospective buyers, agents, distributors, or government officials. Specific information is also required regarding participants; objectives as to agents, distributors, joint venture or licensing partners and any special requirements for these, e.g. physical facilities, technical capabilities, financial strength, staff, representation of complementary lines, etc.

II. Method of Data Collection

Form ITA–466P is sent by request to U.S. firms. Applicant firms complete the form and forward it to the Department of Commerce exhibition manager several weeks prior to the event.

III. Data

OMB Number: 0625–0047.

Form Number: ITA–466P.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4,000.

Estimated Time Per Response: 45 minutes.

Estimated Total Annual Burden Hours: 3,000 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $135,000.00 ($65,000.00 for respondents and $70,000.00 for the federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

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

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

Dated: October 12, 2001.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 01–26113 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Final Results of Antidumping Duty Administrative Review and Recission of Administrative Review in Part: Canned Pineapple Fruit From Thailand

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

SUMMARY: On April 10, 2001, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand. This review covers ten producers/exporters of the subject merchandise. The period of review (POR) is July 1, 1999, through June 30, 2000. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the ''Final Results of Review'' section.

EFFECTIVE DATE: October 17, 2001.

FOR FURTHER INFORMATION CONTACT: David Layton or Charles Riggle, Office 5, Group II, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0371 and (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

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 regulations are references to the provisions codified at 19 CFR part 351 (2001).

Background

This review covers the following producers/exporters of merchandise subject to the antidumping duty order on canned pineapple fruit from Thailand: Vita Food Factory (1989) Co., Ltd. (Vita), Kuiburi Fruit Canning Company Limited (KFC), Malee Sampran Public Co., Ltd. (Malee); Siam Food Products Public Co. Ltd. (SFP), The Thai Pineapple Public Co., Ltd. (TIPCO), Thai Pineapple Canning Industry (TPC), and Dole Food Company, Inc., Dole Packaged Foods Company, and Dole Thailand, Ltd. (collectively, Dole); and Siam Fruit Canning (1988) Co., Ltd. (SIFCO).

On September 12, 2000 and September 15, 2000 respectively, in response to the Department's questionnaire, Prachuab Fruit Canning Company (Praft) and Siam Agro Industry Pineapple and Others Co., Ltd. (SAICO) stated that they made no shipments to the United States of the subject merchandise during the POR.

On April 10, 2001, the Department published the preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand,* 66 FR 18596 (*Preliminary Results*). Consistent with the preliminary results, we are rescinding the review with respect to Praft and SAICO. On May 14–18 we verified information provided by SIFCO. On July 9 and 16, 2001, we received case briefs and/or rebuttal briefs, respectively, from the petitioners,[1] Dole, KFC, Malee, SIFCO, TIPCO and Vita. On July 23, 2001 a public hearing was held.

Scope of Review

The product covered by this review is CPF. CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.,* juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

[1] The petitioners in this case are Maui Pineapple Company and the International Longshoremen's and Warehousemen's Union.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Bernard T. Carreau, Deputy Assistant Secretary, Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated October 9, 2001, which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Fair Value Comparisons

We calculated export price and normal value based on the same methodology used in the preliminary results. We corrected clerical errors with respect to Dole, KFC, SIFCO and Vita.

Cost of Production

We calculated the cost of production (COP) for the merchandise based on the same methodology used in the preliminary results, with the exception of SIFCO. For SIFCO, we calculated a cost for juice used as packing medium and corrected clerical input errors in its COP database that we found at verification.

Final Results of Review

As a result of our review, we determine that the following weighted-average percentage margins exist for the period July 1, 1998, through June 30, 1999:

Manufacturer/exporter	Margin (percent)
Siam Food Products Company Ltd. (SFP)	0.18
Dole Food Company, Inc. (Dole)	0.49
The Thai Pineapple Public Company, Ltd. (TIPCO)	4.74
Kuiburi Fruit Canning Co. Ltd. (KFC)	1.15
Thai Pineapple Canning Industry (TPC)	2.33
Siam Fruit Canning (1988) Co. Ltd. (SIFCO)	2.76
Vita Food Factory (1989) Co. Ltd. (Vita)	2.77

Manufacturer/exporter	Margin (percent)
Malee Sampran Public Co., Ltd. (Malee)	10.45

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer-specific assessment rate is above de minimis we will instruct the Customs Service to assess antidumping duties on that importer's entries of subject merchandise.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) For the companies named above, the cash deposit rate will be the rate listed above, except where the margins are zero or de minimis no cash deposit will be required, (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent segment of the proceeding in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 24.64 percent, the all-others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) 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 in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 9, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Issues Covered in Decision Memorandum

I. Issues Specific to Dole
- Comment 1: Additional U.S. Sales Presented at Verification
- Comment 2: Calculation of General and Administrative Expense (G&A) and Financial Expense Ratios
- Comment 3: Imputed Credit Expenses
- Comment 4: Reseller's Profit
- Comment 5: Fruit Cost Allocation
- Comment 6: Correction of Errors in Database
- Comment 7: Early Payment Discounts
- Comment 8: Clerical Error Allegation

II. Issue Specific to KFC
- Comment 9: Clerical Error Allegation

III. Issues Specific to Malee
- Comment 10: Treatment of Negative Margins
- Comment 11: Use of Entry Date to Establish the Universe of Sales Examined

IV. Issues Specific to SIFCO
- Comment 12: Date of Sale: Contract Date vs. Invoice Date
- Comment 13: Additional Sales Found at Verification and Use of Facts Available
- Comment 14: Allocation of Separate Natural Juice Packing Medium Costs
- Comment 15: Correction of Errors in Database

V. Issues Specific to TIPCO
- Comment 16: Export Price (EP) vs. Constructed Export Price (CEP)
- Comment 17: Offset to G&A
- Comment 18: Calculation of Interest Expense Ratio

VI. Issue Specific to Vita
- Comment 19: Clerical Error Allegation

[FR Doc. 01–26124 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Postponement of Preliminary Antidumping Duty Determination: Certain Softwood Lumber Products From Canada

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

EFFECTIVE DATE: October 17, 2001.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Constance Handley, Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–0650, or (202) 482–0631, respectively.

Postponement of Preliminary Determination

The Department of Commerce (the Department) is postponing the deadline for issuance of the preliminary determination in the antidumping duty investigation of certain softwood lumber products from Canada until October 30, 2001.

On April 23, 2001, the Department initiated an antidumping investigation of certain softwood lumber products from Canada. *See Initiation of Antidumping Duty Investigation: Certain Softwood Lumber Products from Canada,* 66 FR 21328 (April 30, 2001). The notice stated that the Department would issue its preliminary determination no later than 140 days after the date of initiation (*i.e.,* September 10, 2001). At the request of the petitioner,[1] on July 30, 2001, the Department postponed the date of preliminary determination by two weeks, until September 24, 2001. After a second request from the petitioner, on September 7, 2001, the Department further postponed the date of preliminary determination by three weeks, until October 15, 2001.

In accordance with section 733(c) of the Tariff Act of 1930, as amended, (the Act), on October 9, 2001, the Department concluded that this investigation is extraordinarily complicated and that additional time is necessary to make the preliminary determination. **See** October 9, 2001, Memorandum to Faryar Shirzad from Bernard Carreau. Additionally, the Department feels that the parties are cooperating in this investigation.

[1] Coalition for Fair Lumber Imports Executive Committee.

Therefore, in accordance with section 733(c) of the Act, the Department is postponing until October 30, 2001 the deadline for issuing this preliminary determination.

Dated: October 11, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 01–26123 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

October 11, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 17, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 69910, published on November 21, 2000.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 11, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 17, 2001, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
334	204,440 dozen.
335	189,387 dozen.
341	3,378,902 dozen.
634	782,688 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.01–26059 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Bulgaria

October 11, 2001.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: October 17, 2001.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 442 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 65 FR 82328, published on December 28, 2000). Also see 65 FR 66719, published on November 7, 2000.

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 11, 2001.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 27, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Bulgaria and exported during the twelve-month period which began on January 1, 2001 and extends through December 31, 2001.

Effective on October 17, 2001, you are directed to increase the current limit for Category 442 to 18,050 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing:

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

J. Hayden Boyd,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 01–26029 Filed 10–16–01; 8:45 am]

BILLING CODE 3510–DR–S

[1] The limit has not been adjusted to account for any imports exported after December 31, 2000.

COMMODITY FUTURES TRADING COMMISSION

Technology Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a), that the Commodity Futures Trading Commission's Technology Advisory Committee will conduct a public meeting on Tuesday, November 27, 2001. The meeting will take place at the Federal Reserve Bank of Chicago, 230 South LaSalle Street, Chicago, Illinois 60604–1413, from 1 to 5 p.m. The purpose of the meeting is to discuss technology-related issues in the financial services and commodity markets.

The agenda will consist of the following:

I. Introduction
II. Subcommittee Reports:
  A. Standardization
  B. Market Access
III. September 11 Disaster:
  A. Exchange Response
  B. Market Participant Issues
  C. Regulatory Actions
IV. Other Business

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Thomas J. Erickson, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Technology Advisory Committee, c/o Commissioner Thomas J. Erickson, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Commissioner Erickson in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

For further information concerning this meeting, please contact Natalie A. Markman or William Penner at 202–418–5060.

Issued by the Commission in Washington, DC on October 11, 2001.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 01–26003 Filed 10–16–01; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Tuesday, October 23, 2001.

LOCATION: Room 420, East West Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

PURCHASER IDENTIFICATION CARD PROGRAM (ANPR): The staff will brief the Commission on a staff's recommendation to issue an advance notice of proposed rulemaking (ANPR) concerning a program that would require purchaser identification cards with certain consumer products.

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

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East-West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: October 12, 2001.

Todd A. Stevenson,

Acting Secretary.

[FR Doc. 01–26275 Filed 10–15–01; 12:51 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 66, No. 199, Monday, October 15, 2001, page 52396.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Tuesday, October 16, 2001.

CHANGES IN MEETING: The Commission meeting regarding Purchaser Identification Card Program (ANPR) was canceled and is rescheduled for Tuesday, October 23, 2001 at 10 a.m.

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

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East-West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: October 15, 2001.

Todd A. Stevenson,

Acting Secretary.

[FR Doc. 01–26274 Filed 10–15–01; 12:57 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0002]

Federal Acquisition Regulation; Submission for OMB Review; Solicitation Mailing List Application (SF 129)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0002).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Solicitation Mailing List Application (SF 129). A request for comments was published at 66 FR 45016, on August 27, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 16, 2001.

ADDRESSES: Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Standard Form 129, Solicitation Mailing List Application, is used by all Federal agencies as an application form for prospective contractors to provide information needed to establish and maintain a list of firms interested in selling to the Government. The information is used to establish lists of firms to be solicited when the products or services they provide are needed by the Government.

B. Annual Reporting Burden

Respondents: 200,000.
Responses Per Respondent: 4.
Total Responses: 800,000.
Hours Per Response: .58.
Total Burden Hours: 464,000.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0002, Solicitation Mailing List Application (SF 129), in all correspondence.

Dated: October 11, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–26010 Filed 10–16–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0018]

Federal Acquisition Regulation; Submission for OMB Review; Certification of Independent Price Determination and Parent Company and Identifying Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0018).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning certification of independent price determination and parent company and identifying data. A request for public comments was published at 66 FR 45015,August 27, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 16, 2001.

ADDRESSES: Submit comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Agencies are required to report under 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) suspected violations of the antitrust laws (e.g., collusive bidding, identical bids, uniform estimating systems, etc.) to the Attorney General.

As a first step in assuring that Government contracts are not awarded to firms violating such laws, offerors on Government contracts must complete the certificate of independent price determination. An offer will not be considered for award where the certificate has been deleted or modified. Deletions or modifications of the certificate and suspected false certificates are reported to the Attorney General.

B. Annual Reporting Burden

Respondents: 64,250.
Responses Per Respondent: 20.
Total Responses: 1,285,000.
Hours Per Response: .01.
Total Burden hours: 12,850.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0018, Certification of Independent Price Determination and Parent Company and Identifying Data, in all correspondence.

Dated: October 11, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–26011 Filed 10–16–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0028]

Federal Acquisition Regulation; Submission for OMB Review; Termination Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0028).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning termination requirements. A request for public comments was published at 66 FR 45016, August 27, 2001. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 16, 2001.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Acquisition Policy Division, GSA, (202) 501–3755.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

Contracting officers terminate contracts, for default or convenience, only when it is in the best interest of the Government to do so. After receipt of the notice of termination, contractors are required to terminate subcontracts, advise the contracting officer of any special circumstances, submit any requests for an equitable adjustment, submit a settlement proposal, and take other action as directed. Records regarding the terminated contract must be maintained for 3 years.

The information submitted or retained in connection with contract termination is used to reach an equitable settlement with firms and to protect the interests of the Government and the terminated contractor.

B. Annual Reporting Burden

Respondents: 2,920.
Responses Per Respondent: 1.
Total Responses: 2,920.
Hours Per Response: 3.
Total Burden Hours: 8,760.
Total Recordkeeping Hours: 2,920.

Obtaining Copies Of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0028, Termination Requirements, in all correspondence.

Dated: October 11, 2001.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 01–26012 Filed 10–16–01; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF ENERGY

Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: Monday November 5, 2001, 10 am to 5:30 pm and Tuesday, November 6, 2001, 9 am to 12:30 pm.

ADDRESSES: DoubleTree Hotel, 300 Army Navy Drive,Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Norton Haberman, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE–1, 1000 Independence Avenue, SW., Washington DC 20585, Telephone Number 202–586–0136, E-mail: Norton.Haberman@hq.doe.gov.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy research program.

Tentative Agenda

Monday November 5, 2001
- Welcome remarks,Status of Nuclear Energy's FY 2002 Budget, Discussion of National Energy Policy, Report of Subcommittee on Generation IV Technology Planning, Report of Operating Plant Subcommittee

Tuesday, November 6, 2001
- Space Fission Reactor Technology, Report of Long-term Planning Subcommittee, Public comment period.

Public Participation: The day and a half meeting is open to the public on a first-come, first-serve basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Norton Haberman at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on October 12, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–26074 Filed 10–16–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF DEFENSE

National Imagery and Mapping Agency; Privacy Act of 1974; System of Records

AGENCY: National Imagery and Mapping Agency, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The National Imagery and Mapping Agency (NIMA) is proposing to delete one and amend one system of records notice in the NIMA inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 16, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of General Counsel, National Imagery and Mapping Agency, Mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Willess, Associate General Counsel, at (301) 227–2953.

SUPPLEMENTARY INFORMATION: The National Imagery and Mapping Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 11, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion
B0901–08

SYSTEM NAME:

Civilian Employee Drug Abuse Testing Program Records (July 13, 1995, 60 FR 36124).

REASON:

NIMA now maintains these records under the OPM Government-wide Privacy Act systems of records notices.

Amendment

B1202–17

SYSTEM NAME:

Contracting Officer Designation Files (February 22, 1993, 58 FR 10189).

CHANGES:

* * * * *

Authority for maintenance of the system:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations.''

* * * * *

STORAGE:

Delete ''and/or Kardex book'' from entry.

RETRIEVABILITY:

Delete entry and replace with ''Information is retrieved by name of contracting officer.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a secured area with access limited to authorized personnel whose duties require access. The database can only be accessed via a correct user ID and password.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Certificate of Appointment and background information on education, training, experience, Standard Form l402, and specific information on procurement authorities delegated.''

* * * * *

B1202–17

SYSTEM NAME:

Contracting Officer Designation Files.

SYSTEM LOCATION:

NIMA Contracting Officers are located at NIMA Headquarters in Bethesda, MD; Reston, VA; Washington Navy Yard, Washington, DC; and NIMA St. Louis, MO. Official mailing addresses are published as an appendix to NIMA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employee designated Contracting Officer and Contracting Officer Representative.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents reflecting the designation and rescission of Contracting Officers and Contracting Officers representative which includes the specific procurement authorities delegated.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Federal Acquisition Regulations (48 CFR, Chapter 1); Defense Acquisition Regulations Supplement (48 CFR Ch. 2); NIMA Instruction for Acquisition, Program Development and Approval; NIMA Instruction 5100.1R3.

PURPOSE(S):

To maintain documents showing individual designated as Contracting Officers; to include data reflecting limitations, restrictions on authority, and background information for use in other contracts.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DMA's compilation of systems of records notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records in file folders and on electronic medium.

RETRIEVABILITY:

Information is retrieved by name of contracting officer.

SAFEGUARDS:

Records are maintained in a secured area with access limited to authorized personnel whose duties require access. The database can only be accessed via a correct user ID and password.

RETENTION AND DISPOSAL:

Records are temporary. NIMA destroys these records upon the transfer, reassignment or termination of the contracting officer.

SYSTEM MANAGER(S) AND ADDRESS:

Procurement Technician, National Imagery Mapping Agency, PCP (D–15), 4600 Sangamore Road, Bethesda, MD 20816–5003.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the National Imagery and Mapping Agency, 4600 Sangamore Road, GC (D10), Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the National Imagery Mapping Agency, GC (D–10), 4600 Sangamore Road, Bethesda, MD 20816–5003.

Written requests for information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

NIMA's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in NIMA Instruction 5500.7R1; 32 CFR part 320; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Certificate of Appointment and background information on education, training, experience, Standard Form l402, and specific information on procurement authorities delegated.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–26070 Filed 10–16–01; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is proposing to delete three notices, and amend one system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 16, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 11, 2001.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions

A0037–103e SAFM

SYSTEM NAME:

Disbursing Officer Establishment and Appointment Files (February 22, 1993, 58 FR 10002).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS). See DFAS Privacy Act system of records notice T1300, entitled 'Disbursing Office Establishment and Appointment Files' (August 30, 2000, 65 FR 52715).

A0037–107b SAFM

SYSTEM NAME:

Travel Payment System (February 22, 1993, 58 FR 10002).

REASON:

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS). See DFAS Privacy Act system of records notice T7333, entitled 'Travel Payment System' (August 22, 2000, 65 FR 50973).

A0215–1b SAFM

SYSTEM NAME:

Non-appropriated Fund Accounts Receivable System (February 22, 1993, 58 FR 10002).

REASON:

Non-appropriated Fund Accounts Receivable System (February 22, 1993, 58 FR 10002).

These records are now under the cognizance of the Defense Finance and Accounting Service (DFAS). See DFAS privacy Act system of records notice T7290, entitled 'Non-appropriated Fund Accounts Receivable System' (December 1, 2000, 65 FR 75247.)

Amendment

A0215 CFSC

SYSTEM NAME:

General Morale, Welfare, Recreation and Entertainment Records (September 4, 2001, 66 FR 46266).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry 'DoD Instruction 1015.10, Program for Military Morale, Welfare, and Recreation (MWR)'.

* * * * *

A0215 CFSC

SYSTEM NAME:

General Morale, Welfare, Recreation and Entertainment Records.

SYSTEM LOCATION:

Major Army commands, field operating agencies, installations and activities, Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, their families, other members of the military community, certain DoD civilian employees and their families overseas, certain military personnel of foreign nations and their families, personnel authorized to use Army-sponsored Morale, Welfare, Recreation (MWR) services, youth services, athletic and recreational services, Armed Forces Recreation Centers, Army recreation machines, and/or to participate in MWR-type activities, to include bingo games; professional entertainment groups recognized by the Armed Forces Entertainment; Army athletic team members; ticket holders of athletic events; units of national youth groups such as Boy Scouts, Girl Scouts, and 4-H Clubs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and other pertinent information of members, participants, patrons, and other authorized users. Other ancillary information such as travel vouchers, security check results and orders will be kept in the system. Bingo, pay-out control sheet indicating individual name, grade, Social Security Number, duty station, dates and amount of bingo winnings paid, and Internal Revenue Forms W2-G and 5754, (Gambling Winnings and Statement by Person(s) Receiving Gambling Winnings, respectively).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 26 U.S.C. 6041, Information at Source; Army Regulation 215–1, Morale Welfare, and Recreation Activities and Non-appropriated Fund Instrumentalities; DoD Directive 1015.2, Military Morale, Welfare and Recreation (MWR); DoD Instruction 1015.10, Program for Military Morale, Welfare, and Recreation (MWR); and E.O. 9397 (SSN).

PURPOSE(S):

To administer programs devoted to the mental and physical well-being of Army personnel and other authorized users; to document the approval and conduct of specific contests, shows, entertainment programs, sports activities/competitions, and other MWR-type activities and events sponsored or sanctioned by the Army.

Information will be used to market and promote similar MWR type activities conducted by other DoD organizations.

To provide a means of paying, recording, accounting, reporting, and controlling expenditures and merchandise inventories associated with bingo games.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Internal Revenue Service to report all monies and items of merchandise paid to winners of games whose one-time winnings are $1,200 or more.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, cards, magnetic tapes, discs, computer printouts, and electronic storage media.

RETRIEVABILITY:

By name and Social Security Number.

SAFEGUARDS:

Records are kept in buildings secured during non-duty hours and accessed by only designated persons having official need therefor.

RETENTION AND DISPOSAL:

Bingo records are maintained on-site for four years and then shipped to a Federal Records Center for storage for an additional three years. After seven years, records are destroyed. All other documents are destroyed after 2 years, unless required for current operation.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Community and Family Support Center, 4700 King Street, Alexandria, VA 22302–4414.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director of Community Activities at the installation or activity where assigned.

Individuals must provide name, rank, Social Security Number, proof of identification, and any other pertinent information necessary.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director of Community Activities at the installation or activity where assigned.

Individuals must provide name, rank, Social Security Number, proof of identification, and any other pertinent information necessary.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual or group receiving the service and bingo pay-out control sheets.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 01–26071 Filed 10–16–01; 8:45 am]

BILLING CODE 5001–08–P

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Meeting Notice

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences

TIME AND DATE: 8 a.m. to 4 p.m., November 14, 2001.

PLACE: United States Naval Academy, Rickover Hall, Room 301, Annapolis, MD 21402.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8 a.m. Meeting—Board of Regents

(1) Approval of Minutes—August 14, 2001
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: October 12, 2001.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 01–26235 Filed 10–15–01; 11:21 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Record of Decision: Savannah River Site Salt Processing Alternatives

AGENCY: Department of Energy (DOE).

ACTION: Record of Decision.

SUMMARY: The Savannah River Site Salt Processing Alternatives Supplemental Environmental Impact Statement (Salt Processing SEIS, DOE/EIS–0082–S2) considered alternatives for separating the high-activity fraction from the low-activity fraction of the high-level radioactive salt waste now stored in underground tanks at the Savannah River Site (SRS) near Aiken, South Carolina. Based on the analysis in the SEIS and the results of laboratory scale research and development and independent reviews, DOE determined that any of the alternatives evaluated could be implemented with only small and acceptable environmental impacts. DOE has decided to implement Caustic Side Solvent Extraction for separation of radioactive cesium from SRS salt wastes because the solvent extraction process is robust and efficient, and DOE has experience with similar solvent extraction processes such as PUREX (Plutonium—Uranium Extraction).

Initial implementation of the Caustic Side Solvent Extraction technology will consist of designing, constructing, and operating a facility in S-Area. DOE will evaluate the processing capacity needed based on high-level waste system requirements (including, but not limited to, waste removal capabilities, optimization of salt-sludge blending for Defense Waste Processing Facility operations, and saltstone system modifications or upgrades), projected throughput, and conceptual design data. Based on these evaluations, DOE may elect to build a facility or facilities to carry out the Caustic Side Solvent Extraction process that could accommodate pilot program and production objectives, but would not exceed the size or processing capacity evaluated in the Salt Processing SEIS.

In parallel, DOE will evaluate implementation of any of the other salt processing alternatives for specific waste portions for which processing could be accelerated or that could not be processed in the Caustic Side Solvent Extraction facility. These evaluations and potential operations would be undertaken to maintain operational capacity and flexibility in the HLW system, and to meet commitments for closure of high-level waste tanks.

ADDRESSES: Copies of the Salt Processing SEIS and this Record of Decision may be obtained by calling a toll free number (800–881–7292), by sending an e-mail request to nepa@srs.gov or by mailing a request to: Andrew Grainger, National Environmental Policy Act (NEPA) Compliance Officer, Savannah River Operations Office, Department of Energy, Building 742A, Room 185, Aiken, SC 29808. The SRS Salt Processing Alternatives SEIS (including the 38-page Summary) is available on the Department of Energy NEPA Web site, tis.eh.doe.gov/nepa/docs/docs.htm. This Record of Decision also will be available at the above Web site.

FOR FURTHER INFORMATION CONTACT: Questions concerning the SRS Salt Processing program can be submitted by

calling 800–881–7292, mailing them to Mr. Andrew Grainger at the above address, or sending them electronically to the Savannah River Operations Office e-mail address, *nepa@srs.gov.*

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–4600 or leave a message at 800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

Nuclear materials production operations at the SRS resulted in the generation of large quantities of high-level radioactive waste (HLW), which is stored onsite in large underground tanks. SRS HLW was generated as an acidic solution and was chemically converted to an alkaline solution for storage. In its alkaline form it consists of two components, soluble salt and insoluble sludge. Both components contain highly radioactive residues from nuclear materials production. Radionuclides found in the sludge component include fission products (such as strontium-90) and long-lived actinides (such as uranium and plutonium). Radionuclides found in the soluble salt component include isotopes of cesium and technetium, as well as some strontium and actinides. DOE has been operating the Defense Waste Processing Facility (DWPF) since 1996 to vitrify (convert to glass) the sludge component of HLW to a stable form suitable for disposal in a geologic repository.

DOE continues to manage the salt component within the HLW tank system. Dewatering the salt solution by evaporation, a process that conserves tank space, converts the salt solution to a solid saltcake and a concentrated salt supernatant. In order to process the salt component using any action alternative described in the Salt Processing SEIS, DOE must first convert the saltcake back to salt solution. Solid saltcake would be dissolved by adding water and combined with salt supernatant to form a salt solution. The highly radioactive constituents would be separated from the salt solution and vitrified in DWPF. The remaining low-activity constituents, consisting mostly of non-radioactive salts, would be stabilized with grout (a cement-like mixture) to create a saltstone waste form for disposal at the SRS as low-level radioactive waste.

DOE evaluated the potential environmental impacts of constructing and operating DWPF in a 1982 EIS (DOE/EIS–0082). In 1994 DOE published a SEIS (DOE/EIS–0082–S) evaluating changes in the HLW process proposed after the 1982 EIS was issued. The Record of Decision (60 FR 18589; April 12, 1995) announced that DOE would complete the construction and startup testing of DWPF using the In-Tank Precipitation (ITP) process to separate the high-activity fraction from the salt solution.

DOE designed the ITP process to be carried out primarily in one of the underground HLW storage tanks. Under the ITP process an inorganic sorbent, monosodium titanate, would have removed actinides and radioactive strontium from the salt solution and an organic reagent, sodium tetraphenylborate, would have precipitated radioactive cesium from the salt solution. The ITP process included washing and filtration steps to separate the resulting solids and residual sludge for vitrification in DWPF. However, tetraphenylborate is subject to catalytic and radiolytic decomposition that returns cesium to the salt solution and generates benzene, which is a toxic, flammable, and potentially explosive organic substance that must be safely controlled. The ITP process was designed to accommodate some tetraphenylborate decomposition and to limit benzene accumulation. To achieve the objectives of the ITP process, however, the decomposition of tetraphenylborate must be limited to minimize (1) the amount of precipitated cesium that is redissolved in the salt solution and (2) the amount of benzene generated. Startup testing of the ITP facility in 1995 generated benzene in much greater quantities than had been anticipated based on calculations and laboratory experiments, and ITP startup operations were suspended in order to develop a better understanding of the ITP process chemistry.

In August 1996, the Defense Nuclear Facilities Safety Board (DNFSB), chartered by Congress to independently review operations at DOE nuclear defense facilities and to make recommendations necessary to protect public health and safety, recommended that planned large-scale testing of the ITP process not proceed further until DOE had a better understanding of how benzene was generated and released during the precipitation process. In response to the DNFSB recommendation, DOE initiated an extensive chemistry program to better understand the process of benzene generation and release. In January 1998, DOE determined that ITP, as designed, could not meet production goals and safety requirements, because the separation of radionuclides from HLW salt solution could not be achieved without excessive tetraphenylborate decomposition and benzene generation. DOE must therefore select an alternative technology for HLW salt processing.

Alternative Technology Evaluation

Westinghouse Savannah River Company (WSRC), the SRS operating contractor, evaluated a list of over 140 potential salt treatment technologies to replace the ITP process and in October 1998 recommended four technologies for further consideration: Small Tank Tetraphenylborate Precipitation (Small Tank), Crystalline Silicotitanate Ion Exchange (Ion Exchange), Caustic Side Solvent Extraction (Solvent Extraction), and Direct Disposal in Grout (Direct Disposal). DOE decided in early 1999 to pursue three of the four candidate alternatives for replacement of the ITP process, dropping Solvent Extraction because it was considered technically immature for the salt waste at that time.

In addition to engineering and research and development efforts, reviews by the National Academy of Sciences have played an important role in reviewing DOE's technology selection process. In June 1999 the Under Secretary of Energy requested that the National Academy of Sciences—National Research Council provide an independent technical review of alternatives for processing the HLW salt at the SRS. In response to the request, the Council appointed a ''Committee on Cesium Processing Alternatives for High-Level Waste at the Savannah River Site,'' which conducted a review and provided an interim report in October 1999 and a final report in August 2000. Based on that report's recommendation and new research and development results from independent work at Oak Ridge National Laboratory, DOE restored Solvent Extraction to the list of potential alternatives. In connection with the August 2000 report, DOE asked the Council to provide a follow-on assessment, and the Council appointed a ''Committee on Radionuclide Separation Processes for High-Level Waste at the Savannah River Site'' in October 2000 to review DOE's evaluation of potential technologies for separating radionuclides from soluble high-level radioactive waste at the SRS. This second committee conducted its review and provided an interim report in March 2001 and a Final Report in June 2001. The report concluded that Caustic Side Solvent Extraction technology presents the least technical uncertainties of any of the three cesium separation alternatives.

Alternatives Considered

The Salt Processing SEIS describes the environmental impacts of the four salt processing technology alternatives that were evaluated through engineering and research and development efforts and independent technical reviews. The four salt processing technology alternatives considered in the Salt Processing SEIS were Small Tank, Ion Exchange, Solvent Extraction, and Direct Disposal. The analysis in the Salt Processing EIS is based on pre-conceptual engineering designs of the facilities and emissions estimates generated from knowledge of chemical processes and engineering controls that would be applied. The Salt Processing SEIS also analyzed a No Action alternative (i.e., a continuation of current HLW management activities).

The four salt processing technology alternatives considered in the Salt Processing SEIS share some common features. Each alternative includes initial separation of low-concentration soluble radioactive strontium and actinides (including plutonium) by sorption, followed by filtration. The essential difference among the alternatives is the technology for removal of the relatively high concentrations of radioactive cesium. Except for the Direct Disposal alternative, in which cesium would not be removed but would remain in the fraction immobilized as saltstone for disposal at the SRS, the final waste forms are similar for each of the action alternatives. For these action alternatives the cesium is extracted from the salt solution and incorporated into a vitrified waste form for eventual repository disposal, and the remaining low-activity salt fraction is immobilized as saltstone for disposal at the SRS.

Solvent Extraction

The Solvent Extraction alternative, identified as the preferred alternative in the final Salt Processing SEIS, would use a highly specific organic extractant to separate cesium from the HLW salt solution. The cesium would be transferred from the aqueous salt solution into an insoluble organic phase, using a centrifugal contactor to provide high surface area contact, followed by centrifugal separation of the two phases. Recovery of the cesium by back extraction from the organic phase into a secondary aqueous phase would generate a concentrated cesium solution for vitrification in DWPF.

Small Tank Precipitation

The Small Tank Precipitation alternative would use tetraphenylborate precipitation, the same chemical reaction as in ITP, to remove the radioactive cesium from the HLW salt solution. The process would be conducted as a continuous operation using a small, temperature-controlled reaction vessel to inhibit tetraphenylborate decomposition and benzene generation. The vessel and operating conditions would be designed to minimize benzene emission and flammability hazards by maintaining an inert gas (i.e., nitrogen) atmosphere within the reaction vessel. DOE learned from the ITP process experience that temperature control and maintenance of an inert atmosphere are important for safe and efficient tetraphenylborate precipitation.

Ion Exchange

The Ion Exchange alternative would use crystalline silicotitanate resin in ion exchange columns to separate cesium from the salt solution. The salt solution would be passed through large stainless steel ion exchange columns filled with the ion exchange resin to react the cesium with the resin. Treatment of the solution to separate strontium and actinides, followed by filtration to remove the solids and residual sludge, would be necessary prior to separating the cesium to prevent plugging the ion exchange columns.

The Ion Exchange process would result in the accumulation of as much as 15 million curies of radioactive cesium on the resin inventory within the process cell. This radioactive loading would require stringent shielding and operational controls because of high radiation, high heat generation, and the generation of hydrogen and other gases.

Direct Disposal in Grout

As indicated earlier in this section, under the Direct Disposal alternative the HLW salt solution would be disposed of at SRS as saltstone, without prior separation of radioactive cesium. The resulting saltstone would have radionuclide concentrations less than Class C low-level waste (LLW) limits, but would exceed Class A limits, as defined in U.S. Nuclear Regulatory Commission (NRC) regulations at 10 CFR 61.55. These waste classifications do not apply to DOE-generated LLW, but DOE used the NRC classification system in the Salt Processing SEIS to describe differences in waste forms because DOE Manual 435.1–1 establishes a process for making waste-incidental-to-reprocessing determinations in terms of the NRC classifications. The current Saltstone Facility permit, which was issued by the South Carolina Department of Health and Environmental Control (SCDHEC) under its State wastewater authority, authorizes disposal of wastes with radionuclide concentrations comparable to Class A LLW. Under the permit, DOE must notify SCDHEC if the characteristics of wastes in saltsone vaults would change, as would be the case with the higher level of radioactivity in the final waste form under the Direct Disposal alternative. Also, if this alternative were implemented, cesium would not be present in sufficient concentrations in DWPF canisters to make the canisters ''self-protecting.'' This characteristic would be necessary for DOE to carry out immobilization of certain plutonium materials, as described in the Surplus Plutonium Disposition EIS (DOE/EIS–0283) and the associated Record of Decision (65 FR 1608; January 11, 2000).

No Action

Under the No Action alternative in the near term, DOE would continue current HLW management activities, including tank space management, without a process for separating the high-activity from the low-activity salt fractions. DWPF would vitrify only sludge from the HLW tanks. Saltcake and salt supernatant would be stored in the HLW tanks and monitoring activities would continue. DOE would continue to manage tank space to ensure adequate space to meet safety requirements and closure commitments. Current tank space management projections indicate that additional tank space would be needed after 2010 to support continuing operations under the No Action alternative.

Without a salt processing technology in place, however, current HLW storage operations could not continue indefinitely. DWPF operations result in large volumes of waste, mostly water, which is returned to the HLW tanks. DOE uses evaporators to substantially reduce this volume, but until a salt processing technology is on-line, DWPF operation will increase rather than decrease the volume of HLW that must be stored in the tanks.

Environmentally Preferable Alternative

Ion Exchange is the environmentally preferable alternative. Review of the data presented in the Salt Processing SEIS shows that the construction and operation activities to implement the Ion Exchange alternative would have impacts that are generally small and similar to the other action alternatives. However, because the Ion Exchange alternative does not use organic materials that generate organic

compounds (such as benzene) that must be treated, there are no organic emissions that must be managed. Organic compounds used in the Solvent Extraction and Small Tank alternatives result in organic emissions that must be safely managed. Also, certain accidents involving volatile organic compounds could not occur with the Ion Exchange alternative. Ion Exchange would result in the lowest radiological dose to the worker population and the public, although none of the alternatives would result in adverse health effects from radiological releases during construction and normal operation.

The No Action alternative is the least desirable both in the short term, because of the impacts of construction and operation of new HLW tanks, and in the long term because of the unacceptably high quantity of HLW contaminants that could be released to onsite streams.

In the short term the Direct Disposal alternative would in many cases generate the least effluents of any of the processing alternatives. However, in the long term Direct Disposal would release greater quantities of contaminants to the environment than would the other processing alternatives because of the much greater concentration of cesium that would be disposed of in saltstone. For this reason Direct Disposal cannot be considered the environmentally preferable alternative.

Comments on the Final Supplemental EIS

On July 30, 2001, the Defense Nuclear Facilities Safety Board (DNFSB) commented on DOE's identification of the Solvent Extraction alternative as the preferred technology for processing salt waste at SRS. DNFSB urged DOE to pursue a back-up technology through pilot scale operations to give DOE more flexibility in addressing unforeseen technical or programmatic issues. The DNFSB letter identified the Small Tank Precipitation alternative as an apparently appropriate back-up technology. The DNFSB letter also stated the belief that DOE would benefit from further assessment of direct disposal of low-source-term wastes. In an August 24, 2001, response to the DNFSB letter, DOE expressed appreciation for the DNFSB's perspective on the technologies and associated technical challenges, and pledged to continue to work closely with the DNFSB and its staff to communicate the bases of the DOE approach as well as progress on assuring that the project proceeds safely and effectively. DOE will continue laboratory testing of the other technologies in support of potential future needs as a backup technology and as potential technologies for processing specific portions of the HLW until such time as a Solvent Extraction facility is operational and has proven successful.

By letter dated August 15, 2001, the United States Environmental Protection Agency, Region 4 (EPA) commented on the Final Salt Processing SEIS. EPA stated that the disposal routes and locations for secondary waste streams, including low-level waste that would be generated from the Small Tank and Solvent Extraction technologies, were not discussed clearly in the EIS. On June 28, 2001, DOE published an Amended Record of Decision (66 FR 34431) for the SRS Waste Management EIS (DOE/EIS–0217, July 1995), announcing DOE's decision to ship certain SRS low-level and low-level mixed waste streams offsite for treatment and disposal at commercial or Government facilities. DOE will select among the disposal options considered in the SRS Waste Management EIS, depending upon the volume and characteristics of the salt processing alternative waste stream, and the costs of treatment and disposal. The Final Salt Processing SEIS acknowledges the possibility of offsite treatment or disposal for certain waste streams, but at this time DOE cannot be more specific about which disposal options would eventually be chosen.

EPA requested clarification on the current viability of the Consolidated Incineration Facility and other options for treatment of mixed low-level waste. As is explained on page 1–4 of the Final Salt Processing SEIS, DOE expects to decide whether to resume CIF operations by April 2002. DOE is investigating alternatives to incineration and will not operate the CIF if an effective alternative disposition of PUREX solvents can be identified.

Decision

DOE has decided to implement Caustic Side Solvent Extraction for separation of radioactive cesium from SRS salt wastes. The results of research and development activities were an important factor in DOE's selection of a salt processing technology. DOE has performed research on each of the three cesium removal technology alternatives since 1998. Independent scientists and subject matter experts have reviewed the results of the research and assessed the advantages and disadvantages associated with each of the identified alternatives, considering life cycle costs and schedules for the design, construction, and operation of each alternative. In addition to, and in consideration of this research, analysis, and independent review, DOE conducted a final management review that comparatively evaluated each of the action alternatives against a list of criteria that included cost, schedule, technical maturity, implementability, environmental impacts, facility interfaces, process simplicity, process flexibility, and safety.

Although Solvent Extraction uses a complex four-component solvent system, laboratory testing has clearly shown that component concentration and process flow can be maintained to effectively remove cesium from the wastes. Other key strengths identified for the Solvent Extraction technology include: (1) Maturity of and experience within the DOE complex for solvent extraction processing of nuclear material, (2) simplicity with which the Solvent Extraction product stream could be incorporated into the current DWPF vitrification process, and (3) the ability to rapidly start up and shut down the Solvent Extraction centrifugal contactors, which lends flexibility by allowing responsiveness to processing contingencies elsewhere in the HLW management system. DOE believes the Solvent Extraction process to be robust and efficient. In addition, DOE has extensive experience at the SRS with a similar solvent extraction process, Plutonium—Uranium Extraction (PUREX). The PUREX process has been used in F- and H-Canyons at SRS for almost 50 years to extract plutonium and uranium from solutions created by the dissolution of nuclear fuel and targets.

In addition to engineering and research and development efforts, the National Academy of Sciences has played an important role in evaluating DOE's technology selection process. In June 1999 the Under Secretary of Energy requested that the National Academy of Sciences—National Research Council provide an independent technical review of alternatives for processing the HLW salt at the SRS. In response to the request, the Council appointed a ''Committee on Cesium Processing Alternatives for High-Level Waste at the Savannah River Site,'' which conducted a review and provided an interim report in October 1999 and a final report in August 2000. Based on that report's recommendation and new research and development results from independent work at Oak Ridge National Laboratory, DOE restored Solvent Extraction to the list of potential alternatives. In connection with the August 2000 report, DOE asked the Council to provide a follow-on assessment, and the Council appointed a ''Committee on Radionuclide Separation Processes for

High-Level Waste at the Savannah River Site'' in October 2000 to review DOE's evaluation of potential technologies for separating radionuclides from soluble high-level radioactive waste at the SRS. This second committee conducted its review and provided an interim report in March 2001 and a Final Report in June 2001. The report concluded that Caustic Side Solvent Extraction technology presents the least technical uncertainties of any of the three cesium separation alternatives.

Initial implementation of the Caustic Side Solvent Extraction technology will consist of designing, constructing, and operating a facility in S-Area. DOE will evaluate the processing capacity needed based on the high-level waste system requirements (including, but not limited to, waste removal capabilities, optimization of salt-sludge blending for Defense Waste Processing Facility operations, and Saltstone system modifications or upgrades), projected throughput, and conceptual design data. Based on these evaluations, DOE may elect to build a Caustic Side Solvent Extraction process facility or facilities that could accommodate pilot program and production objectives, but would not exceed the size or processing capacity evaluated in the Salt Processing SEIS. In parallel, DOE will evaluate implementation of any of the other salt processing alternatives for specific waste portions for which processing could be accelerated or that could not be processed in the Solvent Extraction facility. These evaluations and potential operations would be undertaken to maintain operational capacity and flexibility in the HLW system, and to meet commitments for closure of high-level waste tanks.

The analysis in the Salt Processing SEIS shows that the environmental impacts of the construction and operation of a full-scale Solvent Extraction facility would be generally small and similar to those of the other processing alternatives. DOE determined that any of the alternatives evaluated could be implemented with only small and acceptable environmental impacts. The EIS estimates that the radiation doses for any of the alternatives would result in a small increase in latent cancer fatalities in the worker population and the offsite public, but would be well below applicable standards for both populations. The Solvent Extraction alternative would generate up to 900,000 gallons per year of radioactive liquid waste. Most of this volume consists of water that would be evaporated, and the remainder would be treated at the SRS Effluent Treatment Facility to remove radioactive substances and discharged as water meeting drinking water standards. The long term (after mission completion and facility decommissioning) effect on groundwater quality from residual radionuclides released from the saltstone vaults would be small and similar for the cesium separation alternatives, and greater, but still small, for the Direct Disposal alternative.

Mitigation

DOE is committed to environmental stewardship and to operating the SRS in compliance with all applicable laws, regulations, DOE Orders, permits, and compliance agreements. Construction and operation of the salt processing facility will be conducted in accordance with good engineering practice that includes measures to minimize the risks associated with the construction and operation of any industrial facility. DOE considers these to be standard operating procedures that do not require a mitigation action plan (under 10 CFR 1021.331(a)).

Issued at Washington, DC, October 9, 2001.

Jessie Hill Roberson,

Assistant Secretary for Environmental Management.

[FR Doc. 01–26082 Filed 10–16–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 02–02; Nanoscale Science, Engineering, and Technology

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for innovative research on the topic of nanoscale science, engineering and technology. Opportunities exist for research with primary focus in materials sciences and engineering, chemical sciences, biosciences, and biomolecular materials. More specific information is outlined in the supplementary information section below.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 02–02, should be submitted by mail and received by DOE by 4:30 p.m., E.S.T., November 16, 2001. A response to the preapplications encouraging or discouraging a formal application generally will be communicated to the applicant on or before December 21, 2001. The deadline for receipt of formal applications is 4:30 p.m., E.S.T. February 12, 2002, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2002.

ADDRESSES: All preapplications referencing Program Notice 02–02 should be sent to Dr. Jerry J. Smith, Division of Materials Sciences and Engineering, SC–13, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown MD 20874–1290. Formal applications referencing Program Notice 02–02, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 02–02. This address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: For questions concerning research topics in specific technical areas, contact the following individuals in the appropriate area of interest (please use e-mail when possible):

Materials Sciences and Engineering: Dr. Jerry J. Smith, Division of Materials Sciences and Engineering, SC–13, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–4269, e-mail: *jerry.smith@science.doe.gov.* Chemical Sciences: Dr. Walter J. Stevens, Division of Chemical Sciences, Geosciences, and Biosciences, SC–14, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–2046, e-mail: *walter.stevens@science.doe.gov.* Biosciences: Dr. Sharlene Weatherwax, Division of Chemical Sciences, Geosciences, and Biosciences, SC–14, Office of Science, U. S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–6165, e-mail: *sharlene.weatherwax@science.doe.gov.*

SUPPLEMENTARY INFORMATION: Controlling and manipulating matter at the atomic and molecular scale is the essence of nanoscale science, engineering, and technology (NSET). The BES program has worked with the National Science and Technology Council's Interagency Working Group on Nanotechnology, with the Basic Energy Sciences Advisory Committee

(BESAC), and with the broad scientific community from academia, industry, and the National Laboratories to define and articulate the goals of this research.

The BES program in NSET has the following overarching goals: (1) Attain a fundamental scientific understanding of nanoscale phenomena; (2) achieve the ability to design and synthesize materials at the atomic level to produce materials with desired properties and functions, including nanoscale assemblies that combine hard and soft (biological) materials to achieve novel functions; (3) attain a fundamental understanding of the structural, dynamic, and electronic aspects of nanoassemblies, including biomolecular assemblies, associated with unique materials properties, chemical transformations, energy conversion, and signal transduction; (4) develop experimental characterization tools and theory/modeling/simulation tools necessary to understand, predict, and control nanoscale phenomena; and (5) to obtain an integrated structural and dynamic view of nanoassemblies in biological systems, through the development of enhanced imaging tools and nanoscale probes.

Two recent reports prepared by the BES program, which address both NSET research and broader program goals that are dependent on nanoscale understanding, are available on the internet. These reports are Complex Systems: Science for the 21st Century (1999) available at: http://www.sc.doe.gov/production/bes/complexsystems.htm and Nanoscale Science, Engineering and Technology Research Directions (1999) available at: *http://www.sc.doe.gov/production/bes/nanoscale.html.* These reports detail current topics supported by BES in the area of NSET, describe future research directions, and should be used as a guide to appropriate proposal topics. Applications in these areas will be accepted from individual investigators or groups of 2–4 investigators.

Program Funding

It is anticipated that up to $8 million will be available for grant awards during FY 2002, contingent upon the availability of appropriated funds. Multiple year funding of grant awards is expected, also contingent upon the availability of appropriated funds, progress of the research and continuing program need. Applications received by the Office of Science, Office of Basic Energy Sciences, under its current competitive application mechanisms may be deemed appropriate for consideration under this notice and may be funded under this program.

Preapplications

A brief preapplication may be submitted. The preapplication should identify on the cover sheet the institution, principal investigator name, address, telephone and FAX numbers, e-mail address, title of the project, and the field of scientific research. The preapplication should consist of no more than a three-page narrative describing the research project objectives, rationale, and methods of accomplishment. Budgets are not required. Preapplications must be submitted by mail. Electronic submissions will not be accepted. Preapplications will be reviewed relative to the scope and research needs of the Nanoscale Science, Engineering, and Technology initiative, as well as, DOE programmatic needs. Preapplications are strongly encouraged but not required prior to submission of a formal application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR Part 605.10(d) *http://www.sc.doe.gov/production/grants/605index.html:*

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, that external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applications involving collaborations with other institutions are acceptable. Such applications should clearly identify the research to be performed by each collaborator and, when funding is requested for more than one institution, should include a detailed budget for each. Individual investigators are limited to participation in one application only.

While collaborations with researchers at DOE FFRDC's are encouraged, no funds will be provided to these organizations under this notice. A parallel invitation with a similar potential total amount of funds has been sent to DOE FFRDCs. Successful proposals from DOE FFRDC's and DOE FFRDC collaborations on successful non-DOE FFRDC applications will be funded from the DOE FFRDC program. All projects will be evaluated using the same criteria, regardless of the submitting institution.

A guide for submitting a collaborative application can be accessed via the web at *http://www.science.doe.gov.production/grants/Colab.html.*

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* On the grant face page, form DOE F 4650.2, block 15; provide the principal investigator's phone number, FAX number and e-mail address. The research description should be 20 pages or less, exclusive of figure illustrations, and must contain an abstract or summary of the proposed research. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is made.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on October 4, 2001.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 01–26083 Filed 10–16–01; 8:45 am]

BILLING CODE 6450–02–U

DEPARTMENT OF ENERGY

Hydrogen Technical Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Hydrogen Technical Advisory Panel (HTAP). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, as amended), requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, October 29, 2001, 8:30 A.M.–6 P.M.
Tuesday, October 30, 2001, 8:30 A.M.–2:30 P.M.

ADDRESSES: Desert Research Institute, Northern Nevada Science Center, 2215 Raggio Parkway, Reno Nevada 89512, Telephone: 775–673–7312.

FOR FURTHER INFORMATION CONTACT: Neil Rossmeissl, Designated Federal Officer, Hydrogen Program Manager, EE–15 Office of Power Technologies, Department of Energy, Washington, DC 20585; Telephone 202–586–8668.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To present the HTAP Committee Reports and their proposed plans for the coming year, technical presentations and discussions with experts on hydrogen's role in national security and the status of coordination of hydrogen activities within various government offices.

Tentative Agenda

Monday, October 29, 2001

8:45, a.m.—Welcome and Introduction, J. O'Sullivan
9:15—Welcome to Desert Research Institute (DRI) and Introduction of Senator Reid, Dr. Wells
Keynote: Energy and National Security, Senator Reid, Nevada
9:45—Questions and Answers, HTAP Discussion, J. O'Sullivan
10:15—Break
10:45—Energy, Environment, and National Security, J. Hamrin
11:15—Questions and Answers, HTAP Discussion, J. O'Sullivan
12:00—Lunch
1:30
Hydrogen and National Energy Security
Mobilizing Regional Resources
Existing Hydrogen Infrastructure
Regional Domestic Resources
Technology Status Needs
3:00—Break
3:30
Mobilizing National and International Resources
Iceland's Strategic Vision
National Hydrogen Agenda for the 21st Century
4:30—Questions and Answers, HTAP Discussion, J. O'Sullivan
5:00—Public Comments
5:30—Adjourn

Tuesday, October 30, 2001

9:00 a.m.—Welcome, Recap of Day 1, J. O'Sullivan
9:10—HTAP Committee Reports
Coordination, H. Chum
Scenario Planning, H. Wedaa
Fuel Choice, R. Nichols
10:00—HTAP Discussion, J. O'Sullivan
10:30—Break
11:00—DOE Report
11:20—DOE Vision 21 Update
11:30—Public Comments
12:00—HTAP Discussion: FY 2002 Agenda and Beyond, All

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mr. Neil Rossmeissl's office at the address or telephone number listed above. Request must be received 5 days prior to the meeting and a reasonable provision will be make to include the presentations in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00, a.m. and 4:00, p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Neil Rossmeissl, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, or by calling (202) 586–8668.

Issued at Washington, DC on October 11, 2001.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–26073 Filed 10–16–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–23–001]

Florida Gas Transmission Company; Notice of Filing

October 11, 2001.

On October 1, 2001, Florida Gas Transmission Company submitted revised standards of conduct in response to the Commission's September 13, 2001 letter order. 96 FERC ¶ 61,295 (2001).

Florida Gas Transmission Company states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211 or 385.214) All such motions to intervene or protest should be filed on or before October 26, 2001. 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. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–26103 Filed 10–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–188–003]

PSI Energy, Inc.; Notice of Supplemental Stipulation and Agreement

October 11, 2001.

Take notice that on October 9, 2001, PSI Energy, Inc. (PSI) tendered for filing with the Federal Energy Regulatory Commission (Commission) a motion to reopen Docket No. ER00–188 and, pursuant to Rule 602(a) of the Commission's Rules of Practice and Procedure, 18 CFR 385.602(a), and an uncontested Supplemental Stipulation and Agreement in this proceeding.

Copies of these filings have been served on the parties.

Pursuant to Rule 602(d)(2) of the Commission's regulations, comments on the Supplemental Stipulation and Agreement should be filed on or before

October 29, 2001 and reply comments on or before November 8, 2001.

David P. Boergers,

Secretary.

[FR Doc. 01–26104 Filed 10–16–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–1–000]

Southern Natural Gas Company; Notice of Application

October 11, 2001.

Take notice that on October 1, 2001, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP02–1–000, an application pursuant to Section 7(b) and 7(c) of the Natural Gas Act (NGA) and part 157 of the Federal Energy Regulatory Commission's Regulations (Commission), for authorization to abandon certain compression facilities and for a certificate of public convenience and necessity authorizing the construction, installation and operation of certain pipeline, compression, measurement, interconnection and appurtenant facilities in Louisiana, Mississippi, Alabama, and Georgia, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance).

Southern states that it proposes a significant expansion of its pipeline system. According to Southern, eight shippers have entered into firm transportation service agreements for a total of 359,891 Mcf per day of Transportation Demand and that a small amount of this new service has been contracted for by a municipal gas system and two industrial end users connected directly to Southern's system. Southern states that the vast majority of the new service, however, will be used to serve existing, new, and expanded gas-fired electric generation facilities. Southern states that all eight shippers have executed a new or amended service agreement providing for an initial term of 15 years for their new Transportation Demands.

Southern states that to provide the capacity for these new transportation services, Southern proposes to construct, install, and operate approximately 123 miles of loop pipeline and 76,930 horsepower of compression. Southern states that a portion of the new horsepower will replace seven existing compressor units at two compressor stations that have become physically deteriorated and/or obsolete to the extent that their replacement is deemed necessary to insure the safe, reliable, and efficient operation of Southern's pipeline system. Accordingly, the loop pipeline will be added at twelve locations on Southern's South System and will be 99.8 percent co-located within and along Southern's existing rights-of-way. Southern states that the construction will be undertaken in two phases, with a target in-service date for Phase I of June 1, 2003, and for Phase II of May 1, 2004, and Southern estimates the total cost of the proposed facilities to be $245.5 million.

Any questions regarding this application should be directed to R. David Hendrickson, Associate General Counsel, at (205) 325–7114, Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before November 1, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a

final Commission order approving or denying a certificate will be issued.

David P. Boergers,

Secretary.

[FR Doc. 01–26102 Filed 10–16–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES02–1–000, et al.]

Citizens Communications Company, et al.; Electric Rate and Corporate Regulation Filings

October 10, 2001.

Take notice that the following filings have been made with the Commission:

1. Citizens Communications Company

[Docket No. ES02–1–000]

Take notice that on October 1, 2001, Citizens Communications Company(Applicant) filed an application for authorization to issue securities pursuant to Section 204 of the Federal Power Act, 16 U.S.C. 824(c) (1994), and part 34 of the Commission Rules and Regulations, 18 CFR part 34. The Applicants requests that the Commission authorize: (i) The issuance of unsecured promissory notes (Promissory Notes); (ii) the issuance of longer-term debt and asset securities (and any like instruments issued in exchange therefor or in refinancing thereof) with a final maturity or maturities of not less than nine months nor more than 50 years, and the entering into of capitalized leases and other instruments that are deemed to be long-term debt obligations of the Company (Longer-Term Debt Securities); (iii) the issuance of shares of common stock (Common Stock) including shares which may be issued upon conversion of other securities of the Company; and the issuance by the Company of shares of its preferred stock (Preferred Stock); and (iv) the assumption by the Company of obligations and liabilities of the Company's subsidiaries (and any like securities issued in exchange therefor or in refinancing thereof) (Guaranteed Obligation) all such issuances and assumption of securities under (i), (ii), (iii) and (iv) of unsecured Promissory Notes, long-term securities, common stock, preferred stock and guarantees being subject to an aggregate limitation of $3,000,000,000.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

2. Citizens Communications Company

[Docket No. ES02–2–000]

Take notice that on October 1, 2001, Citizens Communications Company(Applicant) filed an application for authorization to renew a guarantee of the obligations of a non-utility subsidiary under a construction and lease facility covering non-jurisdictional equipment and facilities at a cost of up to $111 million.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

3. Klamath Energy LLC

[Docket Nos. ER01–3121–000 and ER01–3121–001]

Take notice that on August 27, 2001, PPM Three LLC (Applicant) filed a notification of a name change with the Federal Energy Regulatory Commission (Commission) changing it from ''PPM Three LLC'' to Klamath Energy LLC (Klamath) effective August 20, 2001. On October 3, 2001, Klamath filed its First Revised Rate Schedule No. 1. Klamath's rate schedule was revised to reflect the change of name from PPM Three LLC to Klamath Energy LLC.

Comment date: October 24, 2001, in accordance with Standard Paragraph E at the end of this notice.

4. De Pere Energy L.L.C.

[Docket No. ER97–1432–011]

Take notice that on October 1, 2001, De Pere Energy L.L.C. (De Pere) filed with the Federal Energy Regulatory Commission (Commission) an updated market analysis in accordance with the Commission's Order dated June 12, 1997 in Docket Nos. ER97–1431–000 and ER97–1432–000.

Comment date: October 22, 2001, in accordance with Standard Paragraph E at the end of this notice.

5. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

[Docket No. ER98–4289–000]

Take notice that on October 9, 2001, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota) tendering for filing with the Federal Energy Regulatory Commission (Commission) an updated market analysis pursuant to the Commission's Order issued on October 16, 1998 authorizing market based rate authority.

Copies of the filing have been provided to the Montana Consumer Counsel, Montana Public Service Commission, North Dakota Public Service Commission, South Dakota Public Utilities Commission, and Wyoming Public Service Commission.

Comment date: October 30, 2001, in accordance with Standard Paragraph E at the end of this notice.

6. Bangor Hydro-Electric Company

[Docket Nos. ER00–980–004]

Take notice that on October 5, 2001, Bangor Hydro-Electric Company (Bangor Hydro), submitted with the Federal Energy Regulatory Commission (Commission), its open access transmission tariff with the correct tariff volume number consistent with Order No. 614. Bangor Hydro files its complete tariff including the corrected tariff sheets originally submitted to the Commission on March 28, 2001 as a compliance filing.

Comment date: October 26, 2001, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER02–18–000]

Take notice that on October 2, 2001, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed with the Federal Energy Regulatory Commission (Commission) Service Agreement No. 150 to add one new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services. Allegheny Energy Supply proposes to make service available as of June 1, 2002 to the Borough of Seaside Heights. Confidential treatment of information in the Service Agreement has been requested.

Copies of the filing have been provided to the New Jersey Board of Public Utilities and all parties of record.

Comment date: October 23, 2001, in accordance with Standard Paragraph E at the end of this notice.

8. Idaho Power Company

[Docket No. ER01–2672–001]

Take notice that on October 4, 2001, Idaho Power Company amended its filing with the Federal Energy Regulatory Commission (Commission) the Generator Interconnection and Operating Agreement between Idaho Power Company and Emmett Power Company, under its open access transmission tariff in the above-captioned proceeding.

Comment date: October 25, 2001, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a

motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

David P. Boergers,

Secretary.

[FR Doc. 01–26105 Filed 10–16–01; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AZ057–NOA; FRL–7084–8]

Adequacy Status of the Maricopa County, Arizona, Submitted CO Attainment Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this document, EPA is notifying the public that we have found that submitted Revised Maricopa County Carbon Monoxide (CO) Attainment Plan is adequate for conformity purposes. As a result of our finding, the Maricopa Association of Governments and the Federal Highway Administration are required to use the CO motor vehicle emissions budget from the submitted CO Attainment Plan for future conformity determinations.

DATES: This budget is effective November 1, 2001.

FOR FURTHER INFORMATION CONTACT: The finding is available at EPA's conformity Web site: *http://www.epa.gov/oms/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity''). You may also contact Frances Wicher, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1248 or *wicher.frances@epa.gov.*

SUPPLEMENTARY INFORMATION: Today's document is simply an announcement of a finding that we have already made. EPA Region IX sent a letter to the Arizona Department of Environmental Quality and the Maricopa Association of Governments on September 28, 2001 stating that the Revised Maricopa County CO Attainment Plan (submitted on April 18, 2001) is adequate for conformity purposes. This finding has also been announced on our conformity Web site: *http://www.epa.gov/oms/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review which is required by section 110(k)(1) of the Clean Air Act, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

Dated: October 9, 2001.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 01–26091 Filed 10–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7085–3]

Meeting of the National Drinking Water Advisory Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S3300f *et seq.*), will be held on November 8, 2001, from 9 a.m. until 5 p.m., November 9, 2001, from 8:30 a.m. until 12:30 p.m., at the Wyndham City Center, 1143 New Hampshire Avenue, NW, Washington, D.C. The Council will hear presentations and have discussions on several topics important to the Environmental Protection Agency's national drinking water program, including: Regulatory program update and key issues in development of the Arsenic, Stage 2 Disinfectants and Disinfection Byproducts and Long Term 2 Enhanced Surface Water Treatment rules, and making regulatory determinations from the Contaminant Candidate List; the Agency's Critical Infrastructure Protection efforts; progress on strategies for overall drinking water research and waterborne microbial disease; and updates on other implementation initiatives. The Council encourages the hearing of outside statements and will allocate one hour for this purpose. Oral statements will be limited to five minutes, and it is preferred that only one person present the statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–9194 or (202) 260–5509 before October 30, 2001.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to all members of the Council before any final discussion or vote is completed. Any statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Members of the public that would like to attend the meeting, present an oral statement, or submit a written statement, should contact Janet Pawlukiewicz, Designated Federal Officer, National Drinking Water

Advisory Council, U.S. EPA, Office of Ground Water and Drinking Water (4601), 401 M Street SW., Washington, DC 20460. The telephone number isArea Code (202) 260–9194 or e-mail *pawlukiewicz.janet@epa.gov.*

Dated: October 5, 2001.

Cynthia C. Dougherty,

Director, Office of Ground, Water and Drinking Water.

[FR Doc. 01–26101 Filed 10–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7084–7]

Announcement of Availability of the Final Version of the ''Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The intent of this notice is to announce the availability of the final version of the ''Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action.'' The Office of Solid Waste, in partnership with EPA Region III's Waste and Chemicals Management Division, developed this Handbook as part of the RCRA Cleanup Reforms efforts that EPA announced in July 1999 and January 2001. The primary objectives of these reforms are to promote faster, focused and more flexible cleanups, and foster creative solutions to improve program implementation. EPA's goal for this Handbook is that it will help meet these objectives by reducing time-consuming uncertainties and confusion about EPA's current policies concerning groundwater protection and cleanup at RCRA facilities.

Topics addressed in the Handbook include: Groundwater protection and cleanup strategy; short-term protection goals; intermediate performance goals; final cleanup goals; groundwater cleanup levels; point of compliance; cleanup timeframes; source control; groundwater use designations; institutional controls; monitored natural attenuation; technical impracticability; reinjection of contaminated groundwater; performance monitoring; and, completing groundwater remedies.

This final version of the Handbook is available for immediate use by all stakeholders. However, it is important to recognize that issuing this Handbook does not foreclose further discussion concerning groundwater polices for the RCRA Corrective Action Program. On the contrary, we hope that this Handbook will spur new dialogues that will lead to improvements in groundwater protection and cleanup in general. Furthermore, we recognize that continued dialogue on these important topics could result in changes to the policies in this Handbook. So, we intend to revise the document as needed to help ensure that it reflects current Agency positions.

FOR FURTHER INFORMATION CONTACT: You can view the comments we received in response to a 60-day public review of an April 27, 2000 draft version of the Handbook, as well as other supporting materials, at the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you reference the docket number F–2000–CURA–FFFFF and make an appointment by calling 703–603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index and some supporting materials are available electronically.

If you would like to receive a hard copy of the Handbook, please call the RCRA Hotline at 800–424–0346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. However, we designed the Handbook to be a useful resource in an Internet-based electronic format. For example, the Handbook contains numerous internal and external ''hyperlinks'' to help you navigate within the document and to take you directly to the more detailed guidance documents concerning individual topic areas. We also designed the Handbook to be easily updated because we recognize that the policies may evolve as our understanding of complex issues associated with groundwater protection and cleanup increases. Therefore, we urge you to access an electronic version of the Handbook at *http://www.epa.gov/correctiveaction* so you can take full advantage of the ''hyperlinks'' feature and make sure you are reading the most current version.

While this is the final version of the Handbook, we will continue to welcome public comment at any time. For more detailed information on specific aspects of document, or to submit comments that we will consider in any future revisions, contact Guy Tomassoni, Office of Solid Waste 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (703–308–8622), (*tomassoni.guy@epa.gov*).

SUPPLEMENTARY INFORMATION: In general, stakeholder comments received on the draft version were supportive of the purpose and format of the Handbook. Here is how this final version responds to some of the major comments we received on the April 2000 draft we issued for public comment:

The Handbook now includes a Groundwater Protection and Cleanup Strategy that conveys EPA's overall goals and approaches for dealing with contaminated groundwater at RCRA facilities, and serves as a common focus for other policies addressed in the Handbook. For example, the Strategy emphasizes EPA's long-standing general expectation that final cleanups return usable groundwater to its maximum beneficial use where practicable. However, the Strategy also conveys that using meaningful and measurable short-term and intermediate goals (where appropriate) often make sense as part of an overall phased approach to address contaminated groundwater.

The Handbook now describes how a different ''point of compliance'' for groundwater cleanups might be appropriate depending on the particular goal (short-term, intermediate, or final) a facility and overseeing regulator are pursuing.

The Handbook clearly conveys the need for facilities to control sources (using treatment technologies for ''principal threats'') so as to reduce or eliminate, to the extent practicable, further releases of hazardous waste or hazardous constituents that may pose a threat to human health and the environment.

Consistent with EPA's long-standing policies, the Handbook continues to recognize that there can be various uses and purposes of groundwater, and that regulators and facilities should consider these uses and purposes (and associated exposures), as appropriate, in implementing facility-specific corrective action. However, the Handbook recognizes that most states identify the majority of their groundwaters as actual or potential sources of drinking water, and therefore have their own requirements and policies aimed at cleaning up contaminated groundwater so that it will be suitable for drinking water purposes.

We thank those that took the time to comment on the draft version of the Handbook, and we look forward to continued interactions concerning groundwater protection and cleanup.

Dated: October 3, 2001.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 01–26092 Filed 10–16–01; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7085–4]

Maryland State Prohibition on Discharges of Vessel Sewage; Receipt of Applications and Tentative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that two applications were received from the State of Maryland on August 24, 2001, requesting a determination by the Regional Administrator, Environmental Protection Agency Region III, pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the navigable waters of Herring Bay, Ann Arundel County, and the northern Coastal Bays (Isle of Wight Bay and Assawoman Bay), Worcester County, Maryland. EPA tentatively approves these applications, and upon receipt of a final affirmative determination following the public comment period, Maryland may completely prohibit the discharge of sewage, whether treated or not, from any vessel in Herring Bay and in the northern Coastal Bays.

DATES: Comments and views regarding these applications and EPA's tentative determination may be filed on or before November 16, 2001.

ADDRESSES: Comments or requests for information or copies of these applications should be addressed to Edward Ambrogio, U.S. Environmental Protection Agency, Region III, Office of Ecological Assessment and Management, 1650 Arch Street, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Edward Ambrogio, U.S. Environmental Protection Agency, Region III, Office of Ecological Assessment and Management, 1650 Arch Street, Philadelphia, PA 19103. Telephone: (215) 814–2758. Fax: (215) 814–2782. Email: ambrogio.edward@epa.gov.

SUPPLEMENTARY INFORMATION: These applications were made jointly by the Maryland Department of the Environment (MDE) and the Maryland Department of Natural Resources (MDNR) . Upon receipt of an affirmative determination in response to these applications following the public comment period, Maryland may completely prohibit the discharge of sewage, whether treated or not, from any vessel in Herring Bay and in the northern Coastal Bays (Isle of Wight Bay and Assawoman Bay) in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

Herring Bay

The proposed Herring Bay no discharge zone (NDZ) is a 3,145-acre area of water located along the western shore of the Chesapeake Bay in southern Anne Arundel County. The area includes Rockhold, Tracy, and Parker Creeks on the north and Rose Haven Harbor on the south. The proposed NDZ includes tidal waters west of the following: Beginning on Holland Point at or near 38°43′34.9″ N latitude/ 76°31′37.3″ W longitude, then running in a northerly direction to Crab Pile A at or near 38°46′33.0″ N latitude/ 76°32′10.1″ W longitude, then running to a point on the north shore of Parkers Creek at or near 38°46′39.1″ N latitude/ 76°32′10.8″ W longitude.

The Herring Bay watershed is approximately 25 square miles. Although traditionally a farming area, several residential communities are located within the watershed including some that are located along the shoreline. Herring Bay is also a very popular recreational boating area and is home to 16 marinas containing 2,090 slips.

Long-term pollution problems that have impacted Herring Bay include failing septic systems, discharge from a private sewage treatment plant, and runoff from farm and other lands. With the number of marinas in the area, recreational boating is also a concern. The potential for bacterial contamination from all sources of pollution, including boat sewage, has resulted in the on-going closure of the oyster beds, however, recent water quality data does not show consistent high levels of fecal coliform in the area.

Currently, there are no public or private sewage treatment plants that impact Herring Bay. Although the Broadwater Wastewater Treatment Plant is north of Herring Bay and the Chesapeake Beach Wastewater Treatment Plant is south of Herring Bay, neither plant's discharges affect Herring Bay. Until very recently, there had, however, been a private treatment plant at Rose Haven which discharged into Herring Bay. That plant is now closed and the sewage from Rose Haven currently goes to the Chesapeake Beach Wastewater Treatment Plant.

Information submitted in the application states that there are a total of nine pumpout facilities currently in Herring Bay, of which eight provide portable toilet disposal through the use of a wand attachment to the pumpout hose. Eight of the nine pumpout facilities currently available to the general public are located at six marinas. Each of the six marinas is a privately owned facility that used Clean Vessel Act (75%) and state funds (25%) to install their pumpouts. Each facility that is open to the general public is limited to charging no more than $5.00 per pumpout. One of the nine pumpouts is located at a 61-slip marina and is only available to slipholders. To provide a conservative estimate of pumpout availability, this private pumpout was not included in the application's calculations. Also not included were two additional marinas that have applied for grant funding to install pumpouts which should become operational during the 2001 boating season. For the purposes of this application, therefore, there are a total of eight pumpouts in Herring Bay, of which seven provide portable toilet disposal. Maryland's boating season is generally considered to be from April 15 to November 15, with very little recreational boating activity occurring in the winter. For the few boats in Herring Bay that may need to be pumped out in the off-season, both of Herrington Harbour North's pumpouts and one of Herrington Harbour South's pumpouts are open throughout the year. The other pumpouts are open during the boating season only. For those marinas with wand attachments (all facilities except Sherman's), portable toilets may be emptied whenever the pumpouts are open. Details of these facilities' location, availability and hours of operation are as follows:

Gates Marine Services is an 88-slip facility located on Rockhold Creek north of the Deale Road bridge. The marina has a trailer mounted pumpout installation located at the travel lift. A wand attachment is used to empty portable toilets. The marina's sewage disposal hours of operation are 8 am–Monday through Friday, 8 am–4 pm Saturday and Sunday.

Harbor Cove Marina is a 78-slip facility located on Rockhold Creek north of the Deale Road bridge. The marina has a fixed pumpout installation which is located at the gas dock (''C'' dock). A wand attachment is used to empty portable toilets. The marina's sewage disposal hours of operation are 8 am–6 pm seven days per week.

Herrington Harbour North is a 670-slip marina located at the junction of Rockhold

Creek and Tracy Creek in northern Herring Bay. The marina has a fixed pumpout installation which is located on the T head of ''D'' Dock and it also has a portable pumpout that is used for pumpouts throughout the marina. Both pumpouts utilize wand attachments to empty portable toilets. The marina's sewage disposal hours of operation are 9 am–5 pm seven days per week.

Herrington Harbour South is a 650-slip marina located on Rose Haven Harbor in southern Herring Bay. The marina has a fixed pumpout installation which is located on the fuel dock (''D'' Dock) and it also has a pumpout boat that travels throughout the marina pumping out both slip holders and transient vessels. Both pumpouts utilize wand attachments to empty portable toilets. The marina's sewage disposal hours of operation are 24 hours daily (self-serve) seven days per week, staffed 8 am–6 pm seven days per week between May 31 and September 7.

Sherman's Marina is a 26-slip facility located on Rockhold Creek north of the Deale Road bridge. The marina has a fixed pumpout installation which is located on the ''B'' dock. The marina's sewage disposal hours of operation are during daylight hours seven days per week.

Shipwright Harbor is a 250-slip facility located at the mouth of Rockhold Creek in northern Herring Bay. The marina has a fixed pumpout installation which is located near the travel lift. A wand attachment is used to empty portable toilets. The marina's sewage disposal hours of operation are 9:00am–5:00pm seven days per week.

Under Maryland law (Natural Resources Article § 8–707), each grant funded pumpout project must be approved by MDE. The MDE, in turn, consults with the local health/permitting authority to ensure that the proposed pumpout and sewage disposal method is in compliance with all applicable Federal and state laws. All six of the marinas in Herring Bay that have pumpouts open to the public, used grant funding to obtain their pumpouts (a total of eight pumpout facilities). All of these projects were approved by MDE upon the recommendation of the Anne Arundel County Department of Utilities. All six marinas discharge to either the Chesapeake Beach Wastewater Treatment Plant, or to the Broadwater Wastewater Treatment Plant via either a direct connection, or by a licensed septage hauler.

The MDNR maintains records on the number and size of vessels registered and documented in Maryland's waters. In an attempt to estimate transient vessels in the area, a representative of the two largest marinas in Herring Bay was contacted and asked to estimate how many transient vessels, by size, are typically in Herring Bay on a typical high-volume day during the boating season. Included in the number of registered vessels are charter boats generally used for fishing. From this information, the vessel population of Herring Bay based on length is 638 vessels less than16 feet, 906 vessels between 16 and 26 feet, 1,111 vessels between 26 and 40 feet, and 158 vessels over 40 feet. Based on the number and size of boats, and using various methods to estimate the number of on-board holding tanks and portable toilets, it was determined that Herring Bay needs a total of five pumpouts and one dump station. As described above, Herring Bay is currently served by eight operational pumpouts, of which seven provide portable toilet disposal. Additionally, two other marinas (Paradise Marina and Rockhold Creek Marina) are actively participating in the pumpout grant program and should complete their installations by the start of the next boating season in early 2002.

Northern Coastal Bays

The proposed northern Coastal Bays no discharge zone (NDZ) will include all tidal waters north of the Ocean City Inlet, including Isle of Wight Bay and Assawoman Bay, defined by the points 38°19′23.83″ N latitude/75°5′14.36″ W longitude to 38°19′35.77″ N latitude/75°06′27.68″ W longitude, to the Delaware state line.

The Maryland Coastal Bays are comprised of five large tidal bays (Assawoman, Isle of Wight, Sinepuxent, Newport, and Chincoteague) that are bounded by two barrier islands (Fenwick and Assateague). The drainage basin feeding into the watershed is 117,939 acres and is characterized by poor flushing ability due to two narrow inlets. The land surrounding the northern Coastal Bays (Isle of Wight Bay and Assawoman Bay) is primarily agriculture, forested or marsh but also includes the largest percentage of developed land surrounding all five Coastal Bays (Ocean Pines and Ocean City). The population of Worcester County is expected to increase significantly over the next 10 years and reach 50,000 before the year 2010. Currently, Worcester County is the second fastest growing county in the state.

In 1996 the MDE listed the northern Coastal Bays (specifically Assawoman and Isle of Wight) on the Clean Water Act Section 303(d) impaired waters list as a priority area for excessive nutrients, low dissolved oxygen, and elevated fecal coliform counts. MDE is currently in the process of having a Total Maximum Daily Load (TMDL) model calculated for the above listed substances. The St. Martin's River, a large freshwater tributary leading to the Isle of Wight Bay, along with Herring and Turville Creeks are currently listed as ''restricted for shellfish harvest'' by MDE as well.

There is one wastewater treatment plant, located within the residential community of Ocean Pines, that discharges treated effluent into the Isle of Wight Bay. The Ocean City Wastewater Treatment Plant in Ocean City discharges treated effluent several miles offshore into the Atlantic Ocean.

Information submitted in the application states that there are a total of nine pumpout facilities currently in the northern Coastal Bays, of which five provide portable toilet disposal through the use of a wand attachment to the pumpout hose or at dump stations. Eight of the nine pumpout facilities that are available to the general public, as well as all facilities that provide portable toilet disposal are located at six marinas. Each of the six marinas is a privately owned facility; four used Clean Vessel Act (75%) and state funds (25%) to install their pumpouts. These four marinas are limited to charging no more than $5.00 per pumpout. One of the nine pumpouts is located at a marina that is only available to slipholders. To provide a conservative estimate of pumpout availability, this private pumpout was not included in the application's calculations. Also not included was one additional marina that applied for grant funding to install a pumpout which should become operational during the 2002 boating season. For the purposes of this application, therefore, there are a total of eight pumpouts in the northern Coastal Bays, of which five provide portable toilet disposal via a wand attachment or a dump station. Maryland's boating season is generally considered to be from April 15 to November 15, with very little recreational boating activity occurring in the winter. For the few boats in the northern Coastal Bays that may need to be pumped out in the off-season, Advanced Marina's pumpout is open throughout the year. The other pumpouts are generally open during the boating season only. Details of these facilities' location, availability and hours of operation are as follows:

Advanced Marina is a 60-slip marina located at 66th St., Ocean City on Isle of Wight Bay. The marina has a portable pumpout unit and potty wand attachment for emptying portable toilets. The marina's sewage disposal hours of operation are 8 a.m.–8 p.m. seven days per week, all year.

Harbour Island Marina is a 110-slip marina located at 14th St., Ocean City on Isle of Wight Bay. The marina has one fixed pumpout unit at the entrance to the marina

and one potty wand attachment for emptying portable toilets. The marina's sewage disposal hours of operation are 6:00am-8:00pm seven days per week, from May through September.

Ocean City Fishing Center is a 240-slip marina located near the Route 50 bridge in West Ocean City on the Isle of Wight Bay. The marina has one fixed pumpout unit located next to the marina office. The marina's sewage disposal hours of operation are 5 a.m.–8 p.m. seven days per week, from May through September.

Ocean Pines Marina is an 86-slip marina located near the Route 90 bridge in Ocean Pines on the St. Martins River. The marina has one fixed pumpout located at the end of pier A. The marina's sewage disposal hours of operation are 8am–6pm Monday through Friday, 7am–7pm Saturday and 7am–6pm Sunday, from May through October.

Sunset Marina is a 204-slip marina located at the Ocean City Inlet in West Ocean City on Isle of Wight Bay. The marina has one fixed pumpout with two remote stands, each at the end of successive piers, one portable unit with potty wand attachment for emptying portable toilets, and one dump station on the bulkhead. The marina's sewage disposal hours of operation are 9am–5pm seven days per week, from May through September.

Townes of Nantucket II is a 92-slip marina located at Nantucket Point near the Delaware state line in Ocean City on Assawoman Bay. The marina has one fixed pumpout and one dump station for portable toilets, both located at the ''A'' bulkhead. The marina's sewage disposal hours of operation are 24 hours a day, seven days per week, from April through October.

Marinas participating in the Maryland Pumpout Program are required by law (Natural Resources Article § 8–707) to have an approved method of sewage disposal as determined by MDE and local (county or municipal) health inspectors. Four of the six marinas participated in the Maryland Pumpout Program, and therefore are in compliance with state and Federal laws. Information about the removal of pumpout waste from the other two marinas was obtained through marina surveys. Of the six marinas described above, five discharge to the Ocean City Wastewater Treatment Plant; the remaining marina discharges to the Ocean Pines Wastewater Treatment Plant.

The MDNR maintains records of all documented and registered boats in the state. In order to estimate the number of transient boaters, several methods were employed. First a marina survey was conducted where marina owners were asked to estimate the percentage of transient boaters that utilize their facility and the northern Coastal Bays. Second, information collected from a 1999 aerial survey of the northern Coastal Bays, conducted by the MDNR Fisheries Department, was used to determine types and sizes of boats using the waters on a peak day in-season. Finally, a land survey was conducted where MDNR employees surveyed Coastal Bay vessel usage on a typical day during the season. All of these methods were employed to come up with a best estimate for transient usage. It was estimated, using the above techniques, that Ocean City/northern Coastal Bays have approximately 10,000 wet slips. It was also assumed that the transient boat population mirrored the resident population as far as relative percent of the size and numbers of boats. Based on this information the vessel population of the northern Coastal Bays based on length is 2,800 vessels less than 16 feet, 6,600 vessels between 16 and 26 feet, 600 vessels between 26 and 40 feet, and 100 vessels over 40 feet. Based on the number and size of boats, and using various methods to estimate the number of holding tanks and portable toilets, it was determined that the northern Coastal Bays need three pumpouts and five dump stations. There are currently eight operating pumpouts and one proposed pumpout in the northern Coastal Bays along with two dump stations and three pumpouts equipped to empty portable toilets making a total of five portable toilet waste facilities. There is also one proposed pumpout that would accept portable toilets by the start of the next boating season in early 2002.

Tentative Finding

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Herring Bay, Ann Arundel County, Maryland, and the northern Coastal Bays (Isle of Wight Bay and Assawoman Bay), Worcester County, Maryland. A final determination on this matter will be made following the 30 day period for public comment and may result in a Maryland state prohibition of any sewage discharges from vessels in Herring Bay and the northern Coastal Bays. Comments and views regarding these applications and EPA's tentative determination may be filed on or before November 16, 2001.

Comments or requests for information or copies of Maryland's applications should be addressed to Edward Ambrogio, U.S. Environmental Protection Agency, Region III, Office of Ecological Assessment and Management, 1650 Arch Street, Philadelphia, PA 19103. Telephone: (215) 814–2758. Fax: (215) 814–2782. Email: *ambrogio.edward@epa.gov.*

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 01–26086 Filed 10–16–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standards

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of Issuance of Statement of Federal Financial Accounting Standards (SFFAS) No. 20, *Elimination of Certain Disclosures Related to Tax Revenue Transactions by the Internal Revenue Service, Customs, and Others*—Amendment to SFFAS 7, Accounting for revenue and other financing sources.

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules Of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued Statement of Federal Financial Accounting Standards (SFFAS) No. 20, *Elimination of Certain Disclosures Related to Tax Revenue Transactions by the Internal Revenue Service, Customs, and Others, Amendments to SFFAS No. 7,* Accounting for Revenue and Other Financing Sources.

The Board approved the Statement in June 2001, and submitted it to FASAB principals for a 90-day review. The review period closed on September 29, 2001.

SFFAS No. 20 rescinds paragraph 65.2 of SFFAS 7, the provisions of which could, absent very detailed explanations, result in information being given to readers of the financial statements that they might misinterpret.

The standards prescribed in SFFAS No. 20 are effective for periods beginning after September 30, 2000. Hard copies of the statement will be mailed to the FASAB mailing list. It is also available on the FASAB web site at *www.financenet.gov/fasab.htm* or by calling 202–512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: October 12, 2001.

Wendy M. Comes,

Executive Director.

[FR Doc. 01–26165 Filed 10–16–01; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standards

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of New Statement of Federal Financial Standards No. 21, *Reporting Corrections of Errors and Changes in Accounting—Amendment of SFFAS 7, Accounting for Revenue and Other Financing Sources.*

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has published a Statement of Federal Financial Standards No. 21, *Reporting Corrections of Errors and Changes in Accounting Principles—Amendment to SFFAS 7, Accounting for Revenue and Other Financing Sources.* The Board approved the Statement in December 2000, and submitted it to FASAB principles for a 90-day review. The review period ended October 16, 2001.

A summary of the proposed Statement follows:

I. On October 16, 2001, the Federal Accounting Standards Advisory Board released Statement of Federal Financial Standards (SFFAS) No. 21, *Reporting Corrections of Errors and Changes in Accounting Principles—Amending SFFAS 7, Accounting for Revenue and Other Financing Sources.* The Chairman of the Federal Accounting Standards Advisory Board (FASAB) announced that the FASAB has issued a standard amending the reporting requirements for errors, discovered in the current year, that would have materially affected prior year financial statements. The amended standard required that adjustments be recognized as a change in cumulative results of operations (rather than as an element of net results of operations for the period) and that prior period financial statements not be restated for prior period adjustments recognized in the current period. The amendment requires that, when material errors are discovered in prior year financial statements, all statements presented must be restated to correct the error. The primary reason for the amendment is to allow reporting entities to present comparative statements. The Board has retained the requirement that prior period financial statements not be restated for changes in accounting principles, unless otherwise specified in the transition instructions section of a new FASAB standard. The language addressing the requirements, however, has been revised to improve clarity and to require certain disclosures.

II. The standards prescribed in SFFAS No. 21 are effective for periods beginning after September 30, 2001 with earlier implementation encouraged. Hard copies of SFFAS No. 21 will be mailed to FASAB's mailing list subscribers. Additionally, it will be in available on FASAB's home page *http://www.financenet.gov/fasab.htm.* Copies can be obtained by contacting FASAB at (202) 512–7350, or *palmera@fasab.gov.*

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Room 6814, Washington, DC 20548, (202) 512–7350, or Andrea Palmer at (202) 512–7360.

Authority: Federal Advisory Committee Act, Pub. L. No. 92–463.

Dated: October 16, 2001.

Wendy M. Comes,

Executive Director.

[FR Doc. 01–26164 Filed 10–16–01; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

October 9, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 17, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0656.

Title: Application to Participate in an FCC MDS Auction.

Form No.: FCC 175–M.

Type of Review: Extension of currently approved collection.

Respondents: Businesses, or other-for profit.

Number of Respondents: 50.

Estimated Hours Per Response: 40 minutes (10 minutes-respondent; 30 minutes-contracting attorney).

Frequency of Response: On Occasion.

Cost to Respondents: $5,000.

Estimated Total Annual Burden: 2 hours.

Needs and Uses: The Commission established competitive bidding rules and procedures for the Multipoint Distribution Service (MDS). The Commission uses simultaneous multiple round bidding for MDS auctions. For the MDS auctions, designated entities would only include small businesses. The FCC 175 is used by entities to apply to participate in an auction. The information will be used by FCC staff to determine whether the applicant is legally, technically and otherwise qualified to participate in the auction. The rules and requirements were designed to ensure that the competitive bidding process is limited to serious, qualified applicants and to deter possible abuses of the bidding and licensing processes.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–25999 Filed 10–16–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 10, 2001.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 16, 2001. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.:—3060–0056.

Title: Part 68—Connection of Terminal Equipment to the Telephone Network.

Form No.: FCC Form 730.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit.

Number of Respondents: 54,369.

Estimated Time Per Response: .10–24 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 117,959 hours.

Total Annual Cost: $2,705,000.

Needs and Uses: The purpose of 47 CFR part 68 is to protect the network from certain types of harm and interference to other subscribers. To ensure that consumers, providers of telecommunications, the Administrative Council, TCB's, and the Commission are able to trace products to the party responsible for placing terminal equipment on the market, it is essential to require manufacturers and suppliers to provide the information required by Part 68.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–26000 Filed 10–16–01; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 201120–001.

Title: License and concession agreement.

Parties:

Port of Oakland Marine Terminals Corporation.

Synopsis: The agreement amendment provides for, among other things, a special wharfage rate for certain steel cargo.

By Order of the Federal Maritime Commission.

Dated: October 12, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–26142 Filed 10–16–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. § 817 (e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

American Classic Voyages Company, 1380 Port of New Orleans Place, New Orleans, LA 70130–1890

Vessels: *Project America Ship I* and *Project America Ship II*

C G Cruise Invest AS (d/b/a SeaDream Yacht Club), 3601 S. Bayshore Drive, Penthouse 1B, Coconut Grove, FL 33133

Vessels: *Seadream I* and *Seadream II*

Carnival Corporation (d/b/a Carnival and Carnival Cruise Lines), 3655 N.W. 87th Avenue, Miami, FL 33178–2193

Vessels: *Carnival Glory, Carnival Miracle* and *Carnival Valor*

Celebrity Cruises Inc.(d/b/a Celebrity Cruises), 1050 Caribbean Way, Miami, FL 33132

Vessel: *Constellation*

Corporacion Ferries del Caribe, Inc. (d/b/a Ferries del Caribe), Calle Concordia #249 Altos, P. O. Box 6448, Mayaguez, PR 00680

Vessel: *Millenium Express*

Cunard Line Limited (d/b/a Cunard), 6100 Blue Lagoon Drive, Suite 400, Miami, FL 33126

Vessel: *Queen Mary 2*

Discovery Sun Partnership, Discovery Sun Cruises, Inc. and Discovery Sun Tours, Inc., 1775 N.W. 70th Avenue, Miami, FL 33126–1341

Vessel: Discovery Sun

Norwegian Cruise Line Limited (d/b/a Norwegian Cruise Line), 7665 Corporate Center Drive, Miami, FL 33126

Vessels: *Norwegian Leo, Norwegian Star* and *Norwegian Sun*

Norwegian Cruise Line Limited (d/b/a Orient Lines), 7665 Corporate Center Drive, Miami, FL 33126

Vessel: *Ocean Voyager*

P & O Princess Cruises International Limited and Princess Cruise Lines, Ltd. Richmond House, Terminus Terrace, Southampton S014 3PN, United Kingdom

Vessel: *Oceana*

Prince of Fundy Cruises Ltd., International Shipping Partners, Inc. and Transworld Steamship Co. Inc., Station A, P.O. Box 4216, 468 Commercial Street, Portland, ME 04101
Vessel: *Scotia Prince*
Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited and P & O Princess Cruises plc, 24305 Town Center Drive, Santa Clarita, CA 91355–4999
Vessels: *Coral Princess, Crown Princess, Dawn Princess, Golden Princess, Grand Princess, Ocean Princess, Regal Princess, Sea Princess, Star Princess* and *Sun Princess*
Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited, Princess Cruises (Shipowners) Limited and P & O Princess Cruises plc, 24305 Town Center Drive, Santa Clarita, CA 91355–4999
Vessels: *Pacific Princess* and *Royal Princess*
Royal Olympic Cruises Ltd., 805 3rd Avenue, 18th Floor, New York, NY 10002
Vessel: *Olympic Countess*
Silversea Cruises, Ltd. and Silversea New Build Two Ltd., 110 East Broward Blvd., Fort Lauderdale, FL 33301
Vessel: *Silver Whisper*
West Travel, Inc. (d/b/a Alaska Sightseeing/Cruise West), 2401 4th Avenue, Seattle, WA 98121–1438
Vessel: *Spirit of Oceanus*

Dated: October 12, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–26144 Filed 10–16–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Austal Ships Sales Pty Ltd. 100 Clarence Beach Road, Henderson 6166, Perth, Australia
Vessel: *Westpac Express*
C G Cruise Invest As (d/b/a SeaDream Yacht Club), 2601 S. Bayshore Drive, Coconut Grove, FL 33133
Vessels: *Seadream I* and *Seadream II*
Celebrity Cruises, Inc. and Summit Inc., 1050 Caribbean Way, Miami, FL 33132
Vessel: *Summit*
Corporacion Ferries del Caribe, Inc., Access Ferries S.A. and Wealcan Enterprises Inc., Calle Concordia #249 Altos, P.O. Box 6448, Mayaguez, PR 00680
Vessel: *Millenium Express*
Delta Queen Coastal Voyages, L.L.C., The Delta Queen Steamboat Co. andCape May Light, L.L.C., 1380 Port of New Orleans Place, New Orleans, LA 70130
Vessel: *Cape May Light*
Discovery Sun Partnership, Discovery Sun Cruises, Inc., Discovery Sun Tours, Inc. and International Shipping Partners, Inc., 1775 N.W. 70th Avenue, Miami, FL 33126–1341
Vessel: *Discovery Sun*
Norwegian Cruise Line Limited, 7665 Corporate Center Drive, Miami, FL 33126
Vessel: *Norwegian Sun*
P & O Princess Cruises International Limited, Princess Cruise Lines, Ltd. and Cosmex International Limited, Richmond House, Terminus Terrace, Southampton S014 3PN, United Kingdom
Vessel: *Victoria*
Prince of Fundy Cruises Ltd., International Shipping Partners, Inc. and Transworld Steamship Co. Inc., Station A, P.O. Box 4216, 468 Commercial Street, Portland, ME 04101
Vessel: *Scotia Prince*
Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited and P & O Princess Cruises plc, 24305 Town Center Drive, Santa Clarita, CA 91355–4999
Vessels: *Crown Princess* and *Regal Princess*
Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited, Fairline Shipping Corporation Ltd. and P & O Princess Cruises plc, 24305 Town Center Drive, Santa Clarita, CA 91355–4999
Vessel: *Dawn Princess*
Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited, GP2 Ltd. and P & O Princess Cruises plc, 24305 Town Center Drive,Santa Clarita, CA 91355–4999
Vessel: *Golden Princess*
Princess Cruise Lines, Ltd. P & O Princess Cruises International Limited, Fairline Shipping International Corporation Ltd. and P & O Princess Cruises plc, 24305 Town Center Drive, Santa Clarita, CA 91355–4999
Vessel: *Grand Princess*
Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited, OP Shipping Corporation, Ltd. and P & O Princess Cruises plc, 24305 Town Center Drive, Santa Clarita, CA 91355–4999
Vessel: *Ocean Princess*
Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited, Princess Cruises (Shipowners) Limited, Liberty Maritime International Ltd. and P & O Princess Cruises plc, 24305 Town Center Drive, Santa Clarita, CA 91355–4999
Vessel: *Pacific Princess*
Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited, Princess Cruises (Shipowners) Limited, Princess Tours Limited andP & O Princess Cruises plc, 24305 Town Center Drive, Santa Clarita, CA 91355–4999
Vessel: *Royal Princess*
Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited C P Shipping Corporation, Ltd. and P & O Princess Cruises plc, 24305 Town Center Drive, Santa Clarita, CA 91355–4999
Vessel: *Sea Princess*
Princess Cruise Lines, Ltd., P & O Princess Cruises International Limited, COROT Shipping Corp. (Sociedade Unipessoal Lda.) and P & O Princess Cruises plc, 24305 Town Center Drive, Santa Clarita, CA 91355–4999
Vessel: *Sun Princess*
Silversea Cruises, Ltd. and Silversea New Build Two Ltd., 110 East Broward Blvd., Fort Lauderdale, FL 33301
Vessel: *Silver Whisper*
West Travel, Inc. (d/b/a Alaska Sightseeing/Cruise West), 2401 4th Avenue, Seattle, WA 98121–1438
Vessel: *Spitit of Alaska*
West Travel, Inc.(d/b/a Alaska Sightseeing/Cruise West) The Spirit of Oceanus, Ltd. and V Ships Leisure SAM, 2401 4th Avenue, Seattle, WA 98121–1438
Vessel: *Spirit of Oceanus*

Dated: October 12, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–26145 Filed 10–16–01; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Carib Cargo, Inc., 8012 NW., 29th Street, Miami, FL 33122, Officer: Armando Peralta, President/Director (Qualifying Individual)

North Star Express, Inc., 2252 Beverly Blvd., Ste. 204, Los Angeles, CA 90057, Officers: Leonardo B. Lucena, Marketing Director (Qualifying Individual), Eleuterio Gagar, President

Vision Intermodal, Inc., 16020 Van Ness Avenue, #16, Torrance, CA 90504 Officers: In Su Choi, C.E.O./Secretary (Qualifying Individual)

Nobel Cargo Systems, Inc., 3571 N.W. 82nd Avenue, Miami, FL 33122, Officers: Ivo Vieira Neto, President (Qualifying Individual), Claudinei Piccoli, Vice President

Dated: October 12, 2001.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 01–26143 Filed 10–16–01; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0086]

Submission for OMB Review and Extension GSA Form 1364, Proposal to Lease Space (Not Required by Regulation)

AGENCY: General Services Administration (GSA).

ACTION: Notice of an emergency reinstatement and request for review and extension of the reinstated collection (3090–0086).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA Regulatory Secretariat requested in August 2001 that the Office of Management and Budget (OMB) reinstate on information collection that pertains to GSA Form 1364, Proposal to Lease Space. OMB reinstated the collection on August 24, 2001, Information collected under this authority is not otherwise required by regulation. This notice indicates GSA's intent to request an extension by 3 years of OMB's emergency reinstatement of this collection and to request public review and comment on the collection

Public comments are particularly invited on: Whether the GSA Form 1364, Proposal to Lease Space, is necessary to conduct a proper analysis of leasing proposals prior to awarding leasing contracts, and whether it will have practical utility; whether our estimate of the burden of this collection of information is accurate, and based on valid assumptions and methodology; easy to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before December 17, 2001.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

ADDRESSES Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Ed Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris General Services Administration, Regulatory Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) have various mission responsibilities related to the acquisition and provision of real property management, and disposal of real and personal property. These mission responsibilities generate requirements that are realized through the solicitation and award of leasing contracts. Individuals solicitations and resulting contracts may impose unique information collection/reporting requirements on contractors, not required by regulation, but necessary to evaluate particular program accomplishments and measure success in meeting program objectives.

B. Annual Reporting Burden

Respondents: 5016.
Responses Per Respondent: 1.
Total Responses: 5,016.
Total Burden Hours: 25,183.

Obtaining Copies of Proposal

Requesters may obtain a copy of the proposal from the General Services Administration, Regulatory Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0086, GSA Form 1364, Proposal to Lease Space (Not Required by Regulation), in all correspondence.

Dated: October 9, 2001.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–26007 Filed 10–16–01; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0200]

Submission for OMB Review; Comment Request Entitled Sealed Bidding

AGENCY: General Services Administration (GSA)

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Sealed Bidding. A request for public comments was published at 66 FR 38427, July 24, 2001. No comments were received.

DATES: Comments may be submitted on or before November 16, 2001.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Acquisition Policy Division, GSA (202) 501–1758.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General services Administration 9MVP), 1800 F Street, NW., Room 405, Washington, DC 20405.

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0200, concerning Sealed Bidding. The information requested regarding an offeror's monthly production capability is needed to make progressive awards to ensure coverage of stock items.

B. Annual Reporting Burden.

Respondents: 10.
Annual Responses: 10.
Average Hours Per Response: 5.
Burden Hours: 5.

On review the annual responses have decreased, but the time to compile the requested information requires more time, because item purchase has changed from wiping rags to fire pants.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0200, Sealed Bidding, in all correspondence.

Dated: October 9, 2001.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–26005 Filed 10–16–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0058]

Submission for OMB Review; Comment Request Entitled Deposit Bond Annual-Sale of Government Personal Property, Standard Form 151

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Deposit Bond Annual-Sale of Government Personal Property, Standard Form 151. A request for public comments was published at 66 FR 37232, July 17, 2001. No comments were received.

DATES: Comments may be submitted on or before November 16, 2001.

FOR FURTHER INFORMATION CONTACT: Judith R. Cotter, Federal Supply Services, GSA (703) 305–7052.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0058; concerning Deposit Bond Annual-Sale of Government Personal Property, Standard Form 151. This form is used by bidders participating in sales of Government personal property whenever the sales invitation permits an annual type of deposit bond in lieu of cash or other form of deposit.

B. Annual Reporting Burden.

Respondents: 1000.
Annual Responses: 1000.
Burden Hours: 250.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0058, Deposit Bond Annual-Sale of Government Personal Property, in all correspondence.

Dated: October 9, 2001.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 01–26006 Filed 10–16–01; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0057]

Submission for OMB Review; Comment Request Entitled Deposit Bond Individual-Sale of Government Personal Property

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Deposit Bond Individual-Sale of Government Personal Property. A request for public comments was published at 66 FR 37233, July 17, 2001. No comments were received.

DATES: Comments may be submitted on or before November 16, 2001.

FOR FURTHER INFORMATION CONTACT: Judith R. Cotter, Federal Supply Services, GSA, (703) 305–7052.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Services Administration (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0057, concerning Deposit Bond Individual-Sale of Government Personal Property. This form is used by bidders participating in sales of Government personal property whenever the sales invitation permits an individual type of deposit bond in lieu of cash or other form of bid deposit.

B. Annual Reporting Burden

Respondents: 500.
Annual Responses: 500.
Burden Hours: 125.

Obtaining Copies of Proposals

A copy of this proposal may be obtained from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, or by telephoning (202) 501–4744, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0057, Deposit Bond Individual-Sale of Government Personal Property, in all correspondence.

Dated: October 9, 2001.

David A. Drabkin,

Deputy Associate Administrator, Office Acquisition Policy.

[FR Doc. 01–26008 Filed 10–16–01; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Friday, November 2, 2001, from 8:30 a.m. to 4 p.m. and is open to the public.

ADDRESSES: The meeting will be held at 6010 Executive Boulevard, Fourth Floor, Rockville, Maryland 20852.

FOR GENERAL INFORMATION CONTACT: Anne Lebbon, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 2101 East Jefferson Street, Suite 600, Rockville, Maryland 20852, (301) 594–7216. For press-related information, please contact Karen Migdail at 301/594–6120.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, Assistant Administrator for Equal Opportunity, AHRQ, on (301) 594–6662 no later than October 26, 2001.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) established the National Advisory Council for Healthcare Research and Quality. In accordance with its statutory mandate, the Council is to advise the Secretary and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve outcomes, reduce costs of health care services, improve access to such services through scientific research, the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members of the public appointed by the Secretary and Federal *ex-officio* members. Donald M. Berwick, M.D., the Council chairman, will preside.

II. Agenda

On Friday, November 2, 2001, the meeting will begin at 8:30 a.m., with the call to order by the Council Chairman. The Director, AHRQ, will present the status of the Agency's current research, programs, and initiatives. Tentative agenda items include Centers for Education and Research on Therapeutics (CERTS), Evidence-based Practice Centers (EPCs), the National Quality Report, and the National Disparities Report. The official agenda will be available on AHRQ's website at *www.ahrq.gov* no later than October 19, 2001. The meeting will adjourn at 4 p.m.

Dated: October 5, 2001.

John M. Eisenberg,

Director.

[FR Doc. 01–26159 Filed 10–16–01; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

Times and Dates: 8 a.m.–6:30 p.m., December 3, 2001,8 a.m.–5:30 p.m., December 4, 2001.

Place: Oak Ridge Mall, Crown Conference Center, CumberlandRoom, 333 Main Street, Suite 216, Oak Ridge, TN 37830. Telephone: (865) 482–2008.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 150 people.

Background: A Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE, delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles. In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing the public with a vehicle to express concerns and provide advice and recommendations to CDC and ATSDR. The purpose of this meeting is to receive updates from ATSDR and CDC, and to address other issues and topics, as necessary.

Matters to be Discussed: The agenda includes an Epidemiology Workshop II—Discussion of the study ''Cancer Mortality Near Oak Ridge, Tennessee'' by J. Mangano, a discussion of Community Health Centers: Needs and Strategy, continuation of the presentation and discussion of the ATSDR Public Health Assessment process, an update on the health education needs assessment, updates from the Agenda, Public Health Assessment, Health Needs Assessment, Guidelines/Procedures, and Communications/Outreach Work Groups, and to receive agency updates. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: La Freta Dalton, Designated Federal Official, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE, M/S E–54, Atlanta, Georgia 30333, telephone 1–888–42–ATSDR(28737), fax 404/498–1744.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 11, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–26079 Filed 10–16–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community/Tribal Subcommittee and the Board of ScientificCounselors, Agency for Toxic Substances and Disease Registry: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee and committee meetings.

Name: Community/Tribal Subcommittee.

Times and Dates: 9 a.m.–5 p.m., November 13, 2001; 8:30 a.m.–5 p.m., November 14, 2001.

Place: Sheraton Colony Square Hotel, 188 14th Street, Atlanta, Georgia, 30361.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 50 people.

Purpose: This subcommittee brings to the Board advice, citizen input, and recommendations on community and tribal programs, practices, and policies of the Agency.

Matters to be Discussed: Agenda items include an update on ATSDR activities; discussion on individual rights and informed consent; presentation on Academia Agency Community Network; review of ATSDR's improved Public Health Assessment process in impacted communities; presentation on ATSDR's Emergency Response Team; update on the Task Forces progress report and recommendations; report on the CTS Evaluation Process; and review of Action Items and Recommendations from previous meeting.

Name: Board of Scientific Counselors, ATSDR.

Times and Dates: 8:30 a.m.–5 p.m., November 15, 2001, 8:30 a.m.–12 p.m., November 16, 2001.

Place: Sheraton Colony Square Hotel, 188 14th Street, Atlanta, Georgia, 30361.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 50 people.

Purpose: The Board of Scientific Counselors, ATSDR, advises the Secretary; the Assistant Secretary for Health; and the Administrator, ATSDR, on ATSDR programs to ensure scientific quality, timeliness, utility, and dissemination of results. Specifically, the Board advises on the adequacy of science in ATSDR-supported research, emerging problems that require scientific investigations, accuracy and currency of the science in ATSDR reports, and program areas to emphasize or de-emphasize. In addition, the Board recommends research programs and conference support for which the Agency awards grants to universities, colleges, research institutions, hospitals, and other public and private organizations.

Matters to be Discussed: Agenda items will include a review of Action Items; updates on Research Agenda and formation of Health Department Subcommittee; ATSDR updates; review of ATSDR activities at Toms River, New Jersey; overview and community involvement activities; Public Health Assessment, exposure, assessments, health studies, and other activities; overview of the combined vision; update on joint activities; Agency perspective on ''vision;'' report of Community and Tribal Subcommittee; report on emergency preparedness and response; and Fallon, Nevada asthma activities.

Written comments are welcomed and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robert Spengler, Sc.D., Executive Secretary, BSC, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/498–0003.

Dated: October 11, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–26080 Filed 10–16–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Science and Program Review Subcommittee (SPRS) and the Advisory Committee for Injury Prevention and Control(ACIPC): Meetings

In accordance with section 10(a)(2) of the Federal AdvisoryCommittee Act (Pub. L. 92–463), the Centers for DiseaseControl and Prevention (CDC) announces the following subcommittee and committee meetings.

Name: Science and Program Review Subcommittee to ACIPC.

Time and Date: 8 a.m.–12 noon, November 7, 2001.

Place: The Westin Peachtree Plaza, 210 Peachtree Street, NW, Atlanta, Georgia 30303–1745.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee provides advice on the needs, structure, progress and performance of the National Center for Injury Prevention and Control (NCIPC) programs. The Subcommittee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Subcommittee also advises on priorities for research to be supported by contracts, grants, and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: Agenda items include updates from the Subcommittee's Acting Executive Secretary and presentations on the biomechanics of injury.

Name: Advisory Committee for Injury Prevention and Control.

Time and Dates: 1 p.m.–5:30 p.m., November 7, 2001; 8 a.m.–2:50 p.m., November 8, 2001.

Place: The Westin Peachtree Plaza, 210 Peachtree Street, NW, Atlanta, Georgia 30303–1745.

Status: Open to the public, limited only by the space available.

Purpose: The Committee advises and makes recommendations to the Secretary, the Assistant Secretary for Health, and the Director, CDC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control.The Committee provides advice on the appropriate balance of intramural and extramural research, and also provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: Agenda items include the NCIPCInjury Research Agenda; an update from the Director, NCIPC; feedback on issues from earlier ACIPC meetings; reports from the Science and Program Review Subcommittee, Family andIntimate Violence Prevention Subcommittee, and MotorVehicles Priorities Work Group; role of ACIPC members and subcommittees; and NCIPC's 10th Anniversary Celebration. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Thomas E. Blakeney, Acting Executive Secretary, ACIPC, NCIPC, CDC, 4770 BufordHighway, NE, M/S K61, Atlanta, Georgia 30341–3724, telephone 770/488–1481.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for ToxicSubstances and Disease Registry.

Dated: October 11, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–26081 Filed 10–16–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 8:30 a.m.–5 p.m., October 25, 2001. 8 a.m.–5 p.m., October 26, 2001.

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314, telephone 703/684–5900.

Status: Open 8:30 a.m.–9:30 a.m., October 25, 2001. Closed 9:30 a.m.–5 p.m., October 25, 2001. Closed 8 a.m.–5 p.m., October 26, 2001.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas. It is the intent of the NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be Discussed: The meeting will convene in open session from 8:30–9:30 a.m. on October 25, 2001, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the SOHSS to consider safety and occupational health-related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, Centers for Disease Control and Prevention, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

An unavoidable administrative delay prevented meeting the 15-day publication requirement.

Contact Person for More Information: Charles N. Rafferty, Ph.D., NIOSH Scientific Review Administrator, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, Maryland 20892, telephone 301/435–3562, fax 301/480–2644.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 11, 2001.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 01–26077 Filed 10–16–01; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Reauthorization of the Temporary Assistance for Needy Families (TANF) Program Authority

AGENCY: Administration for Children and Families, HHS.

ACTION: Solicitation of comments.

SUMMARY: On August 22, 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act. This legislation created a new welfare block grant program, known as the Temporary Assistance for Needy Families, or TANF. The TANF program goes before Congress for reauthorization next year. The purpose of this notice is to invite public comment about what changes the Administration should propose for this program.

DATES: Submit comments on or before November 30, 2001.

ADDRESSES: Submit comments through the mail to: TANF Reauthorization Ideas, Office of Family Assistance, 5th Floor East, Aerospace Building, 370 L'Enfant Promenade, SW, Washington, DC 20447. Hand deliver comments to: Office of Family Assistance, 5th Floor East, 901 D Street, SW., Washington, DC. If you wish to comment electronically, go to OFA's Web site at *http://www.acf.dhhs.gov/programs/ofa/* and follow the instructions.

FOR FURTHER INFORMATION CONTACT: Ann Burek, Senior Program Specialist, Office of Family Assistance, ACF, at 202–401–4528. Ms. Burek's e-mail address is: *aburek@acf.dhhs.gov*.

SUPPLEMENTARY INFORMATION:

Legislative Background

Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, established the Temporary Assistance for Needy Families (TANF) program at title IV-A of the Social Security Act (the Act). TANF is a block grant program that has facilitated dramatic reforms in the nation's welfare system. Its focus is on moving recipients into work and turning welfare into a program of temporary assistance, preventing and reducing the incidence of out-of-wedlock births, and promoting stable two-parent families.

TANF replaced the national welfare program known as Aid to Families with Dependent Children (AFDC) that provided cash assistance to needy families on an entitlement basis. It also replaced the related programs known as the Job Opportunities and Basic Skills Training (JOBS) program and the Emergency Assistance (EA) program. The law, which provides the major portion of the state and tribal funding for TANF in the form of a block grant, was only authorized through 2002.

You may find an electronic version of the enrolled bill at: *http://thomas.loc.gov/cgi-bin/query/z?c104:H.R.3734.ENR.*

Authority: E.O. 13132. 64 FR 43255, 3 CFR, 1999 Comp., p. 206.

Public Input

Between mid-October and mid-November, the Department is sponsoring five regional meetings with key officials from each state to receive input as the Administration considers its TANF reauthorization proposal. The Department will also be sponsoring a meeting with tribal representatives that will focus on tribal TANF issues. However, it is not possible to capture input from all individuals and organizations that have an interest in TANF reauthorization through these meetings. Thus, this notice is intended to provide any and all parties an opportunity to submit comments.

The Department's primary interest is gathering input about the TANF provisions of the legislation. However, many other federal programs, such as the Food Stamp Program, the Child Care and Development Fund, Child Welfare, and Child Support Enforcement, serve the same needy families as TANF and provide related benefits. Some of these programs are facing reauthorization next year as well. Thus, the Department will also accept comments on program coordination issues.

Dated: October 11, 2001.

Tommy G. Thompson,

Secretary.

[FR Doc. 01–26038 Filed 10–16–01; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 29, 2001, from 8 a.m. to 5 p.m.

Location: Hilton DC North—Gaithersburg, Salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD.

Contact: Veronica J. Calvin, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12514. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will provide advice and recommendations on the types of data and/or labeling needed in premarket notification (510(k)) submissions for glucose test systems to address problems associated with using blood samples from alternate sites, such as the forearm, upper arm, thigh, calf, or base of the thumb. Background information, including the agenda and questions for the committee, will be available to the public on October 26, 2001, on the Internet at http://www.fda.gov/cdrh/panelmtg.html.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 19, 2001. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon and between approximately 3 p.m. and 3:30 p.m. on October 29, 2001. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 19, 2001, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the October 29, 2001, Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 11, 2001.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 01–26173 Filed 10–15–01; 9:31 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1250]

Determination of Regulatory Review Period for Purposes of Patent Extension; Synercid; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of September 21, 2001 (66 FR 486920). The document determined the regulatory review period for Synercid and published the notice of that determination as required by law. The document published with an inadvertent error. This document corrects that error.

DATES: October 17, 2001.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy, Planning, and Legislation (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 01–23703, appearing on page 48690 in the **Federal Register** of Friday, September 21, 2001, the following correction is made: On page 48690, in the second column, ''Docket No. 01E–1250]'' is corrected to read ''[Docket No. 00E–1250]''.

Dated: October 10, 2001.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 01–25998 Filed 10–16–01; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Indian Health Service (IHS).

ACTION: Request for Public Comment: 60-day notice; proposed collection: stakeholder satisfaction with IHS tribal consultation.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, to provide a 60-day advance opportunity for public comment on a proposed information collection project, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review.

Proposed Collection

A voluntary survey will be conducted of elected leaders representing federally recognized tribes, and any board member or executive director authorized to represent a tribal organization or an urban Indian health program to assess the level of customer (stakeholder) satisfaction with the agency's tribal consultation process.

Title: Stakeholder Satisfaction with IHS Tribal Consultation.

Type of Information Collection Request: New collection.

Form Number(s): None.

Need and Use of Information Collection: The information gathered will be used by agency management and staff to establish baseline data, to identify strengths and weaknesses in the current consultation process, to assess how well the processes for consultation are working, to make improvements that are practical and feasible, and to provide feedback to local tribal officials, health boards, tribal organizations, urban Indian health programs and

community members regarding stakeholder satisfaction with the agency's tribal consultation process.

Frequency: Annually.

Affected Public: Individuals, not-for-profit institutions, State, Local, or Tribal Governments.

Number of Respondents: 605.

Annual Number of Responses per Respondent: 1.

Total Annual Responses: 605.

Average Burden per response: 20 minutes.

Total Annual Hours Requested: 202 hours.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report for this collection of information.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send Comments and Requests for Further Information

Send your written comments, requests for more information on the proposed collection, or requests to obtain a copy of the data collection instrument(s) and instructions to: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601 or call non-toll free (301) 443–5938, send via facsimile to (301) 443–2316, or send your e-mail requests, comments, and return address to: lhodahkw@hqe.ihs.gov.

Comment Due Date

Your comments regarding this information collection are best assured of having their full effect if received on or before December 17, 2001.

Dated: October 10, 2001.

Michael H. Trujillo,

Assistant Surgeon General Director, Indian Health Service.

[FR Doc. 01–26063 Filed 10–16–01; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4650–N–76]

Notice of Submission of Proposed Information Collection to OMB; HUD Alternative for SF–424 Forms, Application for Federal Assistance and Attendent Forms

AGENCY: Office of the Chief Information Officer, 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:* November 16, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval (2501–0017) 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, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. 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 name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: HUD Alternative for SF–424 Forms, Application for Federal Assistance and Attendant Forms.

OMB Approval Number: 2501–0017.

Form Number: HUD–424, HUD–424–B, HUD–424–C.

Description of the Need for the Information and its Proposed Use: HUD alternative to the SAF–424, Application for Federal Assistance, and directly related forms intended to offer consolidated and streamlined grant application processors in accordance with the provisions of Public Law 106–107. The Federal Financial Assistance Improvement Act of 1999.

Respondents: Individuals or households, Not-for-institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hour
Reporting Burden	1		1		1		1

Total Estimated Burden Hours: 1.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 10, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 01–26024 Filed 10–16–01; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4663–C–06]

Notice Inviting Applications: Designation of Forty Renewal Communities; Technical Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice inviting applications; technical correction.

SUMMARY: On August 7, 2001, HUD published a Notice inviting applications for designation of nominated areas as Renewal Communities. This document corrects an error in the Notice by removing arson from the list of offenses counted in determining the Crime Index and the Local Crime Index.

DATES: Application Due Date: The extended application due date of November 2, 2001, in accordance with the Notice of Extension published on September 25, 2001 (66 FR 49032), continues to apply.

FOR FURTHER INFORMATION CONTACT: John Haines, Renewal Community Initiative, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7130, Washington, DC 20410, (202) 708–6339. Persons with hearing or speech disabilities may call (800) 877–8339 (the Federal Information Relay Service-TTY).

SUPPLEMENTARY INFORMATION: On August 7, 2001 (66 FR 41432), HUD published a Notice Inviting Applications for Designation of Forty Renewal Communities. The Notice, in section III.C.3.d.ii. at 66 FR 41437, includes arson in the list of offenses that must be included when determining the Local Crime Index (LCI) in a nominated area for purposes of comparing the LCI to the FBI's Crime Index (CI).

Although the offense of arson is included as part of the FBI's Uniform Crime Reporting (UCR) system, it is not included in the Crime Index determination because the reporting for arson is not as consistent as for other offenses. The reference to arson in the Notice is, therefore, being removed. In addition, a correction making conforming changes to the July 9, 2001 (66 FR 35850) interim rule for Designation of Renewal Communities is published elsewhere in this issue of the **Federal Register**.

Accordingly, FR Doc. 01–19652, Notice Inviting Applications: Designation of Forty Renewal Communities, (FR–4663–N–02), published in the **Federal Register** on August 7, 2001 (66 FR 41432), is corrected as follows:

On page 41437, second column, the last complete sentence of section III.C.3.d.ii. is revised to read as follows: ''The offenses used in determining the CI, and which therefore must be used in determining the LCI, are the violent crimes of murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault, and the property crimes of burglary, larceny-theft, and motor vehicle theft.''

Dated: October 10, 2001.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 01–26022 Filed 10–16–01; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability for the Revised Draft Comprehensive Conservation Plan and Environmental Assessment for the Necedah National Wildlife Refuge located in Juneau and Wood Counties, WI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) intends to release for public review and comment a revised Draft Comprehensive Conservation Plan and associated Environmental Assessment for the Necedah National Wildlife Refuge. The Service is furnishing this notice in compliance with Service comprehensive conservation plan policy guidance and in implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain comments on the content and conclusion reached in the revised Comprehensive Conservation Plan and associated Environmental Assessment.

DATES: Written comments must be received by November 20, 2001. All comments should be addressed to Larry Wargowsky, Project Leader, Necedah National Wildlife Refuge, W7996 20th Street West, Necedah, WI 54646. Written comments may also be submitted through the Service's regional website at: *http://midwest.fws.gov/planning/necedahtop.htm.*

FOR FURTHER INFORMATION CONTACT: Larry Wargowsky, Project Leader, Necedah National Wildlife Refuge, W7996 20th Street West, Necedah, WI 54646. Telephone: (608) 565–2551.

SUPPLEMENTARY INFORMATION: Necedah National Wildlife Refuge was established in 1939 as a refuge and breeding ground for migratory birds and for use as an inviolate sanctuary for migratory birds. Located in central Wisconsin, the Refuge includes 43,696 acres consisting of wetlands and open water areas, pine, oak, and aspen forests, grasslands, and rare savannas. It is Service policy to have all lands within the National Wildlife Refuge System, and address significant internal and external needs and issues identified during the scoping and public involvement process. The Service has provided many opportunities for public input into this planning process and will continue to seek public comment.

Subsequent to the release of the previous Draft Comprehensive Conservation Plan and associated Environmental Assessment, substantive modifications and/or changes have been incorporated into the plan. They include:

- Incorporation of the Refuge's Fire Management Plan
- Incorporation of elements of the Refuge's Whooping Crane reintroduction project
- Incorporation of a third alternative to the Environmental Assessment
- Clarification of the proposed new Refuge Visitor Center
- Incorporation of the Biological Opinion prepared for the CCP.

Dated: September 26, 2001.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 01–26098 Filed 10–16–01; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment and Receipt of Application for an Incidental Take Permit for Pinery Glen, Douglas County, CO

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Continental Homes (Applicant) has applied to the Fish and Wildlife Service (Service) for an Incidental Take Permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 as amended (Act). The Service proposes to issue a 10-year permit to the Applicant that would authorize the incidental take of Preble's meadow jumping mouse (Preble's) (*Zapus hudsonius preblei*), federally listed as threatened, and loss and modification of its habitat associated with construction of a residential subdivision in Douglas County, Colorado. Construction of the subdivision has resulted in the loss of approximately 18.79 acres and will result in future loss of up to 2.86 acres of upland field that provides potential foraging and hibernation habitat for Preble's. The permit application includes a combined Environmental Assessment/Habitat Conservation Plan (Plan), which is available for public review and comment. The Plan fully describes the proposed project and the measures the Applicant will undertake to minimize and mitigate project impacts to Preble's.

The Service requests comments on the Plan for the proposed issuance of an ITP. We provide this notice pursuant to section 10(a) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments on the Plan and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments on the permit application and Plan should be received on or before December 17, 2001.

ADDRESSES: Comments regarding the permit application or the Plan should be addressed to LeRoy Carlson, Field Supervisor, Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215. Comments may be sent by facsimile to (303) 275–2371.

FOR FURTHER INFORMATION, CONTACT: Kathleen Linder, Fish and Wildlife Biologist, Colorado Field Office, telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the Plan and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibits the ''take'' of a species listed as endangered or threatened, respectively (take is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct). However, the Service may issue permits to authorize ''incidental take'' (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity) of listed species under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

The proposed action is the issuance of a permit under section 10(a)(1)(B) of the Act to allow the incidental take of Preble's during the construction of a residential subdivision at the site. The project has directly affected approximately 18.79 acres and proposes to affect an additional 2.86 acres of potential habitat for Preble's. A Plan has been developed as part of the preferred alternative. The proposed Plan will allow for the incidental take of Preble's by permitting the construction of the residential subdivision in areas that Preble's use as foraging or hibernation habitat. Construction will result in approximately 8.75 acres of permanent habitat loss and approximately 12.9 acres of temporary impact to the habitat associated with localized disturbance.

The Preble's is the only federally listed species that occurs on site and has the potential to be directly affected by the proposed project. The Applicant has agreed to implement the following measures to minimize and mitigate impacts that may result from incidental take of Preble's:

1. Restore 13.76 acres of upland field adjacent to the intermediate terrace along Cherry Creek. Restoration will include fertilizer application, native grass seeding, and native tree and shrub planting.

2. Establish five stormwater detention basins adjacent to the intermediate terraces along Cherry Creek within the 13.76 acres being restored. These basins will include the combination of wetland/upland herbaceous plants and lush grasses with riparian shrubs to create additional mouse habitat. These basins are expected to exhibit seasonal inundation and to function as emergent wetlands with temporary open water during times of high precipitation and runoff.

3. Enhance 46.9 acres of upper, intermediate, and lower terraces adjacent to Cherry Creek. Enhancement will include leafy spurge control through herbicide, mowing, and biological control, as necessary. Areas treated for leafy spurge will receive fertilizer application, native grass seeding, and native tree and shrub planting. The remaining areas will be enhanced by planting native trees and shrubs selected for appropriate moisture regimes, depending on proximity to Cherry Creek.

4. Enhance an additional 15 acres of upland field adjacent to Cherry Creek. The Applicant will use 5 acres as back-up mitigation to meet the 46.9 acres of total enhancement. An additional 10 acres will be enhanced for Douglas County to be held as a Preble's habitat mitigation bank for future county needs. These additional 15 acres will be enhanced as described in subsection 3 above.

This notice is provided pursuant to section 10(c) of the Act. The Service will evaluate the permit application, the Plan, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of Preble's. The final permit decision will be made no sooner than 60 days from the date of this notice.

Dated: October 1, 2001.

John A. Blankenship,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 01–26078 Filed 10–16–01; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; reports of suspicious orders or theft/loss of listed chemicals/machines.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has

submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged with will be accepted for sixty days until December 17, 2001. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia Good, 202–307–7297, Chief, Policy and Liaison Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies/components 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Reports of Suspicious Orders or Theft/Loss of Listed Chemicals/Machines.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form No.:* None. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Individuals or households.

The Chemical Diversion and Trafficking Act of 1988 created, and the Domestic Chemical Diversion Control Act of 1993 amended, DEA's chemical reporting requirements to remove the exemption for certain drugs which contain ephedrine. The Comprehensive Methamphetamine Control Act of 1996 removed the exemption for combination ephedrine, psuedoephedrine and Phenylpropanolamine drug products. Persons who previously were not required to file reports regarding suspicious orders, thefts and loss of these products now must do so.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 199 respondents with an average 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 499 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20004.

Dated: October 12, 2001.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 01–26136 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed collection; Comment Request

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; U.S. Official Order Forms for Schedules I and II Controlled Substances (ACCOUNTABLE FORMS), Order Form Requisition.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies Comments are encouraged and will be accepted for sixty days until December 17, 2001.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia Good, 202–307–7297, Chief, Policy and Liaison Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points.

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency/component, including whether the information will have practicaal ulitily;

2. Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information including the validity of the methodlogy 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* U.S. Official Order Forms for Schedules I and II Controlled Substances (ACCOUNTABLE FORMS), Order Form Requisition.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form No.: DEA Form 222 and DEA Form 222a Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profits.

Other: Individuals or households, Federal Government, and State, Local of Tribal Government.

DEA–222 is used to transfer or purchase Schedule I and II controlled substances and data is needed to provide an audit of transfer and purchase. DEA–222a Requisition Form is used to obtain the DEA–2222 Order Form. Respondents are DEA registrants desiring to handle these controlled substances.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 89,908 respondents with an average of 17.5 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 193,508 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20004.

Dated: October 12, 2001.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 01–26137 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day notice of information collection under review: Extension of a currently approved collection; ARCOS Transaction Reporting—DEA Form 333.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 17, 2001. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia Good, 202–307–7297, Chief, Policy and Liaison Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537.

Written comments and suggestion from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies/components 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* ARCOS Transaction Reporting—DEA Form 333.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form No.: DEA Form 333. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: None.

Necessary for U.S. to meet obligations under two international treaties: Single Convention on Narcotic Drugs and Psychotropic Substances. Treaties require information on the manufacture and consumption of certain substances. Information tracks substances from manufacture to sale to dispensing level.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 1,126 respondents with an average 1 hour per response and 10 minutes per electronic response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,700 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20004.

Dated: October 12, 2001.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 01–26138 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day notice of information collection under review; Extension of a currently approved collection; records and reports of registrants: Changes in record requirements for individual practitioners.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 17, 2001. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia Good, 202–307–7297, Chief, Policy and Liaison Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency/component, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies/components 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Records and Reports of Registrants: Changes in Record Requirements for Individual Practitioners.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form No.:* None. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals or households.

Other: Business or other for-profit.

Required information is needed to maintain a closed system of records by requiring the individual practitioner to keep records (1) complimentary samples of controlled substances dispensed to patients and (2) controlled substances which are both administered and dispensed to patients.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 100,500 respondents with an average 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50,250 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20004.

Dated: October 12, 2001.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 01–26139 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day notice of information collection under review: Extension of a currently approved collection; Controlled Substances Import/Export Declaration—DEA Form 236.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 7, 2001. This process is conducted in accordance with 5 CFR 1320.10

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia Good, 202–307–7297, Chief, Policy and Liaison Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

2. Evaluate the accuracy of the agencies/components 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Controlled Substances Import/Export Declaration—DEA Form 236.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection: Form No.:* DEA Form 236, Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for profit.

Other: None.

DEA–236 provides the DEA with control measures over the importation and exportation of controlled substances as required by both domestic and international drug control laws. Affected public consists of businesses or other for profit organizations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 358 respondents with an average 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,432 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20004.

Dated: October 12, 2001.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 01–26141 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 23, 2001, B.I. Chemical Inc., 2820 N. Normandy Drive,

Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Amphetamine (1100)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Levo-alphacetylmethadol (LAAM) (9648).	II

The firm plans to bulk manufacture the listed controlled substances for formulation into finished pharmaceuticals.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 17, 2001.

Dated: October 5, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–26017 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(I)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on August 1, 2001, B.I. Chemical, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the bulk manufacture of amphetamine

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 16, 2001.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 5, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–26018 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 25, 2001, Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724) a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture methylphenidate for product research and development.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 17, 2001.

Dated: October 5, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–26019 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 4, 2000, and published in the **Federal Register** on January 10, 2001, (66 FR 2003), Chiragene, Inc., Technology Center of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
2, 5-Dimethoxyamphetamine (7396).	I
3, 4-Methylenedioxyamphetamine (7400).	I
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The firm plans to manufacture the listed controlled substances to supply their customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Chiragene, Inc. to

manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Chiragene, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 5, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–26014 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(I)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substances in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importance of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby give that on April 24, 2001, Stepan Company, Natural Products Department, 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

The firm plans to import the coca leaves to manufacture bulk controlled substance.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR. 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: October 5, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–26016 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 30, 2001, Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Ft. Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of carfentanial (9743), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the listed controlled substance for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 17, 2001.

Dated: October 5, 2001.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 01–26015 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Revision of a currently approved collection; Individual clearance for mailout customer satisfaction survey.

The Department of Justice (DOJ), Office of Justice Programs, (OJP) National Institute of Justice has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted for ''sixty days'' until December 17, 2001. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Bill Ballweber, (202) 305–2975, Office of Justice Programs, National Institute of Justice, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Individual Clearance for Interactive Voice Response Customer Service Inquiry.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract::* Respondents will be current and potential users of agency products and services. Respondents may represent Federal agencies, State, local, and tribal governments, members of private organizations, research organizations, the media, non-profit organizations, international organizations, as well as faculty and students.

The Bureau of Justice Assistance (BJA), Bureau of Justice Statistics (BJS), National Institute of Justice (NIJ), Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office for Victims of Crime (OVC), and the Office of National Drug Control Policy (ONDCP), in accordance with the requirements of E.O. 12862 and the GPRA, wish to conduct customer satisfaction surveys. The purpose of such surveys is to assess needs, identify problems, and plan for programmatic improvements in the delivery of agency products and services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be 1,000 respondents. It is estimated that each survey will take 3 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total hour burden to conduct this survey is 50 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 11, 2001.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 01–26140 Filed 10–16–01; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38, 617; TA–W–38, 617C]

Garan Manufacturing Corporation Carthage, MI, Garan Manufacturing Corporation, Ozark, AR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 9, 2001, applicable to workers of Garan Manufacturing Corporation, Carthage, Mississippi. The notice was published in the **Federal Register** on April 5, 2001 (66 FR 18118).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations will occur at the Ozark, Arkansas location of Garan Manufacturing Corporation when it closes by the end of 2001. The workers are engaged in the production of the children's knitwear.

Accordingly, the Department is amending this certification to cover workers at the subject firms' Ozark, Arkansas location.

The intent of the Department's certification is to include all workers of Garan Manufacturing Corporation adversely affected by increased imports of children's knitwear.

The amended notice applicable to TA–W–38,617 is hereby issued as follows:

All workers of Garan Manufacturing Corporation, Carthage, Mississippi (TA–W–38,617) and Ozark, Arkansas (TA–W–38,617C) who became totally or partially separated from employment on or after January 19, 2000, through February 9, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 2nd day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26048 Filed 10–16–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,545]

Invensys Systems Inc., Systems Manufacturing, Foxboro, MA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 10, 2001, applicable to workers of Invensys Systems Inc., Systems Manufacturing, located in Foxboro, Massachusetts. The notice was published in the **Federal Register** on September 10, 2001 (66 FR 48707).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Review of the investigation file shows that the Systems Manufacturing division of the plant produced articles in addition to printed circuit boards.

The intent of the Department's certification is to include only those workers of Invensys Systems, Inc., Systems Manufacturing, Foxboro, Massachusetts, adversely affected by the increased imports of printed circuit boards. Accordingly, the Department is amending the certification to limit the worker group coverage to those engaged in activities related to the production of printed circuit boards.

The amended notice applicable to TA–W–39,545 is hereby issued as follows:

All workers engaged in activities related to the production of printed circuit boards at Invensys Systems, Inc., Systems Manufacturing, Foxboro, Massachusetts, who became totally or partially separated from employment on or after June 4, 2000, through September 10, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 3rd day of October 2001.

Edward A. Tomchick,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26047 Filed 10–16–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,047]

Marathon Ashland Pipe Line, LLC Bridgeport, IL; Notice of Negative Determination of Reconsideration on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Marathon Ashland Pipe Line LLC* v. *Alexis Herman U.S. Secretary of Labor,* No. 00–04–00171.

The Department's initial denial for the workers transporting crude oil and petroleum products at Marathon Ashland Pipe Line, LLC, Bridgeport, Illinois, issued on December 2, 1999, and published in the **Federal Register** on December 28, 1999 (64 FR 72691), was based on the finding that the group eligibility requirements of section 222 of the Trade Act of 1974, as amended, were not met.

The petitioners request for reconsideration resulted in a negative determination regarding the application which was issued on February 11, 2000, and was published in the **Federal Register** on February 22, 2000 (64 FR 8743). The Department's findings affirmed that the workers were providing a service and were not producing an article.

On remand, in order to determine if the worker group supported crude oil production of the parent company, the Department contacted officials of Marathon Ashland Pipe Line LLC, to obtain additional information regarding the transportation of articles produced by the parent company, Marathon Oil Company, Inc. The investigation on remand revealed that in 1997, 1998 and in the January through March months of 1998 and 1999, Marathon Ashland Pipe Line Company did not transport via pipeline any articles produced by the parent company, Marathon Oil Company, Inc.

Investigation findings on remand show that in 1997, the parent company purchased crude oil at the lease (Illinois Basin) that was transported by Marathon Pipe Line Company. In 1998, Marathon Ashland Petroleum LLC was formed and it purchased crude from the lease which it transported via the pipe line. In 1999, Marathon Ashland Petroleum LLC did not purchase from the lease.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Marathon Ashland Pipe Line, LLC, Bridgeport, Illinois.

Signed at Washington, DC this 20th day of August 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26041 Filed 10–16–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,730]

Neles Automation USA, Inc., Metso Automation USA, Inc., Houston Delivery Center, Houston, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 22, 2001, applicable to workers of Neles Automation USA, Inc., Houston Delivery Center, Houston, Texas. The notice was published in the **Federal Register** on September 11, 2001 (66 FR 47242).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of industrial valves and controls (ball valves and butterfly valves). New information shows that Metso Automation USA, Inc. is the parent firm of Neles Automation USA, Inc., Houston Delivery Center, Houston, Texas.

Information also shows that some workers separated from employment at the subject firm had their wages reported under a separate employment insurance (UI) tax account for Metso Automation USA, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Neles Automation USA, Inc., Houston Delivery Center, Houston, Texas who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,730 is hereby issued as follows:

All workers of Neles Automation USA, Inc, Metso Automation USA, Inc., Houston Delivery Center, Houston, Texas who became totally or partially separated from employment on or after July 13, 2000, through August 22, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 28th day of September, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26046 Filed 10–16–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39, 179, TA–W–39, 179A]

Rockwell Collins Passenger Systems Irvine, CA and Rockwell Collins Passenger Systems Pomona, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility To Apply for Worker Adjustment Assistance on July 16, 2001, applicable to workers of Rockwell Collins, Passenger Systems, located in Irvine and Pomona, California. The notice was published in the **Federal Register** on August 6, 2001 (66 FR 41053).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The company reports that Rockwell Collins produces more that one in-flight entertainment system. Review of the investigation file shows that 8.6″ Boeing retract for PAVES in-flight entertainment system was the only article produced at the Passenger Systems Division transferred to a foreign country and being imported by the company.

The intent of the Department's certification is to include only those workers of Rockwell Collins, Passenger Systems, Irvine and Pomona, California, adversely affected by increases in imports. Accordingly, the Department is amending the certification to limit the worker group coverage to those engaged in activities related to the production of

8.6″ Boeing retract for PAVES in-flight entertainment systems.

The amended notice applicable to TA–W–39, 179, is hereby issued as follows:

All workers engaged in activities related to the production of 8.6″ Boeing retract for PAVES in-flight entertainment systems at Rockwell Collins, Passenger Systems, Irvine, California (TA–W–39–179) and Pomona, California (TA–W–39, 179A), who became totally or partially separated from employment on or after April 19, 2000 through July 16, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of September 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26045 Filed 10–16–01; 8:45 am]

BILLING CODE 4310–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,495]

VF Imagewear East (Formerly VF Knitwear) Martinsville, VA, Including an Employee of VF Imagewear East (Formerly VF Knitwear), Martinsville, VA Located in Park Ridge, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 17, 2001, applicable to workers of VF Imagewear East (formerly VF Knitwear), Martinsville, Virginia. The notice was published in the **Federal Register** on May 3, 2001 (66 FR 22262).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation occurred involving an employee of the Martinsville, Virginia facility of VF Imagewear East, (formerly VF Knitwear), located in Park Ridge, Illinois. This employee was engaged in employment related to the production of fleece apparel, including jerseys and T-shirts at the Martinsville, Virginia location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of VF Imagewear East, (formerly VF Knitwear), Martinsville, Virginia facility, located in Park Ridge, Illinois.

The intent of the Department's certification is to include all workers of VF Imagewear East (formerly VF Knitwear) adversely affected by increased imports.

The amended notice applicable to TA–W–38,495 is hereby issued as follows:

All workers of VF Imagewear East, (formerly VF Knitwear), Martinsville, Virginia, including a worker of the Martinsville, Virginia facility, located in Park Ridge, Illinois, who became totally or partially separated from employment on or after December 13, 1999, through April 17, 2003, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 2nd day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26050 Filed 10–16–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250 (b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request if filed in writting with the Director of DTAA not later than October 29, 2001.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than October 29, 2001.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–5311, 200 Constitution Avenue, NW. Washington, DC 20210.

Signed at Washington, D.C. this 2nd October, 2001.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
Belco Tool and Mfg. (Co.)	Meadville, PA	09/04/2001	NAFTA–5,271	Spare mold and die parts.
AVX Corporation (Wkrs)	Myrthe Beach, SC	09/04/2001	NAFTA–5,272	Capaciters.
Raltron Electronic (Wkrs)	Miami, FL	08/31/2001	NAFTA–5,273	Electronic.
Toastmaster—Salton, Inc. (Co.)	Boonville, MO	09/10/2001	NAFTA–5,274	Warehousing.
FMC Technologies (Wkrs)	Homer City, PA	09/10/2001	NAFTA–5,275	Handling equipment.
Damy Industries	Athens, TN	09/10/2001	NAFTA–5,276	Ladies robes and housecoats.
Zilog, Inc	Nampa, ID	09/05/2001	NAFTA–5,277	Integrated circuits.
Unifirst Corporation	Cave City, AR	09/06/2001	NAFTA–5,278	Uniforms.
Fasco Industries (Wkrs)	Ozark, MO	08/09/2001	NAFTA–5,279	Shaded pole motors.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
PPG Industries (Co.)	Shelby, NC	09/07/2001	NAFTA–5,280	Fiberglass.
Haemer Wright Tool and Die (Co.)	Saegertown, PA	09/10/2001	NAFTA–5,281	Plastic molds, spare parts.
Them's Fine Apparel (Co.)	Bethel Springs, TN	09/06/2001	NAFTA–5,282	Hospital apparel.
WP Textiles Processing (UNITE)	Richmond, VA	09/06/2001	NAFTA–5,283	Knits and wovens.
Hilton Corporate Casuals (Wkrs)	Thomasville, AL	09/05/2001	NAFTA–5,284	Jackets, and pants and shorts.
Sykes Enterprise (Co.)	Irvine, CA	08/16/2001	NAFTA–5,285	
i2 Technologies (Wkrs)	Yorba Linda, CA	08/02/2001	NAFTA–5,286	Data library.
Ubi Soft Entertainment (Wkrs)	Novatc, CA	08/24/2001	NAFTA–5,287	Computer entertainment software.
Currton Manufacturing (Wkrs)	Travelers Rest, SC	09/06/2001	NAFTA–5,288	Curtains.
GHSP—GH South (PACE)	Grand Haven, MI	08/06/2001	NAFTA–5,289	Plastic injection molding.
PDSP Railcar Services	Port Huron, MI	09/06/2001	NAFTA–5,290	Railroad cars.
Kraft Foods (Wkrs)	Allentown, PA	09/07/2001	NAFTA–5,291	Barbecue sauces.
Rotorex (Wkrs)	Wallersville, MD	09/06/2001	NAFTA–5,292	Air conditioners.
Acme Pattern Works (IAMAW)	Chicago Heights, IL	09/04/2001	NAFTA–5,293	Pattern tooling.
ARMS Industrial (IAMAW)	Dalton, IL	08/20/2001	NAFTA–5,294	Pattern tooling.
Genlyte Thomas Group (IBEW)	Hopkinsville, KY	09/07/2001	NAFTA–5,295	Can lighting.
Parker Hannifin (Co.)	Lincolnshue, IL	09/07/2001	NAFTA–5,296	Testing distribution.
Wackenhut Security (Co.)	Kennewick, WA	09/04/2001	NAFTA–5,297	Fertilizer.
Craftsmen Fabric—Phoenix Mills (Co.)	Concord, NC	09/07/2001	NAFTA–5,298	Textile dyeing.
Meadowbrook Company (Co.)	Spelter, WV	09/07/2001	NAFTA–5,299	Zinc dust.
Forsheda Engineered Seals (Co.)	Vandalia, IL	09/04/2001	NAFTA–5,300	Automotive gaskets.
BMI (Boldt Metronics International) (wkrs)	Schaumburg, IL	09/04/2001	NAFTA–5,301	Metal metronics component.
Tyco Electronics (Co.)	Romeoville, TN	09/04/2001	NAFTA–5,302	Battery packs.
M and S Manufacturing (Wkrs)	Morenci, MI	08/28/2001	NAFTA–5,303	Automotive parts.
Eagle Veneer (Wkrs)	Harrisburg, OR	09/04/2001	NAFTA–5,304	Plywood.
Flomatic International (Wkrs)	Clackamas, OR	09/05/2001	NAFTA–5,305	Beverage valves.
Alcatel Submarine Networks (Wkrs)	Portland, OR	09/04/2001	NAFTA–5,306	Fiber optic undersea cable.
HH Smith (Co.)	Meadville, PA	09/05/2001	NAFTA–5,307	Electronic connectors.
Carolina Mills (Co.)	Gastonia, NC	09/04/2001	NAFTA–5,308	Textile yarn.
Hayward Industrial (Co.)	Kings Mountain, NC	09/04/2001	NAFTA–5,309	Plastic products.
Laclede Steel (Wkrs)	Vandalia, IL	09/05/2001	NAFTA–5,310	Pipes.
General Electric Capital IT Solutions (Co.)	Erlanger, KY	08/22/2001	NAFTA–5,311	Technical support.
Rockwell Automative (UE)	Milwaukee, Wi	09/10/2001	NAFTA–5,312	Push buttons.
Screen Creations—Bolivar Tee (Wkrs)	Bolivar, MO	09/11/2001	NAFTA–5,313	T-shirts.
Daniel Measurement and Control (Co.)	Statesboro, GA	09/11/2001	NAFTA–5,314	Turbine and valve product lines.
Mail Well Envelope (GCU)	Portland, OR	09/10/2001	NAFTA–5,315	Mailing envelops.
GFC Fabricating (Wkrs)	Berwick, PA	09/06/2001	NAFTA–5,316	Fabricate elastic material.
Tyco Electronics (Wkrs)	Carlisle, PA	09/10/2001	NAFTA–5,317	Electroplated connector components.
United Tool and Die (Co.)	Meadville, PA	08/28/2001	NAFTA–5,318	Steel mold.
Motorola (Co.)	Boynton Beach, FL	09/13/2001	NAFTA–5,319	Cellular products.
Motorola (Wkrs)	Schaumburg, IL	09/17/2001	NAFTA–5,320	PCB assembly.
Satilla Manufacturing (Wkrs)	Blackshear, GA	09/18/2001	NAFTA–5,321	Outerwear jackets.
Volvo Construction Equipment (Co.)	Skyland, NC	09/17/2001	NAFTA–5,322	Heavy construction Equipment.
Aramda (Co.)	Leland, NC	09/17/2001	NAFTA–5,323	Zinc die cast parts.
Honeywell (Co.)	Clearfield, UT	09/10/2001	NAFTA–5,324	Air filter.
HPM Corporation (IAMAW)	Mt. Gilead, OH	09/18/2001	NAFTA–5,325	Manifolds.
FB Johnston Group (Co.)	Hillsborough, NC	09/14/2001	NAFTA–5,326	Labels.
Parker Hannifin (Wkrs)	Otsego, MI	09/14/2001	NAFTA–5,327	Manfold.
Steward Connector Systems—Insilco (Wkrs).	Glen Rock, PA	09/14/2001	NAFTA–5,328	Modular components.
Emerson Process Management (Wkrs)	McKinney, TX	09/13/201	NAFTA–5,329	Regulators for gas tanbo.
Micro Tool (Co.)	Meadville, PA	09/13/2001	NAFTA–5,330	Plastic injection molds.
Rayovac (Wkrs)	Portage, WI	09/12/2001	NAFTA–5,331	Batteries.
Brunswick Corp.—Mercury Marine (IAMAW).	Fond du Lac, WI	09/12/2001	NAFTA–5,332	Outboard engines.
Tyco international (UAW)	Wrentham, MA	09/24/2001	NAFTA–5,333	Fossil power valves.
Texfi Industries (Co.)	Hawriver, NC	09/12/2001	NAFTA–5,334	Dyed and finishing knit.
Arris International (Wkrs)	Tiaton Falls, NJ	09/10/2001	NAFTA–5,335	Telephone equipment.
Greenway Manufacturing (Wkrs)	Spartanburg, SC	09/17/2001	NAFTA–5,336	Sleepwear.
Quality Apparel (Co.)	Dillon, SC	09/17/2001	NAFTA–5,337	Polyester pants.
Continental Accessoreis—Quadra Mfg. (Co.).	White Pigeon, MI	09/14/2001	NAFTA–5,338	Running boards.
Steele Apparel (Co.)	Kilmichael, MS	09/07/2001	NAFTA–5,339	Career apparel.
Qwest Wireless (Wkrs)	Denver, CO	09/24/2001	NAFTA–5,340	Call center.
Miller Bag (Co.)	Freeman, SD	09/24/2001	NAFTA–5,341	Grass catchers.
Curtain and Drapery (Wkrs)	Gatonia, NC	09/24/2001	NAFTA–5,342	Window treatment.
Corning Cable Systems (Wkrs)	Hickory, NC	09/24/2001	NAFTA–5,343	Cable TV assemblies.
Drake Extrusion (Wkrs)	Spartanburg, SC	09/21/2001	NAFTA–5,344	Fibers and clothes.
Pinnacle Logistics (Co.)	El Paso, TX	09/13/2001	NAFTA–5,345	Warehouse.

APPENDIX—Continued

Subject firm	Location	Date received at Governor's Office	Petition No.	Articles produced
Contract Apparel (Wkrs)	El Paso, TX	08/22/2001	NAFTA–5,346	Ladies clothes.
Poly One (Co.)	Corna, CA	09/12/2001	NAFTA–5,347	Plastics.
Lexington Lamp (Wkrs)	Lexington, KY	09/20/2001	NAFTA–5348	Autoweld and rewash.
Brooks Automation (Co.)	Colorado Springs, Co	09/20/2001	NAFTA–5,349	Junction boxes.
JVC Digital Image Technology Center (Wkrs).	Carlsbad, CA	09/20/2001	NAFTA–5,350	High technology projector.
Davis Wire (IBT)	Hayward, CA	09/14/2001	NAFTA–5,351	Chain link fencing.
Visteon System LLC (IUE)	Connersville, IN	09/19/2001	NAFTA–5,352	FS–10 compressors.
Phoenix Apparel Resources (Co.)	Sanford, NC	09/20/2001	NAFTA–5,353	Sportswear.
A and E Products—Tyco (Wkrs)	Forest City, NC	09/20/2001	NAFTA–5,354	Plastic hangers.
Fishman and Tobin (Wkrs)	Medley, FL	09/19/2001	NAFTA–5,355	Apparel.
Eaton Corporation (UAW)	Marshall, MI	09/19/2001	NAFTA–5,356	Controls.
Linq Industiral Fabrics (Co.)	Opalocka, FL	09/18/2001	NAFTA–5,357	Bulk containers.
Do Group Holding (Co.)	Marked Tree, AR	09/21/2001	NAFTA–5,358	Office partitions.
Crown Pacific Limited Partnership (Wkrs)	Coeur d'Alene, ID	09/18/2001	NAFTA–5,359	Lumber.
Con Lime (Wkrs)	Bellefonte, PA	09/25/2001	NAFTA–5,360	Lime.
Delta Woodside Industries (Co.)	Fountain Inn, SC	09/25/2001	NAFTA–5,361	Boton weight cotton twill.
Key Plastics (Wkrs)	Felton, PA	09/25/2001	NAFTA–5,362	Automotive plastic parts.
Advanced Wood Resources—Jeld Wen (Wkrs).	Brownsville, OR	09/27/2001	NAFTA–5,363	Panels.
Continental Fabics (Co.)	Angier, NC	09/27/2001	NAFTA–5,364	Textiles fabric.
C. L. Fashion Express (Wkrs)	Panorama City, CA	09/24/2001	NAFTA–5,365	Pants, blouses and shirts.
Acu Crimp (Co.)	El Paso, TX	09/27/2001	NAFTA–5,366	Tooling.
Eagle Knits of Stanfield (Co.)	Norwood, NC	09/26/2001	NAFTA–5,367	Knitted fabrics.
Burkart Form (IAMAW)	Cairo, IL	09/27/2001	NAFTA–5,368	Form products: carpet underlay etc.
Garan Manufacturing (Wkrs)	Ozark, AR	09/27/2001	NAFTA–5,369	Knit shirts.
New World Pasta (BCTW)	Lebanon, PA	09/27/2001	NAFTA–5,370	Pasta products.
Coraza (Wkrs)	San Jose, CA	09/24/2001	NAFTA–5,371	Sheet metal products.
International Paper (Wkrs)	Washington, GA	09/26/2001	NAFTA–5,372	Paper boxes.
Northrop Grumman (Wkrs)	Watertown, CT	09/26/2001	NAFTA–5,373	Electronic connectors.
Axiohm Transaction Solutions (Wkrs)	Cypress, CA	09/26/2001	NAFTA–5,374	Card readers.
Shasta Paper (PACE)	Anderson, CA	09/24/2001	NAFTA–5,375	Uncoated and coated specialty paper.
Temple Inland Forest Products (Co.)	Shippenville, PA	09/25/2001	NAFTA–5,376	Wood.
Fositso Microelectronics (Wkrs.)	Gresham, OR	09/25/2001	NAFTA–5,377	Computer chips.
Burle Industries (IBEW)	Lancaster, PA	09/28/2001	NAFTA–5,378	Electron tubes.
Diamond Tool and Die (Co.)	Townville, PA	09/25/2001	NAFTA–5,379	Zippers.

[FR Doc. 01–26040 Filed 10–16–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04495]

Johnson Electric Automotive, Inc. Lear Corporation Brownsville, TX, Including Temporary Workers of Austin Temporary Services Employed at Johnson Electric Automotive, Inc., Brownsville, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on February 22, 2001, applicable to workers of Johnson Electric Automotive, Brownsville, Texas. The notice was published in the **Federal Register** on April 5, 2001 (66 FR 18119).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of shafts of motors for lawnmowers and boats.

New information shows that workers separated from employment at Johnson Electric Automotive, Inc., had their wages reported under a separated unemployment insurance (UI) tax account for Lear Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Johnson Electric Automotive, Inc., Brownsville, Texas adversely affected by a shift of production to Mexico.

The amended notice applicable to NAFTA—04495 is hereby issued as follows:

''All workers of Johnson Electric Automotive, Inc., Lear Corporation, Brownsville, Texas including temporary workers of Austin Temporary Services, Harlingen, Texas who were engaged in the production of shafts of motors for lawnmowers and boats at Johnson Electric Automotive, Inc., Lear Corporation, Brownsville, Texas who became totally or partially separated from employment on or after January 26, 2000 through February 22, 2003 are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.''

Signed at Washington, DC this 2nd day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26049 Filed 10–16–01; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–05079]

Neles Automation USA, Inc., Metso Automation USA, Inc., Houston Delivery Center, Houston, TX; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of labor issued a Certification for NAFTA Transitional Adjustment Assistance on August 29, 2001, applicable to workers of Neles Automation USA, Inc., Houston Delivery Center, Houston, Texas. The notice was published in the **Federal Register** on September 11, 2001 (66 FR 47242).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of industrial valves and controls (ball valves and butterfly valves). New information shows that Metso Automation USA, Inc. is the parent firm of Neles Automation USA, Inc., Houston Delivery Center, Houston, Texas.

Information also shows that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Metso Automation USA, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Neles Automation USA, Inc., Houston Delivery Center, Houston, Texas who were adversely affected by a shift of production of industrial valves and controls (ball valves and buttlerfly valves) to Mexico.

The amended notice applicable to NAFTA—05079 is hereby issued as follows:

All workers of Neles Automation USA, Inc., Metso Automation USA, Inc., Houston Delivery Center Houston, Texas who became totally or partially separated from employment on or after July 13, 2000, through August 29, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 28th day of September, 2001.

Linda G. Poole,

Certifying Officer, Division of trade Adjustment Assistance.

[FR Doc. 01–26044 Filed 10–16–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–4964, NAFTA–4964A] Rockwell Collins Passenger Systems Irvine, CA and Rockwell Collins Passenger Systems Pomona, CA; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on July 16, 2001, applicable to workers of Rockwell Collins, Passenger Systems, located in Irvine and Pomona, California. The notice was published in the **Federal Register** on August 6, 2001 (66 FR 41053).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The company reports that Rockwell Collins produces more that one in-flight entertainment system. Review of the investigation file shows that 8.6″ Boeing retracting for PAVES in-flight entertainment system was the only article produced at the Passenger Systems Division shifted from the production facility to Mexico.

The intent of the Department's certification is to include only those workers of Rockwell Collins, Passenger Systems, Irvine and Pomona, California, adversely affected by the shift in production to Mexico. Accordingly, the Department is amending the certification to limit the worker group coverage to those engaged in activities related to the production of 8.6″ Boeing retract for PAVES in-flight entertainment systems.

The amended notice applicable to NAFTA–4964 is hereby issued as follows:

All workers engaged in activities related to the production of 8.6″ Boeing retract for PAVES in-flight entertainment systems at Rockwell Collins, Passenger Systems, Irvin, California (NAFTA–4964) and Pomona, California (NAFTA–4964A), who became totally or partially separated from employment on or after May 11, 2000 through July 16, 2003, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, D.C. this 27th day of September 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26043 Filed 10–16–01; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–04405]

VF Imagewear East (Formerly VF Knitwear) Martinsville, VA, Including an Employee of VF Imagewear East (Formerly VF Knitwear), Martinsvile, VA, Located in Park Ridge, IL; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on April 17, 2001, applicable to workers of VF Imagewear East (formerly VF Knitwear), Martinsville, Virginia. The notice published in the **Federal Register** on May 3, 2001 (66 FR 22263).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that a worker separation occurred involving an employee of the Martinsville, Virginia facility of VF Imagewear East, (formerly VF Knitwear), located in Park Ridge, Illinois. This employee was engaged in employment related to the production of fleece apparel, including jerseys and T-shirts at the Martinsville, Virginia location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of VF Imagewear East, (formerly VF Knitwear), Martinsville, Virginia facility, located in Park Ridge, Illinois

The intent of the Department's certification is to include all workers of VF Imagewear East (formerly VF Knitwear) adversely affected by an increase of company of imports from Mexico.

The amended notice applicable to NAFTA–04405 is hereby issued as follows:

All workers of VF Imagewear East, (formerly VF Knitwear), Martinsville, Virginia, including a worker of the Martinsville, Virginia facility, location in Park Ridge, Illinois, who became totally or partially separated from employment on or after December 13, 1999, through April 17, 2003, are eligible for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 2nd day of October, 2001.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 01–26042 Filed 10–16–01; 8:45 am]

BILLING CODE 4310–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–126)]

NASA Advisory Council, Biological and Physical Research Committee, Microgravity Research Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Committee, Physical Sciences Advisory Subcommittee.

DATES: Wednesday, October 24 , from 8:00 a.m. to 5:00 p.m.

ADDRESSES: American Management Association, 440 First Street, NW, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546,202–358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Introduction
—Program Issues and Status
—Office of Biological and Physical Research Outlook
—International Space Station Research Status
—Discipline Working Group Activities Report
—Bio-prefixed Activities in the PSD
—Plans for New Initiatives
—Working Group Changes
—Status of MRAS Recommendations
—Discussion & Summary
—Executive Session/Writing Assignments

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Beth M. McCormick,

Advisory Committee Management Officer,National Aeronautics and Space Administration.

[FR Doc. 01–26053 Filed 10–16–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–125)]

NASA Advisory Council, Biological and Physical ResearchAdvisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory CommitteeAct, Pub. L. 92–463, as amended, the National Aeronautics andSpace Administration announces a meeting of the NASA AdvisoryCouncil, Biological and Physical Research Advisory Committee.

DATES: Thursday, October 25, 2001, 10 a.m. to 5 p.m.; and Friday, October 26, 2001, 8 a.m. to 12 noon.

ADDRESSES: American Management Association, 440 First St.,NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter,Code UG, National Aeronautics and Space Administration,Washington, DC 20546, 202/358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Action Status
—Program Overview
—Division Reports
—Status of International Space Station
—Preparation of Committee Findings and Recommendations
—Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Beth M. McCormick,

Advisory Committee Management Officer,National Aeronautics and Space Administration.

[FR Doc. 01–26054 Filed 10–16–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–124)]

NASA Advisory Council, Biological and Physical Research Advisory Committee Meeting, NASA–NIH Advisory Subcommittee and Life Sciences Advisory Subcommittee; Joint Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee, NASA–NIH Advisory Subcommittee and Life Sciences Advisory Subcommittee; Joint Meeting.

DATES: Wednesday, October 24, 2001, 8 a.m. to 5 p.m.

ADDRESSES: American Management Association, 440 First St.,NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Dr. David Tomko, Code UB, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0220.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Action Status
—Bioastronautics Research Division Update
—Fundamental Biology Research Division Update
—NASA–NIH Interaction Reports
— Update from OBPR Acting Associate Administrator
—Report on Status of Enhancement of OBPR Educational and Public Outreach Programs—Coordination with Other Codes
—Science Talk
—Biomedical Research Program Update
—Integrating Crew Health Maintenance and Biomedical Research
—Preparation of Committee Findings and Recommendations
—Review of Committee Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key

participants. Visitors will be requested to sign a visitor's register.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–26055 Filed 10–16–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–123)]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness.

DATES: Wednesday, November 7, 2001, 12 noon—1 p.m. Eastern Standard Time.

ADDRESSES: This meeting will be conducted via teleconference; hence participation will require contacting Mr. Philip Cleary (202/358–4461) before 4:30 p.m. Eastern, November 6, 2001, and leaving your name, affiliation, and phone number.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the capability of the teleconferencing system. The agenda for the meeting is as follows:

—To assess the operational readiness of the International Space Station to support the new crew and the American and Russian flight team's preparedness to accomplish the Expedition Four mission.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–26056 Filed 10–16–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–122)]

Aerospace Safety Advisory Panel (ASAP); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Friday, October 19, 2001, 3:45 p.m.–5 p.m. Central Standard Time.

ADDRESSES: Hilton Houston NASA Clear Lake, 3000 NASA Road 1, Marina Cove Meeting Room, Houston, TX 77058.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Lengyel, Aerospace Safety Advisory Panel Executive Director, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0391, if you plan to attend.

SUPPLEMENTARY INFORMATION: This meeting will be conducted via telecon with Panel members and consultants at the Johnson Space Center and public participants at the Hilton Houston NASA Clear Lake. This meeting will be open to the public up to the seating capacity of the room (18). The agenda for the meeting is to conduct deliberations on Calendar Year 2001 fact-finding activities and trip reports in preparation for the drafting of the Panel's Annual Report.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 01–26051 Filed 10–16–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (01–121)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and SpaceAdministration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice thatTicona Polymers, Inc., of Summit, NJ 07901–3914, has applied for an exclusive license to practice the invention described and claimed in NASA Case Number LAR–16079–1, entitled ''LIQUID CRYSTALLINE THERMOSETS FROM ESTER, ESTER-IMIDE, AND ESTER-AMIDE OLIGOMERS,'' for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics andSpace Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center. This notice corrects the zip code in Notice #01–115 published in the **Federal Register** on October 2, 2001

DATE: Responses to this notice must be received by November 1, 2001.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Attorney, Langley Research Center, Mail Stop 212, Hampton,VA 23681–2199. Telephone 757–864–3230; Fax 757–864–9190.

Dated: October 10, 2001.

Edward A. Frankle,

General Counsel.

[FR Doc. 01–26052 Filed 10–16–01; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 3, 2001. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–01–8, 13 items, 13 temporary items). Short term records relating to security assistance and military intelligence. Included are such records as organization charts and lists of U.S. Government components involved in security assistance, foreign military sales shipping and property documents, files relating to the training of foreign nationals, intelligence and polygraph reports, and accounting records for contingency funds. Also included are electronic copies of documents created using electronic mail and word processing. This schedule allows the agency to expedite disposal of these records, which previously were approved for disposal. It also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

2. Department of Commerce, National Oceanographic and Atmospheric Administration (N1–370–01–3, 1 item, 1 temporary item). Paper rolls of seismograms recorded at various locations in the United States from 1919 through 1971. These records will be disposed of via donation to Columbia University's Lamont-Doherty Earth Observatory in accordance with 36 CFR 1228.60.

3. Department of Defense, Joint Staff (N1–218–00–1, 58 items, 17 temporary items). Records relating to corporate and headquarter matters accumulated by the Joint Staff and combatant commands. Included are such records as card indexes and other finding aids, internal staffing and tasking correspondence, routine administrative support documents for oversight actions, administrative tasking and control systems, and electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as official memoranda, agendas, case files of the Chairman and Vice-Chairman, reports and analyses of defense issues, research files and background papers for historical monographs and studies, and files relating to national security matters.

4. Department of Defense, Joint Staff (N1–218–00–2, 26 items, 18 temporary items). Records relating to organizational and manpower matters accumulated by the Joint Staff and combatant commands. Included are such records as background papers and drafts submitted in connection with proposed changes in organizational structure, requests and other files pertaining to changes in manpower authorizations, civilian position statements, reports on manpower utilization and expenses, and electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of such files as organization charts and related documents, records of committees and boards, and manpower criteria and requirements are proposed for permanent retention.

5. Department of Defense, Joint Staff (N1–218–00–9, 26 items, 12 temporary items). Records relating to international matters accumulated by the Joint Staff and combatant commands. Included are such records as copies of international agreements and documents, files documenting the release of military information, administrative records relating to foreign military assistance, and electronic systems maintained at combatant commands that feed into systems maintained at higher levels. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of files relating to such matters as international negotiations and agreements, the navigation and overflight program, strategic planning, arms limitation, security assistance, foreign military sales, and international logistics conferences.

6. Department of Defense, Joint Staff (N1–218–00–12, 31 items, 20 temporary items). Records relating to medical matters accumulated by the Joint Staff and combatant commands. Included are such records as directives, guides, correspondence and memorandums pertaining to general medical administration, files pertaining to logistical matters, and mental health, family advocacy, and substance abuse case files. Also included are electronic systems maintained at combatant commands that feed into systems maintained at higher levels as well as electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of files relating to such matters as preventive medicine, medical logistical support, medical doctrine, strategic plans, operational support planning, and medical exercises and operations.

7. Department of Defense, Defense Contract Audit Agency (N1–372–01–4, 3 items, 3 temporary items). Records relating to the investigation of hotline complaints. Included are such records as reports, reviews, memoranda of telephone conversations, and related documentation. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of Defense, Defense Contract Audit Agency (N1–372–01–5, 3 items, 3 temporary items). Records verifying actions taken to sanitize or destroy computer hard drives prior to removal from agency custody. Included are certifications, forms, letters, and related documentation confirming that computer hard drives have been overwritten, demagnetized, or destroyed. Also included are electronic copies of documents created using electronic mail and word processing.

9. Department of Health and Human Services, Health Care Financing Administration (N1–440–01–3), 7 items, 7 temporary items). Records relating to Medicaid state plans and amendments. Included are such records as approved plans for administration of the Medicaid program, Attorney General certifications, and formal transmittals and approval notices. Also included are electronic copies of records created using electronic mail and word processing as well as copies of records that have been posted to the agency web site.

10. Department of Health and Human Services, Health Care Financing Administration (N1–440–01–5), 3 items, 3 temporary items). Records relating to Medicare's secondary payer program. Records include case files developed to establish the Government's right to recovery and/or impose other sanctions or corrective actions as well as general correspondence concerning Medicare policies. Also included are electronic copies of records created using electronic mail and word processing.

11. Department of Health and Human Services, Health Care Financing Administration (N1–440–01–6, 3 items, 3 temporary items). Certifications relating to the compliance of health maintenance organizations with the statutory and regulatory requirements of Title XIII of the Public Health Act and Title XVII of the Social Security Act. Also included are electronic copies of records created using electronic mail and word processing that pertain to compliance activities.

12. Department of the Interior, U.S. Geological Survey (N1–57–01–3, 8 items, 8 temporary items). Records relating to activities carried out under the National Environmental Policy Act. Included are such records as environmental impact statements (EISs) generated by the agency, comments on other agencies' EISs, copies of environmental statement policy memorandums, reports, and general correspondence. Also included are electronic copies of records created using electronic mail, spreadsheets, and word processing.

13. Department of Justice, Office of Policy Development (N1–60–01–4, 4 items, 4 temporary items). Subject, project, and chronological files of the Assistant Attorney General and Deputy Assistant Attorneys General for Policy Development. Also included are electronic copies of records created using electronic mail and word processing.

14. Department of State, Bureau of Human Resources (N1–59–00–10, 18 items, 18 temporary items). Records of the Office of Employee Relations pertaining to such matters as savings bond drives, disciplinary actions, alternative dispute resolution, workers compensation, the provision of reasonable accommodations for the disabled, disability retirement, and health benefits. Also included are electronic systems used to track grievance actions and workers compensation claims as well as electronic copies of documents created using electronic mail and word processing.

15. Department of State, Bureau of Nonproliferation (N1–59–01–12, 72 items, 43 temporary items). Daily activity records, reports and chronological files accumulated at lower levels, conference administrative records, reference files, files of interagency committees for which the bureau is not the chair, proposals and resumes pertaining to International Science Technology Centers, requests from other offices for the clearance of cables, and press files. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are weekly and daily activity reports, higher level chronological files, subject files on various topics handled by the bureau, files of interagency committees for which the bureau is chair, arms transfer case files, information reports files, export case files, and background and briefing books.

16. Department of Transportation, United States Coast Guard (N1–26–01–1, 8 items, 8 temporary items). Data input files, outputs, electronic master files, back-up files, and system documentation pertaining to electronic systems used for acquisition and accounting. Also included are electronic copies of records created using electronic mail and word processing.

17. Environmental Protection Agency, Office of Enforcement and Compliance Assurance (N1–412–99–24, 9 items, 9 temporary items). Records of the Criminal Enforcement Counsel and Criminal Investigation Division relating to criminal investigations. Also included are records pertaining to legal advice issued to investigators and electronic copies of documents created using electronic mail and word processing.

18. Nuclear Regulatory Commission, Regional Offices (N1–431–00–21, 2 items, 2 temporary items). Records relating to the receipt, review, and resolution of allegations of improper actions by employees and contractors. Included are descriptions of complaints, along with related correspondence, recommendations, and conclusions. Also included are electronic copies of documents created using electronic mail and word processing.

Dated: October 9, 2001.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 01–26004 Filed 10–16–01; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public

Law 92–463), as amended, notice is hereby given that two meetings of the Combined Arts Advisory Panel to the National Council on the Arts (Access and Heritage/Preservation categories) will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

Dance: November 5–7, 2001, Room 730. A portion of this meeting, from 9:30 a.m. to 10:30 a.m. on November 7th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on November 5th–6th, and from 10:30 a.m. to 2:30 p.m. on November 7th, will be closed.

Folk & Traditional Arts: November 6–9, 2001, Room 716. A portion of this meeting, from 1:30 p.m. to 2:30 p.m. on November 8th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 6:30 p.m. on November 6th and 7th, from 9:00 a.m. to 1:30 p.m. and 2:30 p.m. to 6:30 p.m. on November 8th, and from 9:00 a.m. to 5:30 p.m. on November 9th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 22, 2001, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: October 11, 2001.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 01–26002 Filed 10–16–01; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 94–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit modification received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application within 30 days of the publication of this notice. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

Description of Permit Modification Requested: The Foundation issued a permit (2000–004) to Dr. Paul J. Ponganis on September 21, 1999. The issued permit allows the applicant to capture up to 60 Emperor adults and 55 Emperor chicks for collection of samples and application of various depth recorders, physiological recorders or video cameras to study the thermoregulation and underwater behavior of Emperor penguins.

The applicant requests a modification to his permit to allow access to Beaufort Island, Ross Sea, Antarctic Specially Protected Area No. 105 to perform a census at the Emperor penguin colony. Current satellite images and sea ice conditions extend further north and well beyond Beaufort Island than in previous seasons. These conditions offer a unique opportunity to census the Beaufort Island Emperor colony and compare that count with the aerial photo censuses taken over the past 15 years. Access will be via helicopter landing offshore on the sea ice and the visit is expected to require approximately 3 hours.

Location: ASPA 105—Beaufort Island, Ross Sea.

Dates: November 15, 2002 to February 28, 2002.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 01–26118 Filed 10–16–01; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456 and STN 50–457]

Exelon Generation Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Exelon Generation Company, LLC (the licensee), to withdraw its August 2, 2001, application as supplemented by their letters dated August 6, 2001, and August 7, 2001, for proposed amendment to Facility Operating License Nos. NPF–72 and NPF–77 for the Braidwood Station, Unit Nos. 1 and 2, located in Will County, Illinois.

The proposed amendment would have revised the technical specification (TS), on an exigent basis, allowing the licensee to temporarily increase the average temperature limit of the UHS from 100 °F to 102 °F through September 30, 2001.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 15,

2001, (66 FR 42895). However, by letter dated September 21, 2001, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 2, 2001, as supplemented by their letters dated August 6, 2001, August 7, 2001, and the licensee's letter dated September 21, 2001, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville,Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index/html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 11th day of October 2001.

For the Nuclear Regulatory Commission.

Mahesh Chawla,

Project Manager, Section 2, Project Directorate III,Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–26106 Filed 10–16–01; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Twenty-Ninth Nuclear Safety Research Conference

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Twenty-Ninth Nuclear Safety Research Conference (NSRC), formerly known as the Water Reactor Safety Meeting, will be held October 22–24, 2001, from 8 a.m. to 5 p.m. at the Marriott Hotel at Metro Center, 775 12th Street, NW., Washington, DC.

Please note that while the name of the conference has changed to more accurately reflect the broad range of topics that we now cover, the objective is still to promote dialogue with stakeholders about research that develops and confirms technical bases for regulatory decisions and prepares the Agency for the future.

Ashok C. Thadani, Director of the Office of Nuclear Regulatory Research, will open the conference on Monday, October 22, 2001, and NRC Chairman Richard Meserve will be the keynote speaker. Roy Zimmerman, Deputy Director of the Office of Nuclear Regulatory Research, will follow Chairman Meserve by discussing recent accomplishments in the Office of Nuclear Regulatory Research.

An expert panel will provide an overview of safety research programs worldwide. Panel members will include Dr. Michel Livolant, Institute de Protection et de Surete Nucleaire of France; Dr. William Magwood, U.S. Department of Energy; Dr. Theodore Marston, Electric Power Research Institute; Dr. Kunihisa Soda, Japan Atomic Energy Research Institute; and Dr. Ashok Thadani, NRC.

NRC Commissioner Greta J. Dicus will be a guest speaker at the Monday morning plenary session.

Technical sessions on advanced reactors and dry cask research will be held in the afternoon.

On Tuesday, October 23, 2001, two expert panel sessions are planned in the morning. The first expert panel on waste and decommissioning will start at 8 a.m. and will discuss current research initiatives for addressing issues in human and environmental health risk assessment. Panel members will include NRC Commissioner Edward McGaffigan, Jr; Mr. Andrew Wallo, U.S. Department of Energy; Mr. Michael Boyd, U.S. Environmental Protection Agency; Mr. Thomas Cardwell, Texas Department of Health; and Mr. Luc Baekelandt, Federal Agency for Nuclear Control in Belgium.

The other expert panel will be on advanced reactors and will provide an overview of ongoing programs and a discussion of the safety attributes of advanced designs, key issues in licensing and development, research needs and priorities, and the outlook for the future. Panel members will include NRC Commissioner Jeffrey S. Merrifield; Dr. Ron Simard, Nuclear Energy Institute; Dr. Theodore Marston, Electric Power Research Institute; Dr. William Magwood, U.S. Department of Energy; Dr. Vladimir Asmolov, Kurchatov Institute of Russia; Mr. Peter Lyons, U.S. Senate Staff (Senator Peter Domenici); and Mr. Edward Lyman, Nuclear Control Institute.

Technical sessions on fuels research and age-related issues and research will be held in the afternoon.

On Wednesday, October 24, 2001, NRC Commissioner Nils J. Diaz will provide brief remarks at 8 a.m. and will be followed by two expert panels and two technical sessions are planned. The first panel will start at 8:15 a.m. and will explore and seek innovative ways to communicate the role, scope, and content of the Office of Nuclear Regulatory Research program. Panelists include Mr. Dwight Cates, Committee on Energy and Commerce, U.S. House of Representatives; Ms. Maureen Conley of Inside N.R.C.; Ms. Angie Howard, NuclearEnergy Institute; Professor Andrew Kadak, Massachusetts Institute of Technology; Mr. David Lochbaum, Union of Concerned Scientists; Dr. Timo Okkonen, STUK—Radiation and Nuclear Safety Authority; Ms. Margaret Federline, USNRC; and Ms. Patricia Norry, Deputy Executive Director for Management Services, USNRC.

The second expert panel will be on fuels. It will look at issues to be addressed in an NRC safety research program and discuss whether the current spectrum of research projects are adequate.

Technical sessions on fuels and risk-informing regulatory practices will be held for the remainder of the day.

This international conference includes presentations by personnel from the U.S. Government, national laboratories, private contractors, universities, reactor vendors, and a number of foreign organizations.

Those who wish to attend are encouraged to register in advance on the NSRC website (*www.bnl.gov/NSRC*) or by contacting Susan Monteleone, Brookhaven National Laboratory, Department of Nuclear Energy, Building 130, Upton, NY 11973, telephone (631) 344–7235; or Sandra Nesmith (301) 415–6437, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 2nd day of October 2001.

For the Nuclear Regulatory Commission.

Mabel F. Lee,

Director, Program Management, Policy Development& Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 01–26107 Filed 10–16–01; 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

Note: The publication date for this notice will change from every other Wednesday to every other Tuesday, effective January 8, 2002. The notice will contain the same information and will continue to be published biweekly.

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 September 24, 2001 through October 5, 2001. The last biweekly notice was published on October 3, 2001 (66 FR 50463).

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 Administrative 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, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 16, 2001, 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 NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. 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: Rulemaking and Adjudications Branch, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, 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, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document room (PDR) Reference staff at 1–800–397–4209, 304–415–4737 or by email to pdr@nrc.gov.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: August 13, 2001.

Description of amendment request: The proposed amendment would change the requirement to withdraw the first set of reactor vessel surveillance specimens by deferring withdrawal for one additional operating cycle.

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:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The withdrawal in Fall 2003 refueling outage vice the March 2002 refueling outage and the deferral of the withdrawal of the vessel surveillance specimens are not initiators of or precursors to any of the accident scenarios presented in the [Updated Safety Analysis Report] USAR. This schedular adjustment will not increase the likelihood of equipment failure, will not defeat the design reactor protection functions, and will not increase the likelihood of a catastrophic failure of any plant structure, system, or component. The vessel surveillance specimens are used as the basis for the pressure-temperature (P/T) curves. However, despite the deferral for one cycle of withdrawal of the vessel surveillance specimens, the P/T curves will continue to conservatively be established in accordance with Regulatory Guide (RG) 1.99, ''Radiation Embrittlement of Reactor Vessel Materials,'' Revision 2, as described in the USAR. Therefore, this change does not involve an increase in the probability of any accident previously evaluated.

The proposed change to the withdrawal schedule for the vessel surveillance specimens postpones the collection of one of two sets of data needed to confirm the basis of the P/T curves with no change to the currently allowed P/T curves. The P/T curves that are in the [Technical Specifications] TS will continue to be based on RG 1.99. The deferral of the removal of the first set of specimens will not affect the confirmation of the bases for the P/T curves because the withdrawal schedule for the second set of specimens is not being changed with this request. Because the basis for the P/T curves is maintained, this proposed change does not impact or increase the assumed radionuclide source term and will not result in an unacceptable reduction in reactor vessel toughness. Therefore, this change does not involve an increase in the consequences of any accident previously evaluated.

In summary, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed deferral for one cycle of the removal of the vessel surveillance specimens does not involve a change to the plant design or operation. No new equipment will be installed or utilized, and no new operating conditions will be initiated as a result of this change. Because the P/T curves are not impacted, the safety function of the reactor vessel to mitigate the release of radioactive steam and limit reactor inventory loss under normal, accident, and transient conditions is not affected. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The deferral for one cycle of the withdrawal of the vessel surveillance specimens does not affect the P/T curves, and therefore does not affect the margin to safety for brittle fracture. Because two sets of specimens are needed to confirm the basis for the P/T temperatures and because the schedule for the withdrawal of the second set of specimens is not changing, the P/T curves continue in the interim to conform to RG 1.99. The proposed change does not challenge the integrity of the fuel cladding, reactor coolant pressure boundary that includes the reactor vessel, or the primary containment.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The Nuclear Regulatory Commission (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.

Attorney for licensee: Robert Helfrich, Mid-West Regional Operating Group, Exelon Generation Company, LLC, 1400 Opus Place, Suite 900, Downers Grove, IL 60515

NRC Section Chief: Anthony J. Mendiola

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: September 17, 2001.

Description of amendment request: The proposed amendment would modify the Technical Specification (TS) surveillance requirement for the containment spray nozzles by changing the test frequency from ''once per 10 years'' to ''following activities that could result in nozzle blockage.''

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:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the testing requirements for the containment spray nozzles to only require verification that each spray nozzle is unobstructed following activities that could result in nozzle blockage. The only event for which the containment spray system is considered an initiator is the maximum containment negative pressure event. This event involves inadvertent actuation of containment spray following a break in the reactor water cleanup system inside containment described in Updated Safety Analysis Report (USAR) Section 6.2.1.1.4.2. This change does not increase the likelihood for an inadvertent actuation of the containment spray system.

The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. No active or passive failure mechanisms that could lead to an accident are affected. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. As a result, the probability of any accident previously evaluated, is not significantly increased.

The consequences of a previously evaluated accident are not significantly increased. The proposed change revises the current Surveillance Frequency from 10 years to following activities that could result in spray nozzle blockage. Since activities that could introduce foreign material into the system (such as inadvertent actuation of the containment spray system or loss of foreign material control) are the most likely cause for obstruction, testing or inspection following such activities would verify the nozzle(s) being unobstructed, and the system capable of performing its safety function. No other evolutions require the system boundary to be breached, so introduction of debris during times when maintenance activities are not in progress are precluded. Introduction of foreign materials into the system from the exterior is highly unlikely due to the location of the spray headers, the passive nature of the nozzles, and the fact that the containment spray headers are maintained dry which does not lend itself to active degradation mechanisms such as corrosion. The proposed testing requirements are considered sufficient to provide a high degree of confidence that containment spray flow will be available when required. Therefore, the proposed change does not significantly increase the consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to the test frequency for the containment spray system nozzles does not involve the use or installation of new equipment. Installed equipment is not operated in a new or different manner. No new or different system interactions are created, and no new processes are introduced. The current foreign material exclusion practices have been reviewed and judged sufficient to provide high confidence that debris will not be introduced during times when the system boundary is breached.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The revision to the containment spray nozzle testing frequency does not introduce any new setpoints at which protective or mitigative actions are initiated. No current setpoints are altered by this change. The design and functioning of the containment spray system is unchanged. Since the system is not susceptible to corrosion induced obstruction nor is the introduction of foreign material from the exterior likely, the proposed testing frequency is sufficient to provide high confidence that the containment spray system will be available to provide the flow necessary to ensure that the effects of drywell bypass leakage and low energy line breaks are mitigated. Therefore, the capacity of the system will remain unchanged. 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.

Attorney for licensee: Robert Helfrich, Mid-West Regional Operating Group, Exelon Generation Company, LLC, 1400 Opus Place, Suite 900, Downers Grove, IL 60515

NRC Section Chief: Anthony J. Mendiola

Carolina Power & Light Company, et al., Docket No. 50–325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of amendment request: September 18, 2001.

Description of amendment request: The proposed amendments would change the Technical Specifications (TS) to revise the Minimum Critical Power Ratio (MCPR) Safety Limit values contained in TS 2.1.1.2, and revise the MCPR Safety Limit values from 1.10 to 1.12 for two recirculation loop operation and from 1.11 to 1.14 for single recirculation loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license amendment will establish MCPR Safety Limit values of 1.12 for two recirculation loop operation and 1.14 for single recirculation loop operation. The revised MCPR Safety Limit values have been determined using NRC-approved methods and procedures. These procedures incorporate cycle-specific parameters and reduced power distribution uncertainties in the determination of the MCPR Safety Limit values. These proposed MCPR Safety Limit values do not affect the operability of any plant systems nor do these revised values compromise any fuel performance limits. Therefore, the proposed change to the MCPR Safety Limit values does not result in an increase in the probability of a previously evaluated accident.

The consequences of a previously evaluated accident are dependent on the initial conditions assumed for the analysis, the behavior of the fuel during the accident, the availability and successful functioning of the equipment assumed to operate in response to the accident, and the setpoints at which these actions are initiated. The MCPR Safety Limit values are determined to ensure that 99.9 percent of the fuel rods will not experience boiling transition during any plant operation if the limit is not exceeded. Operational MCPR limits will be applied that ensure the MCPR Safety Limit is not exceeded during all modes of operation and anticipated operational occurrences. The MCPR Safety Limit does not impact the source term or pathways assumed in accidents previously evaluated. No analysis assumptions are violated, and there are no adverse effects on the factors contributing to offsite and onsite dose. The proposed change to the MCPR Safety Limit values does not affect the performance of any equipment used to mitigate the consequences of a previously evaluated accident. Also, the proposed change does not affect setpoints that initiate protective or mitigative actions. Based on the determination of the MCPR Safety Limit values using conservative NRC-approved methods and the operability of plant systems designed to mitigate the consequences of accidents not being changed, the proposed changes to the MCPR Safety Limit values does not significantly increase the consequences of a previously evaluated accident.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. This proposed license amendment does not involve any facility modifications, and plant equipment will not be operated in a different manner. Also, no new initiating events or transients result from the MCPR Safety Limit changes. As a result, no new failure modes are being introduced. Therefore, the proposed changes to the MCPR Safety Limit values will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety.

The margin of safety is established through the design of the plant structures, systems, and components; through the parameters within which the plant is operated; through the establishment of setpoints for actuation of equipment relied upon to respond to an event; and through margins contained within the safety analyses. The proposed change to the MCPR Safety Limit values does not adversely impact the performance of plant structures, systems, components, and setpoints relied upon to respond to mitigate an accident. The MCPR Safety Limit values have been calculated using NRC-approved methods and procedures. The MCPR Safety Limit values are determined to ensure that 99.9 percent of the fuel rods will not experience boiling transition during any plant operation if the limits are not exceeded, thereby ensuring that fuel cladding integrity is maintained. Based on the assurance that the fuel design criteria are being met, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Section Chief: Richard P. Correia.

Dominion Nuclear Connecticut, Inc., Docket Nos. 50–245, 50–336, and 50–423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of amendment request: August 8, 2001.

Description of amendment request: The proposed amendment would incorporate two changes into each operating license: (1) Revise the physical protection (security) related license condition to indicate that the physical security program plans listed, may, rather than do contain, safeguards information, and (2) change the name of the ''Millstone Nuclear Power Station'' to the ''Millstone Power Station.''

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 first proposed clarification modifies the physical protection (security) related license condition within the respective operating license (OL) to indicate the physical security program plans listed, may, rather than do contain, safeguards information. The second proposed change to reflect the change in name of the facility from the ''Millstone Nuclear Power Station'' to the ''Millstone Power Station'' is editorial. Neither of these changes alter any regulatory requirements or have an impact on the acceptance criteria for any design basis accident described in the respective Unit 2 or 3 Updated Final Safety Analysis Report (UFSAR) or the Unit I Defueled Safety Analysis Report (DSAR).

These changes have no impact on plant equipment operation. Since the changes are solely an administrative or editorial change to the OL, they cannot affect the likelihood or consequences of accidents. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes have no impact on plant operation. Since the proposed changes are solely an administrative or editorial change to the OL, they do not affect plant operation in any way.

The changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The changes do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Since the proposed changes are solely a clarification or an editorial change to the OL, they do not affect plant operation in any way. The proposed changes do not impact any acceptance criteria for the design basis accidents described in the respective Unit No. 2 or No. 3 UFSAR or the Unit No. 1 DSAR and do not impact the consequences of accidents previously evaluated. Therefore, the proposed changes will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, Connecticut 06835.

NRC Section Chief: Stephen Dembek

Dominion Nuclear Connecticut Inc., et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of amendment request: August 9, 2001.

Description of amendment request: The proposed amendments modify the Millstone Nuclear Power Station, Unit Nos. 2 (MP2) and 3 (MP3) Technical Specifications (TSs) to avoid confusion between the qualification standards of the facility staff, who are qualified to American National Standards Institute (ANSI) N18.1–1971/Regulatory Guide (RG) 1.8 Revision 0, and the operators who will be qualified to the education and experience guidelines outlined by National Academy for Nuclear Training ACAD 00–003 ''Guidelines for Initial Training and Qualification of Licensed Operators.''

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.

The proposed administrative clarification modifies the Unit Nos. 2 and 3 TS to avoid confusion between the qualification standards of the facility staff, who are qualified to American National Standards Institute (ANSI), ''Selection and Training of Nuclear Power Plant Personnel,'' ANSI N18.1–1971/Regulatory Guide 1.8, Revision 0, ''Qualification and Training of Personnel for Nuclear Power Plants,'' and the operators who will be qualified to the education and experience guidelines outlined by National Academy for Nuclear Training (NANT 2000 Guidelines), ACAD 00–003, ''Guidelines for Initial Training and Qualification of Licensed Operators.'' The training of the operators themselves is not affected, this change only modifies the education and experience requirements they must meet to qualify for the operator training program. The reactor operator and senior reactor operator applicant (or upgrade) still must learn and are tested on the same material, demonstrate their proficiency on the facility simulator and meet other requirements. Consequently, this change has no impact on the capability of licensed operators, it only modifies and provides alternative qualifications for entry into the program.

This change will not alter any regulatory requirements or have an impact on the acceptance criteria for any design basis accident described in the respective Unit Nos. 2 or 3 Updated Final Safety Analysis Report (UFSAR).

The change has no impact on plant equipment operation. Since the change is solely an administrative change to the Technical Specifications, it cannot affect the

likelihood or consequences of accidents. Therefore, this change will not increase 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.

The proposed change has no impact on plant operation. Since the proposed change is solely an administrative change to the Technical Specifications, it does not affect plant operation in any way.

The change does not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The change does not alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated. The change does not introduce any new failure modes. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

Since the proposed change is solely an administrative change to the Technical Specifications, it does not affect plant operation in any way.

The proposed change does not impact any acceptance criteria for the design basis accidents described in the respective Unit Nos. 2 or 3 UFSAR and does not impact the consequences of accidents previously evaluated. Therefore, the proposed change will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141–5127.

NRC Section Chief: James W. Clifford.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: June 28, 2001.

Description of amendment request: The proposed amendment modifies the Millstone Nuclear Power Station, Unit No. 3 (MP3) Technical Specifications to remove the surveillance requirement associated with post maintenance testing of the containment isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification change to remove the surveillance requirement to perform post maintenance testing of the containment isolation valves will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The containment isolation valves are not accident initiators. The proposed change will not revise the operability requirements (*e.g.*, valve stroke time) for the containment isolation valves. Proper operation of the containment isolation valves will still be verified, as appropriate, following maintenance activities. As a result, the design basis accidents will remain the same postulated events described in the Millstone Unit No. 3 Final Safety Analysis Report, and the consequences of the design basis accidents will remain the same. Therefore, the proposed change will not increase 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.

The proposed change to the Technical Specifications does not impact any system or component that could cause an accident. The proposed change will not alter the plant configuration (no new or different type of equipment will be installed) or require any unusual operator actions. The proposed change will not alter the way any structure, system, or component functions, and will not significantly alter the manner in which the plant is operated. The response of the plant and the operators following an accident will not be different. In addition, the proposed change does not introduce any new failure modes. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed Technical Specification change to remove the surveillance requirement to perform post maintenance testing of the containment isolation valves will not cause an accident to occur and will not result in any change in the operation of the associated accident mitigation equipment. The operability requirements for the containment isolation valves have not been changed, and proper operation of the containment isolation valves will still be verified, as appropriate, following maintenance activities. The containment isolation valves will continue to be able to mitigate the design basis accidents as assumed in the safety analysis. Therefore, the proposed change will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Waterford, CT 06141–5127.

NRC Section Chief: James W. Clifford.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: September 7, 2001.

Description of amendment request: The proposed amendment would change the Technical Specifications Regarding the Post Accident Monitoring Instrumentation (Table 3.3.3–1 of Section 3.3.3. ''Post Accident Monitoring Instrumentation''). Specifically, the proposed amendment would reword the number of required channels stated for the core exit thermocouples (CETs) to be the same as the Standard Technical Specifications; delete notes that describe the redundant channels for the Reactor Coolant System (RCS) Hot Leg Temperature, the RCS Cold Leg Temperature and Main Steam Line Radiation and modify the note pertaining to the redundant channel for Steam Generator Level (Wide Range) to clarify what Condition Statements apply when the instrument channel and/or the Auxiliary Feedwater Flow instrument channel is inoperable. Other existing notes in the Table are proposed to be renumbered to accommodate the above 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, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed [proposed] application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: The proposed amendment involves rewording or clarification of technical specification requirements to properly reflect the design of post accident monitoring instrumentation at Indian Point 3. The proposed rewording of the required channels for core exit thermocouples adopts the wording from the Standard Technical Specifications, which is applicable to the Indian Point 3 design. The proposed deletion of Notes (a), (b), and (g) removes design information that is not needed for the specification to limit plant operation in response to inoperable instrument channels. The proposed rewording of Note (f) clarifies the existing requirement by making a more explicit statement about the applicable conditions for the affected functions.

Renumbering other Table notes is an editorial change to keep the notes in sequential order.

The proposed amendment does not involve any changes to plant equipment, setpoints, or the way in which the plant is operated. These changes do not affect accident initiators or accident mitigating systems. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed amendment involves rewording or clarification of technical specification requirements to properly reflect the design of post accident monitoring instrumentation at Indian Point 3. The proposed amendment does not involve any changes to plant equipment, setpoints, or the way in which the plant is operated. These changes do not affect accident initiators or accident mitigating systems. Therefore the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed license amendment involve a significant reduction in a margin of safety?

Response: The proposed amendment involves rewording or clarification of technical specification requirements to properly reflect the design and licensing basis of post accident monitoring instrumentation at Indian Point 3. The proposed rewording of the required channels for core exit thermocouples adopts the wording from the Standard Technical Specifications, which is applicable to Indian Point 3. This will ensure that appropriate condition statements are entered in the event that core exit thermocouples become inoperable. Notes (a), (b), and (g) provide design information that is not needed in the specification for plant operators to enter appropriate condition statements when inoperable instrument channels in the affected functions are identified. The rewording of Note (f) more clearly states the existing requirement and makes no change to the required actions or completion times for the associated inoperable instrument channels.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Generating Station, 600 Rocky Hill Road, Plymouth, MA 02360.

NRC Section Chief: Lakshminaras Raghavan, Acting.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: August 13, 2001.

Description of amendment request: The proposed amendments would revise technical specifications (TS) to support a planned upgrade to the reactor water level instrumentation. Currently, many low-level actuation functions use Yarway level indicating switches. This includes emergency core cooling system (ECCS), reactor core isolation cooling (RCIC) and feedwater systems. The Yarways will be replaced with more reliable analog level transmitters and additional electronic trip units. The upgrade will provide sensing devices for reactor vessel water level signals and indications that are more reliable with less drift and will require less frequent surveillance requirements. The proposed changes align the TS surveillance requirements with the instrumentation upgrades. This includes changes to calibration frequencies, functional testing and allowable values.

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 proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

During the upcoming refueling outages at Quad Cities Nuclear Power Station (Unit 1 and Unit 2), a design change will be implemented that upgrades the existing reactor vessel level trip instrumentation used in various applications at Quad Cities Nuclear Power Station, including the Emergency Core Cooling System (ECCS), Reactor Core Isolation Cooling System (RCIC) and Feedwater systems.

Technical Specification (TS) requirements that govern operability or routine testing of plant instruments are not assumed to be initiators of any analyzed event because these instruments are intended to prevent, detect, or mitigate accidents. Therefore, these changes will not involve an increase in the probability of occurrence of an accident previously evaluated. Additionally, these changes will not increase the consequences of an accident previously evaluated because the proposed change does not adversely impact structures, systems, or components (SSCs). The planned instrument upgrade is a more reliable design than existing equipment. The proposed TS change maintains existing requirements that ensure components are operable when necessary for the prevention or mitigation of accidents or transients. Revised allowable values for the associated functions have been established in accordance with EGC's setpoint methodology, which is consistent with industry standards. The setpoint methodology establishes TS allowable values that assure systems structures and components (including initiation and trip functions) respond in a manner consistent with the plant safety analysis. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite. For these reasons, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes support a planned instrumentation upgrade. The change provides revised Surveillance Requirements to ensure operability. The change does not adversely impact the manner in which the instrument will operate under normal and abnormal operating conditions. These changes reflect the improved performance of the instrumentation upgrade and provide an equivalent level of safety. The changes in methods governing normal plant operation are consistent with the current safety analysis assumptions. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed change supports a planned instrumentation upgrade. The proposed change does not affect the probability of failure or availability of the affected instrumentation. The change to an analog trip system to monitor reactor vessel level provides for increased reliability. The change has no impact on the underlying design functions. The proposed TS surveillance requirements are consistent with current TS requirements for functions that employ analog trip unit devices. The proposed allowable values have been established in accordance with EGC's setpoint methodology, which considers instrument design and performance characteristics. The methodology establishes TS allowable values with sufficient margin to assure that the plant safety analysis assumptions (e.g., certain initiation and trip functions) are maintained. As such, the trip and actuation functions continue to ensure design basis requirements are maintained. Therefore, it is concluded that the proposed changes will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1 (BVPS–1), Beaver County, Pennsylvania

Date of amendment request: June 29, 2001.

Description of amendment request: The proposed license amendment would change the technical specifications (TSs) to reflect revised reactor coolant system (RCS) heatup and cooldown pressure and temperature (P/T) limit curves that will be valid through 22 effective full power years (EFPYs). The overpressure protection system (OPPS) power-operated relief valve (PORV) setpoints and the OPPS enabling temperature would also be revised. The proposed BVPS–1 P/T limits incorporate the results from the testing of the Capsule Y described in WCAP–15571, ''Analysis of Capsule Y from Beaver Valley Unit 1 Reactor Vessel Radiation Surveillance Program,'' Revision 0, November 2000. These changes have been prepared using the Nuclear Regulatory Commission-approved methodology described in WCAP–14040–NP–A, ''Methodology Used to Develop Cold Overpressure Mitigating System Setpoints and RCS Heatup and Cooldown Limit Curves,'' Revision 2, January 1996, with two exceptions. These exceptions include the use of (1) the American Society of Mechanical Engineers (ASME) Code Case N–640, ''Alternate Reference Fracture Toughness for Development of P–T Curves for Section XI, Division 1,'' March 1999, and (2) the ASME Boiler and Pressure Vessel Code, Section XI, ''Rule for Inservice Inspection of Nuclear Power Plant Components,'' Appendix G, ''Fracture Toughness Criteria for Protection Against Failure,'' December 1995 (through 1996 Addendum). The TS Bases and Figure Index will also be changed to reflect the revisions discussed above.

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 proposed changes do not result in physical changes being made to structures, systems, or components (SSCs), or to event initiators or precursors. Changing the heatup and cooldown curves, power operated relief valve (PORV) setpoint and overpressure protection system (OPPS) enable temperature to reflect 22 effective full power years (EFPY) will not affect the ability of the OPPS to control the reactor coolant system (RCS) at low temperatures such that the integrity of the reactor coolant pressure boundary (RCPB) is not compromised by violating the pressure/temperature (P/T) limits. These changes were determined in accordance with the methodologies set forth in the regulations to provide an adequate margin of safety to ensure the reactor vessel will withstand the effects of normal cyclic loads due to temperature and pressure changes as well as the loads associated with postulated faulted events.

Also, the proposed changes do not impact the design of plant systems such that previously analyzed SSCs would now be more likely to fail. The initiating conditions and assumptions for accidents described in the Updated Final Safety Analysis Report (UFSAR) remain as previously analyzed. Thus, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

The proposed changes do not alter any assumptions previously made in the radiological consequence evaluations nor affect mitigation of the radiological consequences of an accident described in the UFSAR. As such, the consequences of accidents previously evaluated in the UFSAR will not be increased and no additional radiological source terms are generated. Therefore, there will be no reduction in the capability of those SSCs in limiting the radiological consequences of previously evaluated accidents and reasonable assurance that there is no undue risk to the health and safety of the public will continue to be provided. Thus, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed changes do 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?

No. The proposed changes do not involve physical changes to analyzed SSCs or changes to the modes of plant operation defined in the technical specification. The proposed changes do not involve the addition or modification of plant equipment (no new or different type of equipment will be installed) nor do they alter the design or operation of any plant systems. No new accident scenarios, accident or transient initiators or precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes.

The proposed changes do not cause the malfunction of safety-related equipment assumed to be operable in accident analyses. No new or different mode of failure has been created and no new or different equipment performance requirements are imposed for accident mitigation. As such, the proposed changes have no effect on previously evaluated accidents.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

No. The proposed changes have been determined through supporting analyses to be in accordance with the methodologies set forth in the regulations. Compliance with NRC approved methodologies provide for an adequate margin of safety and ensure the reactor vessel will withstand the effects of normal cyclic loads due to temperature and pressure changes as well as the loads associated with postulated faulted events as described in the UFSAR.

The new heatup and cooldown curves define the limits for ensuring prevention of nonductile failure for the BVPS Unit No. 1 reactor vessel and do not significantly reduce the margin of safety for the plant.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: L. Raghavan (Acting).

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: September 27, 2001.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to (1) change the diesel fuel supply volume required for diesel generator (DG) operability, (2) clarify existing wording, (3) add a TS limiting condition for operation (LCO) and a TS surveillance requirement (SR) regarding DG air receivers, (4) delete a current TS SR concerning DG starting air compressors, and (5) restructure and renumber the TS LCOs and SRs for applicability and administrative purposes.

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 a[n] accident previously evaluated.

The proposed Technical Specification changes do not introduce new equipment or new equipment operating modes, nor do the proposed changes alter existing system

relationships. The proposed amendment does not introduce new failure modes.

The proposed revision to the Monticello TS[s] renumbers and relocates TS[s] as appropriate to provide a more understandable TS, deletes an existing TS SR which does not satisfy the requirements of 10 CFR 50.36 for inclusion in the TS[s], adds a new TS LCO and SR for DG air start receivers which more appropriately complies with the requirements of 10 CFR 50.36, and revises the minimum number of gallons of diesel fuel required in the Diesel Oil Storage Tank for the DG to be declared operable.

Therefore, the proposed amendment will 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 analyzed.

The proposed changes do not introduce a new mode of plant operation, or involve a physical modification to the plant. The proposed Technical Specification changes do not introduce new equipment, nor do the proposed changes alter existing system relationships. The proposed amendment does not introduce new failure modes.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed changes maintain the current TS requirements for safe operation of the Monticello plant. The proposed changes do not involve a physical modification to the plant, or a new mode of operation. The proposed changes do not alter the scope of equipment currently required to be operable nor do the proposed changes affect equipment safety functions. The proposed Technical Specification changes do not introduce new equipment, nor do the proposed changes alter existing system relationships. The proposed amendment does not introduce new failure modes.

Therefore, these proposed changes will 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.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: William D. Reckley

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: August 17, 2001.

Description of amendment request: The proposed Technical Specifications (TS) change will: (1) modify Salem TS surveillance requirement 4.6.2.3, and (2) revise the associated TS Bases. Specifically, the proposed change will modify the current acceptance criterion for the service water flow rate through the Containment Fan Coil Units from ≥ 2,550 gallons per minute (gpm) to ≥ 2,300 gpm.

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 not involve a significant increase in the probability or consequences of an accident previously evaluated.

The containment ventilation system, including the containment fan coil units is not an accident initiator.

The proposed TS change to modify the Salem TS surveillance requirement 4.6.2.3 to the service water-cooling water flow through the fan coil units is bounded by the present licensing and design bases analyses. The new proposed flow rate, in conjunction with its associated heat exchanger thermal fouling factor, will continue to maintain the assumed minimum containment heat removal capability to be within the Salem Updated Final Safety Analysis Report (UFSAR) Chapter 15 analyses. Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed TS change to modify the Salem TS surveillance requirement 4.6.2.3 to the service water-cooling water flow though the fan coil units is bounded by the present licensing and design bases analyses. The manner and frequency at which the surveillance test is conducted remains unchanged. The physical facility remains unchanged.

Therefore, the new proposed flow rate does not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. Does not involve a significant reduction in a margin of safety.

The proposed TS change to modify the Salem TS surveillance requirement 4.6.2.3 to the service water-cooling water flow though the fan coil units is bounded by the present licensing and design bases analyses. The new proposed flow rate, in conjunction with its associated heat exchanger thermal fouling factor, will continue to maintain the assumed minimum containment heat removal capability to be within the Salem UFSAR Chapter 15 analyses. Consequently, the existing margins of safety with respect to the current design-basis assumptions of pressure of 47 psig and a saturation temperature of 271 °F in containment during a design-basis accident is maintained.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of amendment request: August 31, 2001.

Description of amendment request: The proposed amendment would allow a one-time deferral of the Type A Containment Integrated Leak Rate Test based on the risk-informed guidance in Regulatory Guide 1.174.

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 Specification change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to Technical Specification 5.5.12 (''Primary Containment Leakage Rate Testing Program'') involves a one-time extension to the current interval for Type A containment testing. The current test interval of ten (10) years would be extended on a one-time basis to no longer than fifteen (15) years from the last Type A test. The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner which the

plant is operated or controlled. The reactor containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such the reactor containment itself and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident, and do not involve the prevention or identification of any precursors of an accident. Therefore, the proposed Technical Specification change does not involve a significant increase in the probability of an accident previously evaluated.

The proposed change involves only the extension of the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications. Industry experience has shown, as documented in NUREG–1493, that Type B and C containment leakage tests have identified a very large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is very small. HNP Unit 1 ILRT test history supports this conclusion. NUREG–1493 concluded, in part, that reducing the frequency of Type A containment leak tests to once per twenty (20) years leads to an imperceptible increase in risk. The integrity of the reactor containment is subject to two types of failure mechanisms which can be categorized as (1) activity based and (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as design change control and procedural requirements for system restoration ensure that containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the reactor containment itself combined with the containment inspections performed in accordance with ASME Section XI, the Maintenance Rule and the containment coatings program serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing. Therefore, the proposed Technical Specification change does not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision to the Technical Specifications involves a one-time extension to the current interval for Type A containment testing. The reactor containment and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve the prevention or identification of any precursors of an accident. The proposed Technical Specification change does not involve a physical change to the plant or the manner in which the plant is operated or controlled. Therefore, the proposed Technical Specification change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed revision to Technical Specifications involves a one-time extension to the current interval for Type A containment testing. The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The specific requirements and conditions of the Primary Containment Leakage Rate Testing Program, as defined in Technical Specifications, exist to ensure that the degree of reactor containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leakage rate limit specified by Technical Specifications is maintained. The proposed change involves only the extension of the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications.

HNP Unit 1 and industry experience strongly supports the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with ASME Section XI, the Maintenance Rule and the Coatings Program serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing. Additionally, the on-line containment monitoring capability that is inherent to inerted BWR containments allows for detection of gross containment leakage that may develop during power operation. The combination of these factors ensures that the margin of safety that is inherent in plant safety analysis is maintained. Therefore, the proposed Technical Specification 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.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard L. Emch, Jr.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: August 31, 2001.

Description of amendment request: The proposed amendments would extend the completion times for the required actions associated with restoring an inoperable emergency diesel generator.

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 extend the Technical Specifications required Completion Times for restoration of an inoperable emergency diesel generator (DG) to a maximum of 14 days. Additionally, the proposed extension of the Completion Time to 14 days results in a corresponding extension of the time period associated with discovery of failure to meet Limiting Condition for Operation 3.8.1 to 17 days. (This provides a maximum time limit for overlapping inoperabilities of DGs and offsite sources.)

For both Plant Hatch units A and C DGs, to utilize the 72 hours to 14 day period of the proposed extended Completion Time, compensatory action is required to ensure two DGs per unit remain available. This action consists of dedicating the 1B DG to that unit with the inoperable DG. This means that the 1B DG will be inhibited from an automatic swap to the opposite unit when that unit (the non-maintenance unit) experiences and undervoltage condition on its F 4160 volt bus, regardless of the presence or absence of a loss of coolant accident (LOCA) signal. Inhibiting the automatic transfer makes the 1B DG inoperable (with a Completion Time of 14 days) for the non-maintenance unit.

Completion Times are not an initial condition or assumption of any analyzed event. DGs are not initiators of any analyzed event. No event mitigation assumes more than two DGs per unit. The consequences of an accident are independent of the time the DGs are out of service provided adequate DG availability is assured. Compensatory actions are proposed in this amendment request that ensure adequate DG availability for both Plant Hatch units. Therefore, the assumptions regarding DG available are maintained.

To fully evaluate the effect of the proposed DG Completion Time extension, Probabilistic Safety Assessment methods and a deterministic analysis were utilized. The

results of the analyses show no significant increase in Core Damage Frequency (CDF) and Large Early Release Frequency (LERF).

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an event previously analyzed.

2. Do the proposed changes create the possibility of a new or different type of accident from any previously evaluated?

The proposed changes do involve a change to the plant configuration when either unit's A or C DG is utilizing the extended Completion Time (*i.e.,* inoperable in excess of 72 hours). That configuration change ensures that both units have two dedicated DGs. Furthermore, affixing the 1B DG to one unit will cause it (1B DG) to be inoperable with respect to the Technical Specifications. Ensuring two DGs available to each unit for event mitigation in no way creates the possibility of a new or different type of accident.

No other change in the design, configuration, or method of operation of the plant is introduced by the proposed change. The changes do not alter any assumptions made in the safety analyses. No new failure modes are introduced.

Therefore, the proposed changes do not create the possibility of a new or different type of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

Since all assumptions of the plant event analyses are maintained, there is no effect on the margin of safety in any safety analyses. If there is any margin of safety ascribed to DG availability and plant risk, it has been determined that such a margin of safety is not significantly reduced, as the proposed changes have been evaluated both deterministically and using a risk-informed approach. These evaluations concluded the following with respect to the proposed changes:

Applicable regulatory requirements will continue to be met, adequate defense-in-depth will be maintained, sufficient safety margins will be maintained, and any increases in CDF and LERF are small and consistent with the NRC Safety Goal Policy Statement (**Federal Register**, Vol. 51, p. 30028 (51 FR 30028), August 4, 1986, as interpreted by NRC Regulatory Guides 1.174 and 1.177). Furthermore, increases in risk posed by potential combinations of equipment out of service during the proposed DG extended Completion Time will be managed by the site configuration risk management procedure, consistent with 10 CFR 50.65, ''Requirements for Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' paragraph (a)(4).

The availability of offsite power together with the availability of the other DGs and the use of on-line risk assessment tools provide adequate compensation for the potential small incremental increase in plant risk of the extended DG Completion Time. In addition, the increased availability of the DGs during refueling outages offsets the small increase in plant risk during operation. The proposed extended DG Completion Times, in conjunction with the availability of the other DGs continues to provide adequate assurance of the capability to provide power to the engineered safety features buses. Therefore, implementation of the proposed changes will 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.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Richard J. Laufer, Acting.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: September 7, 2001.

Description of amendment request: The proposed amendment would revise Technical Specification Section 3.6.11, ''Ice Bed,'' Surveillance Requirement (SR) 3.6.11.2, SR 3.6.11.3, and the associated Bases, to lower the minimum required average ice basket weight from 1236 pounds to 1110 pounds, and the corresponding total weight of the stored ice in the ice condenser from 2,403,800 pounds to 2,158,000 pounds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The primary purpose of the ice bed is to provide a large heat sink to limit peak containment pressure in the event of a release of energy from a design basis loss-of-coolant (LOCA) or high energy line break (HELB) in containment. The LOCA requires the greatest amount of ice compared to other accident scenarios, therefore the reduction in ice weight is based on the LOCA analysis. The amount of ice in the bed has no impact on the initiation of an accident, but rather on the mitigation of the accident.

The containment integrity analysis shows that the proposed reduced ice weight is sufficient to maintain the peak containment pressure below the containment design pressure, and that the containment heat removal systems function to rapidly reduce the containment pressure and temperature in the event of a LOCA. Therefore, containment integrity is maintained and the consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR) are not significantly increased.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The ice condenser serves to limit the peak pressure inside containment following a LOCA. TVA has evaluated the revised containment pressure analysis and determined that sufficient ice would be present to maintain the peak containment pressure below the containment design pressure. Therefore, the reduced ice weight does not create the possibility of an accident that is different than any already evaluated in the WBN UFSAR. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of this proposed change.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The containment integrity analysis for reduced ice weight results in a peak containment pressure that is slightly lower than that in the previous analysis of record. This reduction in peak pressure, along with the ice weight reduction, is due to the removal of analytical conservatism combined with a better segmental representation of the mass and energy release transient from the computer models.

The revised technical specifications ice weight surveillance limits are based on the ice weight assumed in the containment integrity analysis, with margin included for sublimation that is based on actual sublimation data from the first three refueling cycles at WBN. The analysis further demonstrates that the existing relationship between ice bed melt-out and containment spray switchover has been conservatively maintained. With the reduced ice inventory, melt-out of the ice bed following a worst case large break LOCA has been determined to occur after the switchover of containment spray to the recirculation mode. Thus, the reduced ice bed mass does not result in a reduction in the margin for operator action to effect the switchover.

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.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: August 24, 2001.

Brief description of amendments: The proposed change would revise Comanche Peak Steam Electric Station,

Units 1 and 2, Technical Specification (TS) 3.3.2, entitled ''ESFAS [Engineered Safety Features Actuation System] Instrumentation,'' and TS 3.3.6, entitled ''Containment Ventilation Isolation Instrumentation,'' to change the surveillance frequency for Westinghouse Electric Company-type AR relays, used as Solid State Protection System slave relays or auxiliary relays, from quarterly to refueling outage frequency. Surveillance Requirements 3.3.2.6 and 3.3.6.5 would be revised to change the frequency from ''92 days'' to ''92 days *OR* 18 months for Westinghouse type AR relays.''

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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Technical Specifications does not result in a condition where the design, material, or construction standards that were applicable prior to the change are altered. The same ESFAS instrumentation is being used and the same ESFAS system reliability is expected. The proposed change will not modify any system interface or function and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade or prevent the performance of any accident mitigation systems or alter any assumptions previously made in evaluating the radiological consequences of an accident as described in the safety analysis report.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the performance of the ESFAS mitigation systems assumed in the plant safety analysis. Changing the interval for periodically verifying ESFAS slave relays (assuring equipment operability) will not create any new accident initiators or scenarios.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect the total ESFAS system response assumed in the safety analysis. The periodic slave relay functional verification is relaxed because of the demonstrated high reliability of the relay and its insensitivity to any short term wear or aging effects.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: September 27, 2001 (WO 01–0038)

Description of amendment request: The proposed amendment would revise Section 5.3.1.1 of the Technical Specifications to replace the current qualifications in ANSI/ANS 3.1–1981 for licensed operators and senior operators with the National Academy for Nuclear Training, ''Guidelines for Initial Training and Qualification of Licensed Operators,'' dated January 2000.

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 TS change is an administrative change to clarify the current requirements for licensed operator qualifications and licensed operator training program. [The change conforms] to the current requirements of 10 CFR 55.

Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training. WCNOC's [Wolf Creek Nuclear Operating Corporation's] licensed operator training program is accredited by INPO [Institute for Nuclear Power Operations] and is based on a system[']s approach to training. The proposed TS change takes credit for the INPO accreditation of the licensed operator training program. The TS requirements for all other unit staff qualifications remain unchanged.

Therefore, the proposed change does not involve a signification 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 TS change is an administrative change to clarify the current requirements for licensed operator qualifications and licensed operator training program and to conform to the revised 10 CFR 55.

As noted above, although licensed operator qualifications and training may have an indirect impact on the possibility of a new or different kind of accident from any accident previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised [10 CFR 55] rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and based on a system[']s approach to training. As previously noted, WCNOC's licensed operator training program is accredited by INPO and is based on a system[']s approach to training. The proposed TS change takes credit for the INPO accreditation of the licensed operator training program. The TS requirements for all other unit staff qualifications remain unchanged.

Additionally, the proposed TS change does not affect plant design, hardware, system operation, or procedures. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS change is an administrative change to clarify the current requirements applicable to licensed operator qualifications and licensed operator training program. This change is consistent with the requirements of 10 CFR 55. The TS qualification requirements for all other unit staff remain unchanged.

Licensed operator qualifications and training can have an indirect impact on a margin of safety. However, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR 55 [rule], determined that this impact remains acceptable when licensees maintain a licensed operator training program that is accredited and based on a system[']s approach to training. As noted previously, WCNOC's licensed operator training program is accredited by INPO and is based on a system[']s approach to training.

The NRC has concluded, as stated in NUREG–1262, ''Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, Part 55 on Operators' Licenses,'' that the standards and guidelines applied by INPO in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining an INPO accredited, systems approach based licensed operator training program is equivalent to maintaining an NRC approved licensed operator training program which conform with applicable NRC Regulatory Guides or

NRC endorsed industry standards. The margin of safety is maintained by virtue of maintaining an INPO accredited licensed operator training program.

In addition, the NRC has recently published NRC Regulatory Issue Summary 2001–01, ''Eligibility of Operator License Applicants,'' dated January 18, 2001, ''to familiarize addresses with the NRC's current guidelines for the qualification and training of reactor operator (RO) and senior operator (SO) license applicants.'' This document again acknowledges that the INPO National Academy for Nuclear Training (NANT) guidelines for education and experience, outline acceptable methods for implementing the NRC's regulations in this area.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

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.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: August 14, 2001, as supplemented on August 21, 2001.

Description of amendment request: The proposed amendment would extend the allowed outage time for the high pressure coolant injection (HPCI) and reactor core isolation cooling systems from 7 days to 14 days. Requirements were added to immediately assure the availability of alternate means of high pressure coolant makeup. Also clarifying changes were made to Technical Specification (TS) 3.5.E.2 and TS 3.5.G.2 by reformatting the TSs to make nomenclature consistent regarding HPCI and the automatic depressurization system (ADS) as being systems not subsystems.

Date of publication of individual notice in **Federal Register:** September 16, 2001 (66 FR 48152).

Expiration date of individual notice: October 18, 2001.

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, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: January 29, 2001, as supplemented July 6, 2001.

Brief description of amendment: The amendment removes the note from TMI–1 Technical Specification 4.5.4.1 which restricts the applicability of the specified Engineered Safeguards Feature (ESF) Systems leakage rate limit of 15 gallons per hour to the current operating cycle (Cycle 13). The amendment also approves full scope implementation of an alternate source term for TMI–1 in accordance with Title 10 of the Code of Federal Regulations (10 CFR) Section 50.67.

Date of issuance: September 19, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 235.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 2001 (66 FR 31703).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 2001.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: January 23, 2001, as supplemented August 22 and September 17, 2001.

Brief description of amendment: The amendment revised the TMI–1 Technical Specification requirements for containment integrity associated with the personnel and emergency air locks during fuel movement and refueling operations. Partial implementation of an alternate source term (AST) in accordance with Regulatory Guide 1.183, ''Alternate Source Terms for Evaluating Design Basis Accidents at Nuclear Power Plants,'' and Title 10 of the Code of Federal Regulations, Section 50.67,

which the licensee had also requested in its application, was not necessary because the Commission approved full implementation of an AST for TMI–1 in Amendment No. 235 dated September 19, 2001.

Date of issuance: October 2, 2001.

Effective date: As of its date of issuance, contingent upon the licensee's implementation of regulatory commitments contained in the licensee's letters dated August 22 and September 17, 2001, and shall be implemented within 30 days of issuance.

Amendment No.: 236.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 2001 (66 FR 31702).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2001.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: December 6, 2000, as supplemented July 13 and September 6, 2001.

Brief description of amendment: The amendment revises the once-through steam generator (OTSG) surveillance criteria contained in the TMI–1 Technical Specifications (TSs) to allow OTSG tubes to remain in service with indications of inside diameter intergranular attack located below the upper tubesheet secondary face. The changes also extend the repair criteria from a cycle-to-cycle basis to a permanent basis.

Date of issuance: October 5, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 237.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 2001 (66 FR 7669).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 2001.

No significant hazards consideration comments received: No.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: June 15, 2001.

Brief description of amendments: The amendments delete Technical Specifications Section 5.5.3, ''Post Accident Sampling System,'' for Palo Verde Nuclear Generating Station, Units Nos. 1, 2 and 3, and thereby eliminate the requirements to have and maintain the post-accident sampling system.

Date of issuance: September 28, 2001.

Effective date: September 28, 2001, and shall be implemented within 7 months of the date of issuance.

Amendment Nos.: Unit 1–136, Unit 2–136, Unit 3–136.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 2001 (66 FR 41611).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 2001.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: May 1, 2001, as supplemented August 20, 2001.

Brief description of amendments: The amendments change the Technical Specifications related to the pressure-temperature limit curves.

Date of issuance: October 4, 2001.

Effective date: October 4, 2001.

Amendment Nos.: 214 and 241.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register:** May 30, 2001 (66 FR 29350). The August 20, 2001, supplement contained clarifying information only, and did not change the initial no significant hazards consideration determination, or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 2001.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: January 17, 2001, as supplemented March 23 and August 31, 2001.

Brief description of amendments: The amendments change the Technical Specifications to relax the 24-month surveillance frequency of excess flow check valves (EFCVs) by limiting the number of tests to a representative sample every 24 months such that each EFCV will be tested at least once every 10 years.

Date of issuance: October 4, 2001.

Effective date: October 4, 2001.

Amendment Nos.: 215 and 242.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in **Federal Register:** February 21, 2001 (66 FR 11052). The March 23 and August 31, 2001, supplements contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 2001.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–400, Shearon Harris Nuclear Power Plant (HNP), Wake and Chatham Counties, North Carolina

Date of application for amendment: December 13, 2000, as supplemented on February 9, and August 3, 2001.

Brief description of amendment: This amendment revises Technical Specification (TS) 3/4.9.2, ''Refueling Operations—Instrumentation,'' and the associated Bases to permit using one Source Range Nuclear Flux Monitor and one Wide Range Neutron Flux Monitor during MODE 6 (Refueling) instead of the two Source Range Nuclear Flux Monitors specified in the current HNP TS.

Date of issuance: September 10, 2001.

Effective date: September 10, 2001.

Amendment No. 105.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 2001 (66 FR 7672).

The February 9, and August 3, 2001, submittals contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 2001.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: December 14, 2000, as supplemented August 16, and September 12, 2001.

Brief description of amendment: The amendment revises Technical Specification 3/4.8.1 related to Emergency Diesel Generators (EDGs), and specifically revises Surveillance Requirement 4.8.1.1.2.f.7, the 24-hour EDG endurance run test, by removing the restriction to perform the test during shutdown conditions.

Date of issuance: October 3, 2001.

Effective date: October 3, 2001.

Amendment No.: 106.

Facility Operating License No. NPF–63: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 2001 (66 FR 7673). The August 16, and September 12, 2001 supplements contained clarifying information that did not change the scope of the December 14, 2000, application nor the proposed initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 2001.

No significant hazards consideration comments received: No.

Consumers Energy Company, Docket No. 50–155, Big Rock Point Plant, Charlevoix, County, Michigan

Date of amendment request: October 26, 2000, as supplemented by letters dated February 9, February 28, March 14, March 15, March 23, May 2, July 13, July 17, and August 2, 2001.

Brief description of amendment: The amendment revises the Defueled Technical Specifications to reflect the removal of the original 75-ton Reactor Building gantry crane and its replacement with an upgraded single-failure proof crane.

Date of issuance: September 28, 2001.

Effective date: The license amendment is effective as of its date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 122.

Facility Operating License No. DPR–6: The amendment revised the Defueled Technical Specifications.

Date of initial notice in **Federal Register:** May 2, 2001 (66 FR 22025). The supplemental letters dated May 2, July 13, July 17, and August 2, 2001, provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 2001.

No significant hazards considerations comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: December 29, 2000, as supplemented May 2 and July 19, 2001.

Brief description of amendment: The amendment revises the Fermi 2 Technical Specifications associated with handling irradiated fuel assemblies, based on reevaluation of the design-basis fuel handling accident analysis with an alternative radiological source term.

Date of issuance: September 28, 2001.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 144.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 7, 2001 (66 FR 9381). The application was renoticed on August 27, 2001 (66 FR 45062), due to supplemental information beyond the scope of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 2001.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket No. 50–414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of application for amendment: March 9, 2001, as supplemented by letters dated July 25, September 10, and September 13, 2001.

Brief description of amendment: The amendment revised the cold leg elbow tap flow coefficients used in the determination of Reactor Coolant System flow rate. There are no changes to the associated Technical Specifications with this amendment.

Date of issuance: October 2, 2001.

Effective date: As of its date of issuance and shall be implemented before the startup of Cycle 12, and will be in effect only for the duration of Cycle 12.

Amendment No.: 186.

Facility Operating License No. NPF–52: Amendment did not revise the Technical Specifications.

Date of initial notice in **Federal Register:** June 27, 2001 (66 FR 34281). The supplements dated July 25, September 10, and September 13, 2001, provided clarifying information that did not change the scope of the March 9, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2001.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: July 18, 2000, supplemented August 22 and November 8, 2000, and June 7, July 26, and September 5, 2001.

Brief description of amendments: The amendments revised the Technical Specifications to incorporate provisions of the Automatic Feedwater Isolation System.

Date of Issuance: September 26, 2001.

Effective date: As of the date of issuance. It shall be implemented for each Oconee unit prior to reactor startup following installation of the system and training of appropriate personnel.

Amendment Nos.: 320, 320, and 320.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 20, 2000 (65 FR 56949). The supplements dated August 22 and November 8, 2000, and June 7, July 26, and September 5, 2001, provided clarifying information that did not change the scope of the July 18, 2000, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 26, 2001.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 24, 2001, as supplemented by letter dated September 24, 2001.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to incorporate the provisions to perform routine diesel generator (DG) monthly testing by gradually accelerating the DG to

operating speed. In addition, a new TS was added to require fast starts of the DGs on a 184-day frequency.

Date of issuance: September 27, 2001.

Effective date: As of the date of issuance and shall be implemented 120 days from the date of issuance.

Amendment No.: 121.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 7, 2001 (66 FR 13801). The supplemental letter dated September 27, 2001, provided additional information that did not expand the scope of the NRC staff's initial proposed no significant hazards consideration determination (66 FR 13801, published March 7, 2001).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 2001.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 23, 2001, as supplemented by letters dated July 23, 2001, and August 23, 2001.

Brief description of amendment: The amendment changes the following Technical Specifications (TSs): (1) the value of the safety limit minimum critical power ratio was changed in TS 2.1.1.2, (2) an editorial clarification to TS 5.6.5.a.5) was added to include the applicable reactor protection system instrumentation function, and (3) the list of the approved methodologies in TS 5.6.5.b. and the associated Bases and References were updated.

Date of issuance: October 3, 2001.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 122.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 27, 2001 (66 FR 34281). The supplemental letters dated July 23, 2001, and August 23, 2001, provided additional information that did not expand the scope of the application or change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 2001.

No significant hazards consideration comments received: No.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 31, 2001.

Brief description of amendment: The amendment revised Technical Specification 5.5.6, ''Technical Specification (TS) Bases Control Program,'' to provide consistency with the changes to 10 CFR 50.59 which were published in the **Federal Register** (64 FR 53582) on October 4, 1999.

Date of issuance: October 2, 2001.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 192.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 2001 (66 FR 38761). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 2, 2001.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: September 7, 2000, as supplemented December 29, 2000.

Brief description of amendment: The changes revise Technical Specification Section 3.7.B.4 to allow a one-time replacement of Station 125V DC batteries 31 and 32 while at power. The one-time change is necessary to support an on-line replacement of the existing batteries with new batteries. In addition, a change is made on a one-time basis to conduct testing the battery while the plant is not shutdown. Also included is an administrative change involving the deletion of an expired one-time limiting condition for operation statement related to an Emergency Diesel Generator Fuel Oil Storage Tank repair effort.

Date of issuance: September 19, 2001.

Effective date: September 19, 2001.

Amendment No.: 208.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 15, 2000 (66 FR 15922).

The December 29, 2000, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 19, 2001.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: July 31, 2001.

Brief description of amendment: The amendment revised and transferred the inservice testing portion of Technical Specification (TS) 4.0.5 to TS 6.5.8, and eliminated the inservice inspection portion of TS 4.0.5. In addition, other sections of the TSs that reference TS 4.0.5 were revised to be consistent with the revisions discussed above.

Date of issuance: September 24, 2001.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 233.

Facility Operating License No. NPF–6: Amendment revised the TSs.

Date of initial notice in **Federal Register:** August 22, 2001 (66 FR 44167).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 2001.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 22, 2001.

Brief description of amendment: The amendment changes Technical Specifications (TS) 3/4.7.1.2, Emergency Feedwater System, and expands and clarifies the current TS.

Date of issuance: October 4, 2001.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 173.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications and Surveillance Requirements.

Date of initial notice in **Federal Register:** June 27, 2001 (66 FR 34283).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: April 23, 2001.

Brief description of amendments: The amendments deleted the loose parts monitoring system from the LGS Units 1 and 2 Technical Specifications and Bases. The amendments were based on the conclusions of the Boiling Water Reactor Owners' Group TopicalReport NEDC–32975P, ''Regulatory Relaxation for BWR Loose Parts Monitoring System,'' which was approved by the Nuclear Regulatory Commission's Safety Evaluation dated January 25, 2001.

Date of issuance: As of date of issuance and shall be implemented within 30 days.

Effective date: September 19, 2001.

Amendment Nos.: 153 and 117.

Facility Operating License Nos. NPF–39 and NPF–85: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 8, 2001 (66 FR 41619).

The Commission's related evaluation of the amendments is contained in a safety evaluation dated September 19, 2001.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, PSEG Nuclear LLC, and Atlantic City Electric Company, Docket No. 50–278, Peach Bottom Atomic Power Station, Unit 3, York County, Pennsylvania

Date of application for amendment: May 30, 2001 (two letters), as supplemented July 24 (two letters), and August 13, 2001.

Brief description of amendment: This amendment revises Technical Specification 5.5.12 to allow a one-time change in the containment integrated leak rate test interval from the current 10 years to a test interval of 15 years.

Date of issuance: October 4, 2001.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 244.

Facility Operating License No. DPR–56: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 11, 2001 (66 FR 36341). The July 24 (two letters), and August 13, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2001.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, (BVPS–1) Beaver County, Pennsylvania

Date of application for amendment: March 28, 2001, as supplemented by letters dated May 18, June 15, and July 18, 2001.

Brief description of amendment: The amendment approves changes to the BVPS–1 Technical Specification boron concentration limits for the refueling water storage tank, accumulators, boron injection tank (BIT), and the reactor coolant system/refueling canal during Mode 6. In conjunction with the reduction in the maximum boron concentration in the BIT, the temperature controls on the BIT are eliminated.

Date of issuance: September 24, 2001.

Effective date: Immediately and to be implemented within 60 days.

Amendment No: 242.

Facility Operating License No. DPR–66: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 25, 2001 (66 FR 38763). The May 18, June 15, and July 18, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 2001.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Beaver County, Pennsylvania

Date of application for amendment: March 28, 2001.

Brief description of amendment: These amendments approved reductions in the reactor coolant system and secondary coolant system specific activity limits specified in TS 3/4.4.8, ''Reactor Coolant System Specific Activity,'' and TS 3/4.7.1.4, ''Plant Systems Activity.'' These TS changes support revised safety analyses of the design-basis main steam line break dose consequence analysis, which assumes higher primary-to-secondary accident induced leakage in accordance with the methodology described in Generic Letter 95–05, ''Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes by Outside Diameter Stress Corrosion Cracking.'' These amendments also authorized Updated Final Safety Analysis Report (UFSAR) changes.

Date of issuance: September 28, 2001.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment No: 244.

Facility Operating License No. DPR–66: Amendment revised the Technical Specifications and authorized changes to the UFSAR.

Date of initial notice in **Federal Register:** May 30, 2001 (66 FR 29354).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 2001.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit No. 2 (BVPS–2), Beaver County, Pennsylvania

Date of application for amendment: January 18, 2001, as supplemented by letters dated February 20, April 12, May 7, May 18, June 9 (3 letters), June 26, June 29, August 21, and September 5, 2001.

Brief description of amendment: A portion of this amendment approves revisions to BVPS–2 TS 3/4.4.9, ''Pressure/Temperature Limits,'' heatup and cooldown curves.

Date of issuance: September 24, 2001.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 122.

Facility Operating License No. NPF–73: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 27, 2001 (66 FR 39211). The February 20, April 12, May 7, May 18, June 9 (3 letters), June 26, June 29, August 21, and September 5, 2001, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the original notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 24, 2001.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of application for amendments: July 18, 2001, as supplemented August 30 and September 6, 2001.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.9.4 and its associated Bases to allow the containment equipment door to be open during core alterations or movement of non-recently irradiated fuel within the containment, provided that the capability for closure is maintained.

Date of issuance: September 27, 2001.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos: 216 and 210.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the TS.

Date of initial notice in **Federal Register:** August 8, 2001 (66 FR 41622). The August 30 and September 6, 2001, submittals provided clarifying information that did not change the scope of the July 18, 2001, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 2001.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: September 26, 2000, as supplemented February 1, 2001, June 29, 2001, and August 10, 2001.

Brief description of amendments: The amendments would approve changes to revise the current licensing basis, as stated in the updated final safety analysis report, to require operator action to mitigate the effects of a loss of seal injection cooling to the reactor coolant pumps.

Date of issuance: September 28, 2001.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 255 and 238.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments approve changes to the updated final safety analysis report.

Date of initial notice in **Federal Register:** October 18, 2000 (65 FR 62386) The February 1, June 29, and August 10, 2001, supplemental letters did not change the scope of the proposed action and did not change the NRC's preliminary no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 28, 2001.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: April 30, 2001, as supplemented June 27 and August 3, 2001.

Brief description of amendment: The amendment conforms the license to reflect the transfer of Facility Operating License No. DPR–43 for the Kewaunee Nuclear Power Plant (KNPP) to the extent held by Madison Gas & Electric Company (MG&E) to Wisconsin Public Service Corporation (WPSC), as approved by Order of the Commission dated September 20, 2001.

Date of issuance: September 27, 2001.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 159.

Facility Operating License No. DPR–43: Amendment revised the Operating License and Technical Specifications.

Date of initial notice in **Federal Register:** July 27, 2001 (66 FR 39214). The August 3, 2001, supplement was within the scope of the initial application as originally noticed. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 20, 2001.

No significant hazards consideration comments received: No.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: August 8, 2000.

Brief description of amendments: The amendments revised the requirements for the containment isolation valves in the hydrogen/oxygen analyzer containment penetrations. The related safety evaluation also provided approval of an associated request to use closed system boundary valves that do not completely meet the guidance described in the Standard Review Plan, Section 6.2.4, ''Containment Isolation System.''

Date of issuance: September 28, 2001.

Effective date: As of date of issuance and shall be implemented within 30 days.

Amendment Nos.: 195 & 170.

Facility Operating License Nos. NPF–14 and NPF–22: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 12, 2001 (66 FR 31713). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 28, 2001.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 12, 2000, as supplemented April 9, 2001.

Brief description of amendment: This amendment changes the Technical Specifications (TSs) associated with the drywell vacuum breakers and the suppression pool vacuum breakers to provide consistency between the Hope Creek TSs and the improved standard TSs (NUREG–1433).

Date of issuance: October 3, 2001.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 133.

Facility Operating License No. NPF–57: This amendment revised the TSs.

Date of initial notice in **Federal Register:** November 29, 2000 (65 FR 71137). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 2001.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: May 17, 2001, as supplemented on August 6, August 17, and September 12, 2001

Brief description of amendment: The amendment revises the Technical Specifications to permit an increase in the allowable leak rate for the Main Steam Isolation Valves (MSIVs) and to delete the MSIV Sealing System. These changes are based on the use of an alternate source term and the guidance provided in Regulatory Guide 1.183, ''Alternate Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors.''

Date of issuance: October 3, 2001.

Effective date: As of the date of issuance, and shall be implemented during Refueling Outage 10, currently scheduled to commence in October 2001.

Amendment No.: 134.

Facility Operating License No. NPF–57: This amendment revised the TSs.

Date of initial notice in **Federal Register:** June 27, 2001 (66 FR 34288). The letters dated August 6, August 17, and September 12, 2001, provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 2001.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: September 26, 2000, as supplemented on October 6, 2000, and May 21, 2001.

Brief description of amendments: The amendments modify the Salem Technical Specifications by increasing the as-found setpoint tolerance for the Pressurizer Safety Valves from ±1% to ±3%; increasing the as-found setpoint tolerance for the Main Steam Safety Valves (MSSV) from ±1% to ±3%; changing the required actions for inoperable MSSVs; and removing specifications and references related to plant operation with three Reactor Coolant System loops.

Date of issuance: September 19, 2001

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 244 and 225

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 15, 2000 (65 FR 69065), as superseded on August 8, 2001 (66 FR 41624).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 19, 2001.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, 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: May 31, 2000, as supplemented on August 2, 2001.

Brief description of amendments: The amendments modify the Salem Technical Specifications (TSs) Surveillance Requirements for: (1) The Control Room Envelope Air Conditioning System (CREACS), (2) the Auxiliary Building Ventilation System (ABVS), and (3) the Fuel Handling Building Ventilation System (FHVS). Salem TSs will now require the use of American Society for Testing and Materials (ASTM) D3803–1989, ''Standard Test Method for Nuclear-Grade Activated Carbon,'' as the test protocol to evaluate charcoal samples from the ABVS, CREACS, and FHVS.

Date of issuance: September 19, 2001.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 245 and 226.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 2000 (65 FR 46014). The August 2, 2001, letter provided 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 September 19, 2001.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: June 29, 2001 as supplemented by letter dated August 20, 2001.

Brief description of amendments: Revise Technical Specifications (TSs) 3.7.10, ''Emergency Chilled Water (ECW)'' and 3.7.11, ''Control Room Emergency Air Cleanup System (CREACUS)'' and the associated TSs Bases. The proposed change would revise the Allowed Outage Time for a single inoperable train of both the ECW and CREACUS from 7 days to 14 days.

Date of Issuance: October 4, 2001.

Effective date: October 4, 2001, to be implemented within 30 days of issuance

Amendment Nos.: Unit 2–181; Unit 3–172

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 22, 2001 (66 FR 44175). The August 20, 2001 supplemental letter provided additional clarifying information, did not expand the scope of the proposed amendment as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 2001.

No significant hazards consideration comments received: No.

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 29, 2000, as supplemented August 31, 2001.

Brief description of amendments: The amendments revise design bases in the Final Safety Analysis Report. The change adds a description of the methodology Southern Nuclear Operating Company uses to determine what systems and components need to be protected from tornado missiles.

Date of issuance: September 26, 2001.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 150 and 142.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register***:* August 9, 2000 (65 FR 48758).

The supplement dated August 31, 2001, provided clarifying information that did not change the scope of the June 29, 2000, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 26, 2001.

No significant hazards consideration comments received: No.

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: October 4, 2000, as supplemented by letters dated April 30, June 18, and July 18, 2001.

Brief description of amendments: The amendments revise the Technical Specifications to increase the spent fuel storage capacity from 2,026 to 3,373 fuel assemblies in the spent fuel pool.

Date of issuance: October 2, 2001.

Effective date: As of the date of issuance and shall be implemented no later than January 31, 2002.

Amendment Nos.: 87/87.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register***:* December 4, 2000 (65 FR 75737).

The April 30, June 18, and July 18, 2001, supplemental letters provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 2, 2001.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: April 17, 2001.

Brief description of amendment: The amendment removes unnecessary details for certain secondary post-accident monitoring instrumentation from Technical Specification Table 3.2.6.

Date of Issuance: October 2, 2001.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 204.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register***:* May 16, 2001 (66 FR 27178).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 2, 2001.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: March 23, 2001 (CO 01–0013).

Brief description of amendment: The amendment deletes (1) certain license conditions from Facility Operating License No. NPF–42, and (2) reporting requirements in Table 5.5.9–2, ''Steam Generator Tube Inspection,'' in Section 5.5.9, ''Steam Generator (SG) Tube Surveillance Program,'' of the technical specifications. License Conditions 2.C.(4), and 2.C.(6) through 2.C.(14), Section 2.F, and Attachments 2 and 3 to Facility Operating License No. NPF–42 are deleted, and the list of the attachments and appendices to Facility Operating License No. NPF–42 is revised to reflect the deletion of the attachments. The reporting requirements deleted in Table 5.5.9–2 duplicate requirements in 10 CFR 50.72.

Date of Issuance: September 24, 2001.

Effective date: September 24, 2001, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 141.

Facility Operating License No. NPF–42: The amendment revised the operating license and the Technical Specifications.

Date of initial notice in **Federal Register***:* May 2, 2001 (66 FR 22035).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 24, 2001

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: September 15, 2000, and supplements dated October 3, 2000, and September 13, 2001.

Brief description of amendment: The amendment revises footnotes (b) and (c) of Table 1.1–1, ''Modes,'' and adds a program plan to Section 5.5, ''Programs and Manuals,'' of the Wolf Creek Generating Station Technical Specifications. The amendment will allow the plant to operate at full power with one closure bolt less than fully tensioned for one operating cycle.

Date of issuance: September 27, 2001.

Effective date: September 27, 2001, to be implemented within 60 days from the date of issuance.

Amendment No.: 142.

Facility Operating License No. NPF–42: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register***:* October 4, 2000 (65 FR 59227).

The supplements dated October 3, 2000, and September 13, 2001, provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 27, 2001.

No significant hazards consideration comments received: No.

Note: The publication date for this notice will change from every other Wednesday to every other Tuesday, effective January 8, 2002. The notice will contain the same information and will continue to be published biweekly.

Dated at Rockville, Maryland, this 10th of October 2001.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 01–25957 Filed 10–16–01; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Nonforeign Area Cost-of-Living Allowances Price and Background Surveys; Revised Collection; Comment Request

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Personnel Management (OPM) seeks comments on its intention to request reinstatement of two information collections whose approval period has expired. OPM has revised the two information collections to conform to the settlement agreement in the lawsuit *Caraballo, et al.* v. *United States*, No. 1997–0027 (D.V.I), August 17, 2000. OPM uses the two collections—a price survey and a background survey—to gather data to be used in determining cost-of-living allowances for certain Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The price survey will be conducted in selected areas generally on an annual basis. The background survey will be conducted annually on a limited basis in preparation for each of the price surveys.

DATES: Submit comments on or before December 17, 2001.

ADDRESSES: *Comments:* Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200; fax: (202) 606–4264, or email: cola@opm.gov. *Copies:* For copies of this proposal, contact Mary Beth Smith-Toomey at (202) 606–8358 or email: mbtoomey@opm.gov.

FOR FURTHER INFORMATION CONTACT: Kurt M. Springmann, (202) 606–2838.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) approval of the Nonforeign Area Cost-of-Living Allowance Price Survey and Background Survey expired on August 31, 2001. OPM plans to request OMB approval for an additional 3 years and is seeking comments prior to submitting the collections to OMB for review. As set out in OMB regulations at 5 CFR 1320.8(d)(1), comments are requested to—

- Evaluate whether the surveys are necessary and have practical utility;

• Evaluate the accuracy of the burden estimate, including the assumptions and methodological validity used in determining the burden estimate;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden on respondents.

Overview of Information Collections

Title: Nonforeign Area Cost-of-Living Allowance Price Survey and Background Survey.

OMB Control Number: 3206–0199.

Summary: The Nonforeign Area Cost-of-Living Allowance Price Survey is used by OPM to collect price data in survey areas located in the nonforeign allowance areas and in the Washington, DC, area. The allowance areas are located in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The price surveys will be conducted annually in selected survey areas on a rotating basis.

The Nonforeign Area Cost-of-Living Allowance Background Survey is used by OPM to collect information to identify the services, items, quantities, outlets, and locations that will be surveyed in the annual price surveys. It is also used to collect information on local trade practices, consumer buying patterns, taxes and fees, and other economic characteristics related to living costs. The background survey will be conducted annually on a limited basis.

Need/Use for Surveys: The price survey is necessary for collecting living-cost data used to determine cost-of-living allowances (COLAs) paid to General Schedule, U.S. Postal Service, and certain other Federal employees in the allowance areas. The information is used to compare costs in the allowance areas with costs in the Washington, DC, area and to derive a COLA rate when the local cost of living significantly exceeds that in the DC area. The background survey is necessary to determine the continued appropriateness of items, services, and businesses selected for the annual price surveys. OPM uses the information collected under this survey to define the sources and parameters for the price surveys and to improve the COLA methodology.

Respondents: OPM will survey selected retail, service, realty, and other businesses and local governments in the allowance areas and in the Washington, DC, area. Approximately 2,200 establishments will be contacted in the price survey, and approximately 30 establishments will be contacted in the background survey. Participation in the surveys is voluntary.

Reporting and Recordkeeping Burden: OPM estimates that the average price survey interview will take approximately 7 minutes, for a total burden of 257 hours. The average background survey interview will take approximately 10 minutes, for a total burden of 5 hours.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 01–26057 Filed 10–16–01; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following additional meeting during the week of October 8, 2001: a closed meeting was held on Wednesday, October 10, 2001 at 2:00 p.m.

Commissioner Unger, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matter may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(9)(A) and (10) and 17 CFR 200.402(a)(9)(i)(A), (9)(i)(B), and (10), permit consideration of the scheduled matter at the closed meeting.

The subject matters of the closed meeting held on Wednesday, October 10, 2001, was: a regulatory matter regarding financial institutions; and continuation of matters discussed at previous meeting.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 11, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–26259 Filed 10–15–01; 12:05 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To be published on Monday, October 15, 2001].

STATUS: Closed meeting.

PLACE: 450 Fifth Street NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, October 16, 2001 at 10 a.m.

CHANGE IN THE MEETING: Additional Items.

The following items have been added to the closed meeting scheduled for Tuesday, October 16, 2001:

Institution of injunctive actions; and

Institution of an administrative proceeding of an enforcement nature.

Commissioner Unger, as duty officer, determined that Commission business required to above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: October 12, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–26272 Filed 10–15–01; 12:43 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44918; File No. SR–NASD–2001–71]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify SuperSOES Use Fees and the Liquidity Provider Rebate, Institute a Quotation Update Charge, and Introduce a Mechanism for Sharing Market Data Revenue With Certain NASD Members

October 10, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 9, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities

and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. 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

This is a rule change, on a pilot basis, to: (1) Modify the fees for use of the Nasdaq National Market Execution System (''NNMS'' or ''SuperSOES''); (2) modify Nasdaq's liquidity provider rebate; (3) institute a quotation update charge; and (4) introduce a mechanism for sharing market data revenue with NASD members that report substantially all of their trades through the Automated Confirmation Transaction Service (''ACT''). Pursuant to Section 19(b)(3)(A)(ii) of the Act [1] and Rule 19b–4(f)(2) thereunder,[2] Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization, and therefore the proposed rule change is effective upon filing as applied to NASD members. The rule change will become operative on a pilot basis, commencing on December 1, 2001 and ending on November 30, 2002.[3] During the pilot period, Nasdaq will assess the effect of the rule change on market participants and Nasdaq and may file additional changes to the level or structure of its fees. The text of the proposed rule change is set forth below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7010. System Services

(a) *(1)* Nasdaq Level 1 Service

The charge to be paid by the subscriber for each terminal receiving Nasdaq level 1 Service is $20 per month. This Service includes the following data:

[(1)]*(A)* inside bid/ask quotations calculated for securities listed in The Nasdaq Stock Market and securities quoted in the OTC Bulletin Board (OTCBB) service;

[(2)]*(B)* the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and

[(3)]*(C)* last sale information on securities classified as designated securities in the Rule 4630, 4640, and 4650 Series and securities classified as over-the-counter equity securities in the Rule 6600 Series.

(2) Market Data Revenue Sharing

For a pilot period commencing on December 1, 2001 and lasting until November 30, 2002, Full Contribution Members (as defined in Rule 7010(i)(2)) shall receive a market data revenue sharing credit. The total credit shall consist of two components, a ''Base Credit'' and a ''Supplemental Credit.'' [4]

(A) A Full Contribution Member's Base Credit shall be calculated in accordance with the following formula:

Base Credit = (0.50) × (Eligible Revenue) × (Member's Volume Percentage)

(B) A Full Contribution Member's Supplemental Credit shall be calculated in accordance with the following formula:

Supplemental Credit = (Eligible Revenue) × (Member's Volume Percentage) × (Member's Overall Volume Percentage, not to exceed 10%)

(C) Definitions. The following definitions shall apply to this Rule:

(i) ''Eligible Revenue'' shall mean:

a. The portion of the net distributable revenues that Nasdaq, through the NASD, is eligible to receive under the Nasdaq UTP Plan, that is attributed to the Nasdaq Level 1 Service for Eligible Securities, minus

b. The portion of the fee charged to Nasdaq by NASD Regulation, Inc. for regulatory services allocated to the Nasdaq Level 1 Service for Eligible Securities.

(ii) ''Eligible Securities'' shall mean all Nasdaq National Market securities and any other security that meets the definition of ''Eligible Security'' in the Nasdaq UTP Plan.

(iii) ''Member's Volume Percentage'' shall mean the average of:

a. The percentage derived from dividing the total number of trades in Eligible Securities conducted on non-Nasdaq transaction systems that the member reports in accordance with NASD trade reporting rules to the Automated Confirmation Transaction Service (''ACT'') by the total number of trades in Eligible Securities reported to ACT by NASD members, and

b. The percentage derived from dividing the total number of shares represented by trades in Eligible Securities conducted on non-Nasdaq transaction systems that the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all trades in Eligible Securities reported to ACT by NASD members.

(iv) ''Members Overall Volume Percentage'' shall mean the average of:

a. The percentage derived from dividing the total number of trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of trades in Eligible Securities reported to ACT by NASD members, and

b. The percentage derived from dividing the total number of shares represented by trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all trades in Eligible Securities reported to ACT by NASD members.

(v) ''Nasdaq UTP Plan'' shall have the meaning set forth in NASD Rule 4720.

(b)–(h) No change.

(i) Transaction Executive Services

(1) No change.

(2) Nasdaq National Market Execution System (SuperSOES)[5]

(*A*) The following charges shall apply to the use of the Nasdaq National Market Execution System:

Order Entry Charge—$0.10 per order entry (entering party only)

Per Share Charge—$0.001 per share executed for all fully or partially executed orders (entering party only)

Cancellation Fee—$0.25 per order cancelled (cancelling party only)

(B)(i) For a pilot period commencing on [November] *December* 1, 2001 and lasting until [October 31] *November 30,* 2002, the per share charge will be [$0.002 per share executed for all fully or partially executed orders (entering party only).] *determined as follows:*

Full Contribution Members—$0.002 per share executed for all fully or partially executed orders (entering party only)

Partial Contribution Members—$0.003 per share executed for all fully or partially executed orders (entering party only)

[1] 15 U.S.C. 78s(b)(3)(A)(ii).

[2] 17 CFR 240.19b–4(f)(2).

[3] Nasdaq also filed a companion rule filing (SR–NASD–2001–72) to apply portions of the rule change to national securities exchanges trading Nasdaq-listed securities pursuant to grants of unlisted trading privileges (''UTP Exchanges''). SR–NASD–2001–72 will become effective upon approval by the Commission and will be implemented on the later of (i) December 1, 2001, or (ii) the first day of the month immediately following Commission approval.

[4] Nasdaq corrected a typographical error that appeared in the proposed rule language. Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division of Market Regulation (''Division''), Commission, October 10, 2001.

[5] Nasdaq corrected a typographical error that appeared in the proposed rule language. Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq and Susie Cho, Special Counsel, Division, Commission, October 10, 2001.

Full Contribution UTP Exchanges:[6]—

$0.003 per share executed for all fully or partially executed orders (entering party only)

(ii) Definition following definitions shall apply to this Rule:

(a) ''Full Contribution Member'' shall mean an NASD member that reports substantially all of its trade during regular market hours through the Automated Confirmation Transaction Service; provided, however, that for the first three months of the pilot period, all NASD members shall be deemed to be Full Contribution Members. Nasdaq may request that a member submit data demonstrating that it satisfies the definition of a Full Contribution Member, and may deem a member that fails to submit such data upon request to be a Partial Contribution Member.

b. ''Partial Contribution Member'' shall mean any NASD member that is not a Full Contribution Member.

c. ''Full Contribution UTP Exchange'' shall mean any national securities exchange trading Nasdaq securities pursuant the Nasdaq UTP Plan (as defined in NASD Rule 4720) that chooses to participate in the automatic execution functionality of the Nasdaq National Market Execution System.[7]

(3) No change.

(4) Liquidity provider rebate

For a pilot period commencing on [November] *December* 1, 2001 and lasting until [October 31] *November 30,* 2002:

(A) [NASD members] *Full Contribution Members* that do not charge an access fee to market participants accessing their quotations through the Nasdaq National Market Executive System will receive a rebate of $0.001 per share when their quotation is executed against by a Nasdaq National Market Execution System order.

(B) Partial Contribution Members that do not charge an access fee to market participants accessing their quotations through the Nasdaq National Market Execution System will receive a rebate of $0.0005 per share when their quotation is executed against by a Nasdaq National Market Execution System order.

[(B) NASD members] *(C) Full Contribution Members and Partial Contribution Members* will receive a rebate of $0.001 per share when they send a Nasdaq National Market Execution System order that executes against the quotation of a market participant that charges an access fee to market participants accessing its quotations through the Nasdaq National Execution System.

(5) Quotation Updates

For a pilot period commencing on December 1, 2001 and lasting until November 30, 2002, the following charges shall apply to NASD members for quotation updates in the Nasdaq quotation montage:

Full Contribution Members—$0.01 per quotation update

Partial Contribution Members—$0.03 per quotation update

(j)–(q) 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth below in Sections (A), (B), and (C), 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

On January 14, 2000, the Commission issued an order approving a rule change that: (1) Established the NNMS, a new platform for the trading of Nasdaq National Market (''NNM'') securities; (2) modified the rules governing the use of SelectNet for trading NNM issues; and (3) left unchanged trading of Nasdaq SmallCap securities through the Small Order Execution System (''SOES'') and SelectNet.[8] Nasdaq began implementing these system changes on July 9, 2001 and completed implementation on July 30, 2001. Through these changes, the NNMS has become the primary trading platform for NNM securities, and SelectNet is intended to be used primarily for the transmittal and execution of ''non-liability'' orders for market makers in NNM securities, as well as the transmittal and execution of ''liability'' orders to market participants that do not participate in the automatic execution functionality of the NNMS. On September 28, 2002, Nasdaq filed modifications to the pricing structure for SlectNet and the NNMS.[9] These changes were designed as an interim modification to begin the process of aligning the charges to market participants for using the NNMS and SelectNet more closely with the costs of providing these services and the benefits that they provide to market participants. On October 3, 2001, Nasdaq filed a rule change, on a pilot basis, to increase the per share charge for use of the NNMS, and introduce a liquidity provider rebate for NASD members.[10]

With this filing, Nasdaq is introducing a mechanism for sharing market data revenue with NASD members that report substantially all trades through ACT. Nasdaq is also making additional modifications to the fees for use of the NNMS and the liquidity provider rebate to calibrate the level of fees and rebates to the contributions that each type of market participant makes to the support of the Nasdaq market. Finally, Nasdaq is introducing a quotation update charge.

Nasdaq represents that the proposal is designed to enhance market efficiency and fairness by offering incentives to market participants that provide liquidity through the NNMS and support Nasdaq operations through trade reporting. The proposal imposes new charges on market participants that use the Nasdaq quotation mechanism to quote, but do not provide meaningful liquidity by exposing and executing orders in Nasdaq. The proposal seeks to reward those who provide meaningful quotes and expose orders for execution in Nasdaq, while building in economic incentives to discourage posting of inefficient quotations that impose burdens on system capacity. In particular, Nasdaq is concerned about the extent to which the quotes of market participants that are displayed in Nasdaq are accessed and/or reported

[6] For purposes of completeness, NASD has included this provision on per share charges for ''Full Contribution UPT Exchanges,'' but the provision is not effective until approved by the Commission. *See* SR–NASD–2001–72.

[7] For purposes of completeness, NASD has included this provision defining ''Full Contribution UTP Exchange,'' but the provision is not effective until approved by the Commission. *See* SR–NASD–2001–72.

[8] *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) (SR–NASD–99–11).

[9] *See* Securities Exchange Act Release No. 44899 (October 2, 2001) (SR–NASD–2001–63) and Securities Exchange Act Release No. 44898 (October 2, 2001) (SR–NASD–2001–64). SR–NASD–2001–63 applied the new fees to NASD members, effective upon filing, and was implemented on October 1, 2001. SR–NASD–2001–64 will apply the new fees to UTP Exchanges and will be implemented on the first day of the month immediately following Commission approval.

[10] *See* Securities Exchange Act Release No. 44910 (October 5, 2001) (SR–NASD–2001–67) and Securities Exchange Act Release No. 44914 (October 9, 2001) (SR–NASD–2001–68). SR–NASD–2001–67 applied these pilot changes to NASD members, effective upon filing, for a pilot period from November 1, 2001 through October 31, 2002. SR–NASD–2001–68 will apply the increase in the per share charge to UTP Exchanges, and will be implemented on the first day of the month immediately following Commission approval.

through non-Nasdaq systems. Market participants may advertise their liquidity on Nasdaq, but contribute very little to supporting the quotation, execution, and regulatory infrastructure that underpins the Nasdaq market.

The proposal delineates three types of market participants. A ''Full Contribution Member'' is defined as an NASD member that reports substantially all of its trades during regular market hours through ACT (either directly or as a result of an execution through a Nasdaq transaction execution system). All other NASD members would be considered ''Partial Contribution Members'' under the proposal. For the first three months of the pilot period, all NASD members are deemed to be Full Contribution Members. Thereafter, Nasdaq may request that a member submit data demonstrating that it satisfies the definition of a Full Contribution Member, and may deem a member that fails to submit such data upon request to be a Partial Contribution Member. A ''Full Contribution UTP Exchange'' is defined as any UTP Exchange that chooses to participate in the automatic execution functionality of the NNMS.

Charges for Order Execution and Quotation Updates

Under the proposal, the per share charge for orders executed in the NNMS by Partial Contribution Members and Full Contribution UTP Exchanges will increase to $0.003 per share and will remain at $0.002 per share for Full Contribution Members. Nasdaq is also instituting a quotation update fee that is applicable to NASD members (but not UTP Exchanges), in recognition of the fact that the ability to post quotes in the Nasdaq quotation montage provides market participants with the valuable opportunity to advertise the liquidity that they offer. Nasdaq believes that the absence of any charges for quotation updates has encouraged market participants to quote inefficiently, imposing unnecessary burdens on Nasdaq system capacity. Moreover, to the extent that quotations are accessed through non-Nasdaq systems, the firms that post the quotations are currently free riding on the quotation infrastructure provided by Nasdaq. Accordingly, Nasdaq will charge Full Contribution Members $0.01 each time their quotation is updated and Partial Contribution Members $0.03 each time their quotation is updated.[11]

Liquidity Provider Rebate

Effective on December 1, 2001, Nasdaq will modify the liquidity provider rebate instituted by SR–NASD–2001–67,[12] by setting the rebate for Partial Contribution members that do not charge an access fee to market participants accessing their quotations through the NNMS at $0.0005 per share when their quotation is executed against via the NNMS. The rebate for Full Contribution Members that do not charge an access fee to market participants accessing their quotations through the NNMS will remain $0.001 per share when their quotation is executed against via the NNMS, and a rebate of $0.001 per share will remain for all members when they send an NNMS order that executes against the quotation of a market participant that charges an access fee to market participants accessing its quotation through the NNMS.

Market Data Revenue Sharing

Nasdaq proposes to share a portion of market data revenue with Full Contribution Members, the members that do the most to generate such revenues. The proposal is similar to the transaction credit already in effect to share Consolidated Tape Association revenue with NASD members that trade exchange-listed stocks through Nasdaq's Intermarket Trading System[13] and similar revenue sharing programs established by UTP Exchanges.[14] A member's total credit will consist of two parts, a Base Credit and a Supplemental Credit.

A member's Base Credit will be 50% of the product of Eligible Revenue and the Member's Volume Percentage. Eligible Revenue is defined as (i) the portion of the net distributable revenues that Nasdaq, through the NASD, is eligible to receive under the Nasdaq UTP Plan, that is attributed to the Nasdaq Level 1 Service for NNM securities or other securities covered by the Nasdaq UTP Plan (''Eligible Securities''), minus (ii) the portion of the fee charged to Nasdaq by NASD Regulation, Inc. (''NASDR'') for regulatory services allocated to the Nasdaq Level 1 Service for Eligible Securities. The Member's Volume Percentage is defined as the average of (i) the percentage derived from dividing the total number of trades in Eligible Securities conducted on non-Nasdaq transaction systems that the member reports in accordance with NASD trade reporting rules to ACT by the total number of trades in Eligible Securities reported to ACT by NASD members, and (ii) the percentage derived from dividing the total number of shares represented by trades in Eligible Securities conducted on non-Nasdaq transaction systems that the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all trades in Eligible Securities reported to ACT by NASD members. In other words, the Base Credit is 50% of the net Level 1 revenue attributable to the member's reports of non-Nasdaq transaction system trades in Eligible Securities, with the pool of sharable revenue being comprised of Level 1 revenues distributable to Nasdaq under the UTP Plan minus an allocated portion of the NASDR regulation fee, and the member's non-Nasdaq transaction system trade report activity being measured by total number of trades and share volume.

In addition, a member may receive a Supplemental Credit, equal to a percentage of the product of Eligible Revenue and the Member's Volume Percentage. The percentage will be the lesser of 10% or the Member's Overall Volume Percentage, which is defined as the average of (i) the percentage derived from dividing the total number of trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of trades in Eligible Securities reported to ACT by NASD members, and (ii) a percentage calculated by dividing the total number of shares represented by trades in Eligible Securities that the member reports in accordance with NASD trade reporting rules to ACT by the total number of shares represented by all trades in Eligible Securities reported to ACT by NASD members. In other words, the Supplemental Credit of up to 10% is based upon all of the member's trade reports, as measured by the total number of trades and share volume.

Nasdaq believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5)[15] of the Act, which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and Section

[11] A quotation update charge will not be imposed on UTP Exchanges at this time, because the Nasdaq Unlisted Trading Privileges Plan (the ''Nasdaq UTP Plan'') does not currently authorize such a charge.

[12] *See supra* note 10.

[13] *See* NASD Rule 7010(c)(2).

[14] *See, e.g.,* Securities Exchange Act Release No. 41238 (March 31, 1999), 64 FR 17204 (April 8, 1999) (SR–CSE–99–03); Securities Exchange Act Release No. 40591 (October 22, 1998), 63 FR 58078 (October 29, 1998) (SR–BSE–98–9); Securities Exchange Act Release No. 38237 (February 4, 1997), 62 FR 6592 (February 12, 1997) (SR–CHX–97–01).

[15] 15 U.S.C. 78*o*–3(b)(5).

15A(b)(6) [16] of the Act, which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

As the Commission has noted in the context of another self-regulatory organization's fees, the Act ''prohibits 'unfair discrimination,' simpliciter * * *'' [17] Nasdaq believes that the proposed fee structure distinguishes among market participants in order to reward those who do the most to finance market innovations such as SuperSOES and who contribute the most to the liquidity and efficient operations of Nasdaq's market, while imposing higher fees on market participants that receive the benefits of posting quotations on Nasdaq systems but pay relatively little to support the operation of those systems. Thus, the economic incentives embodied by the new fee structure are designed to promote behavior that benefits both the market structure that Nasdaq offers to investors and Nasdaq as a business. As another self-regulatory organization noted when it established a credit available only to certain of its market participants, ''measures * * * designed to promote and encourage certain behaviors and/or discourage others * * * [are] an appropriate, nondiscriminatory business strategy.'' [18]

Moreover, Nasdaq believes that the level of fees charged to market participants under the proposal is reasonable. Nasdaq anticipates that overall fees for the NNMS, SelectNet, and SOES, net of he liquidity provider rebate and the market data revenue sharing credit, will be comparable to overall fees for the NNMS, SelectNet, and SOES under Nasdaq's recently implemented pricing changes. Such fees are, in turn, estimated to be slightly lower than overall fees for SelectNet and SOES prior to the introduction of the NNMS.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] Securities Exchange Act Release No. 37250 (May 29, 1996), 61 FR 28629 (June 5, 1996) (SR–CBOE–96–23) (quoting *Timpinaro* v. *SEC,* 2 F.3d 453, 456 (D.C. Cir. 1993)).

[18] Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (f) of Rule 19b–4, thereunder because it establishes or changes a due, fee or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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, NW., Washington, DC 20549–0609. 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 principal office of the NASD. All submissions should refer to file number SR–NASD–2001–71 and should be submitted by November 7, 2001.[19]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44917; File No. SR–NFA–2001–02]

Self-Regulatory Organizations; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Futures Association Clarifying the Interpretive Notice Regarding Obligations to Customers and Other Market Participants

October 10, 2001.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and rule 19b–7 under the exchange Act,[2] notice is hereby given that on September 18, 2001, the National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by NFA. The text of the proposed rule change is available for inspection and copying at the places specified in Item IV below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

On August 29, 2001, pursuant to Section 17(j) of the Commodity Exchange Act (''CEA''),[3] NFA requested that the Commodity Futures Trading Commission (''CFTC'') make a determination that review of the proposed rule change submitted by NFA to the CFTC is not necessary. The CFTC made such a determination on September 7, 2001.

I. Self-Regulatory Organization's Statement of the Terms and Substance of the Proposed Rule Change

The Commodity Futures Modernization Act of 2000 (''CFMA'') amended Section 15A of the Exchange Act to add a new subsection (k),[4] which makes NFA a national securities association for the limited purpose of regulating the activities of NFA Memberss who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.[5] The proposed rule change clarifies that certain provisions of the ''Interpretive Notice Regarding Obligations to Customers and Other Market Participants'' (''Interpretive Notice'') apply only to these NFA

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] 7 U.S.C. 21(j).

[4] 15 U.S.C. 78o–3(k).

[5] 15 U.S.C. 78o–(b)(11).

Members.[6] The text of the proposed rule change is available at the Office of the Secretary, NFA, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Interpretive Notice contains provisions: (1) Prohibiting trading ahead of research reports; (2) prohibiting trading based on knowledge of an imminent block transaction, with an exception for hedging counterparty risk under approved exchange block rules; and (3) requiring a sound basis for evaluating the facts regarding a particular security futures product. The proposed rule change clarifies that these requirements only apply to NFA Members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.[7]

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of he Exchange Act.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act and the CEA, as they were amended by the CFMA. In fact, the NFA believes that the proposed rule change will level the playing field between broker-dealers that are dual members of NFA and the National Association of Securities Dealers (''NASD'') and broker-dealers that are only members of NFA by assuring that dual members are not subject to duplicative regulation.

[6] The instant proposed rule change amends the text of the Interpretive Notice that was contained in File No. SR–NFA–2001–01. *See* Securities Exchange Act Release No. 44823 (September 20, 2001), 66 FR 49439 (September 27, 2001).

[7] 15 U.S.C. 78o(b)(11).

[8] 15 U.S.C. 78o–3(k).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA worked with industry representatives in developing the rule change. NFA did not, however, publish the rule change to its membership for comment. NFA did not receive comment letters concerning the rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on September 7, 2001.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Exchange Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Exchange Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* 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 these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Internet website (*http://www.sec.gov).* All submissions should refer to File No. SR–NFA–2001–02 and should be submitted by November 7, 2001.

[9] 15 U.S.C. 78s(b)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[10] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44920; File No. SR–PHLX–00–75]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc. Relating to Changes to TheStreet.com Internet Index

October 11, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2000, 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 PHLX. The PHLX filed Amendment Nos. 1 and 2 to the proposal on September 14, 2001,[3] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, PHLX, to Yvonne Fraticelli, Special Counsel, Division of Market Regulation (''Division''), Commission, dated September 12, 2001 (''Amendment No. 1''). In Amendment No. 1, the PHLX: (1) Indicated that the PHLX generally will announce new share amounts on the Wednesday prior to the effective date of a rebalancing; (2) indicated that the PHLX, in consultation with TheStreet.com, Inc. (''TheStreet.com'') has established policies and procedures to administer The Street.com Internet Index (''the Index''); (3) stated that the announcement of share amount changes prior to a rebalancing will allow investors to adjust hedging positions in a more cost effective manner; (4) clarified how the proposed changes will enhance the Index and facilitate the development of new products based on the Index; (5) clarified that the share amounts of replacement issues and additional Index components will be determined based on the closing price four business days prior to the date on which the divisor is adjusted; (6) indicated that announcing changes in share amounts of replacement stocks prior to their implementation will allow investors to adjust hedging positions in a more cost effective manner; (7) indicated that the PHLX will not trade options on the existing Index and the revised Index simultaneously; and (8) described the PHLX's policies and procedures to prevent potential misuse by PHLX staff of material, non-public information in connection with the maintenance of the Index.

September 21, 2001,[4] respectively.[5] The Commission is publishing this notice to solicit comments on the proposed rule change and on Amendment Nos. 1 and 2 from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX requests approval to continue listing and trading options on TheStreet.com Internet Index (the ''Index'')[6] after: (1) Changing the name of the Index to ''TheStreet.com Internnet Sector Index;'' (2) changing the Index rebalancing procedure so that share amounts in the Index will be determined based upon the component shares' last sales prices at the close of trading on the Tuesday prior to expiration Friday in the January cycle; (3) changing the procedure for the inclusion of replacement Index components and additional Index components[7] so that the average dollar amount of the Index components is determined based upon prices at the close of trading four business days in advance of the anticipated effective date of the replacement; and (4) revising Index policies and procedures to reflect the role of TheStreet.com as a provider of ongoing company and industry analysis as it relates to component inclusion decisions and its role in the decision making process regarding the inclusion of component stocks in the Index.

The text of the proposed rule change is available at the PHLX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

(1) Purpose

In 1998, the PHLX proposed to list and trade options on the Index.[8] Pursuant to the Notice, the PHLX has listed for trading European-style, cash-settled options on the Index. The PHLX developed the Index pursuant to PHLX Rule 1009A(b) in accordance with the Generic Index Option Approval Order (''Generic Index Approval Order'') for the listing and trading of options on narrow-based indexes.[9] On July 24, 2000, the PHLX increased the number of Index components to 24 stocks.[10] The PHLX now proposes to make certain enhancements to the Index. Specifically, the PHLX seeks approval to continue to list and trade options on the Index after changing the name of the Index and certain aspects of the Index maintenance. The proposed changes are described below.[11]

(a) *Name Change.* The PHLX proposes to change the name of the Index from ''TheStreet.com Internet Index'' to ''TheStreet.com Internet Sector Index,'' the name by which the Index is more widely know in the marketplace, because the PHLX trades a number of options on stock indexes representing various industry groups which the PHLX describes as ''sector'' index options.[12]

(b) *Calculation of Share Amounts—Quarterly Rebalancing.* The Index is an equal dollar-weighted index, meaning that each of the component stocks is represented in the Index in approximately equal dollar amounts. Following the close of trading on the third Friday of January, April, July, and October, the PHLX rebalances the Index portfolio by changing the number of whole shares of each component so that each company is again represented in ''equal'' dollar amounts.[13] If necessary, the PHLX makes a divisor adjustment at the rebalancing to ensure the continuity of the Index's value. The newly adjusted portfolio then becomes the basis for the Index's value on the first trading day following the adjustment.

The current rebalancing schedule prescribes that the PHLX determine the share amounts in the Index after the close of trading on expiration Friday in the January cycle to be effective at the opening on the following Monday. The PHLX proposes to change this procedure so that the PHLX will determine share amounts in the Index based upon the shares' last sales prices at the close of trading on the Tuesday prior to expiration Friday in the January cycle. The PHLX generally will announce the new share amounts on Wednesday.[14] The implementation of the rebalancing will continue to be

[4] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, PHLX, to Yvonne Fraticelli, Special Counsel, Division, Commission, dated September 20, 2001 (''Amendment No. 2''). Amendment No. 2 clarified the PHLX's timing for implementing the proposed changes.

[5] The PHLX also submitted a letter from TheStreet.com describing TheStreet.com's policies regarding employee transactions in products based on the Index and TheStreet.com's policies regarding the misuse of material, non-public information concerning the Index.

[6] TheStreet.com does not guarantee the accuracy or completeness of the Index, makes no express or implied warranties with respect to the Index and shall have no liability for any damages, claims, losses or expenses caused by errors in the Index calculation. The PHLX represents that it will have sole discretion over the calculation of the Index.

[7] In Amendment No. 1, the PHLX indicated that the revised procedure would apply to additional Index components as well as to replacement issues. *See* Amendment No. 1, *supra* note 3.

[8] *See* Securities Exchange Act Release No. 40685 (November 17, 1998), 63 FR 65630 (November 27, 1998) (notice of filing and immediate effectiveness of file No. SR–PHLX–98–48) (''Notice'').

[9] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 9, 1994) (order approving File Nos. SR–Amex–92–35; SR–CBOE–93–59; SR–NYSE–94–17; SR–PSE–94–07; and SR–PHLX–94–10). The Generic Index Approval Order established generic listing standards for options on narrow-based indexes and adopted streamlined procedures for introducing trading in options that satisfy the generic listing standards.

[10] The Index originally contained 20 component securities. *See* Notice, *supra* note 8. The Notice states that the PHLX will not change the number of Index components to more than 24 or fewer than 16 absent Commission approval.

[11] In a separate filing with Commission, the PHLX proposed, among other things, to increase the number of Index components to 25. *See* File No. SR–PHLX–00–70. The Commission has approved File No. SR–PHLX–00. *See* Securities Exchange Act Release No. 44921.

[12] The PHLX's sector index options include options on the Index as well as options on the following sector indexes: the Computer Box Maker Index (BMX); the PHLX Oil Service Index (OSX); the Gold-Silver Index (XAU); the National Over-the-Counter Index (XOC); the PHLX Forest and Paper Products Sector Index (FPP); the Over-the-Counter Prime Index (OTX); the Utility Index (UTY); the Semiconductor Index (SOX); the PHLX/KBW Bank Index (BKX); and the Wireless Telecom Sector Index (YLS).

[13] The PHLX handles day-to-day administrative duties in connection with the Index, including replacements, additions, or deletions of Index securities, Index security weight adjustments, divisor adjustments, quarterly rebalancings, the public dissemination of official information regarding the Index, and recordkeeping. *See* Amendment No. 1, *supra* note 3.

[14] The PHLX notes that there may be circumstances under which the PHLX will make the share determination and announcement outside of the normal Tuesday and Wednesday schedule. For example, if the PHLX is scheduled to be close don an expiration Friday, the PHLX would need to determine the share amounts on Monday, and announce them on Tuesday. The PHLX would rebalance the index after the close of trading on Thursday and the revised share amounts and Index divisor would be effective before the opening of trading on Monday morning. *See* Amendment No. 1, *supra* note 3.

effective on the Monday following expiration Friday and the PHLX will calculate divisor changes based on Friday's closing prices.

The PHLX believes that it is in the interest of investors generally to announce share amount changes prior to rebalancing because the announcement will provide them with an opportunity to adjust any hedging positions in a more cost effective manner.[15] Currently, the PHLX officially determines share amount changes no earlier than the close of business on the business day prior to the effective date of the change. As a result, investors must transact timely position adjustment either prior to the final share determinations (at speculated share amounts) or during non-business hours, thereby adding undue cost and risk to those who use the Index.[16] Under the proposal, all investors will equally have the opportunity to effect portfolio adjustments at a known share amount and during normal business hours.[17] The PHLX believes that the proposed change will enhance the Index.

In addition, the PHLX believes that the proposal will facilitate the development and implementation of potential new products based on the Index by allowing adequate opportunity for various structures of investment vehicles to effectively track the Index by reducing the Index tracking error associated with the execution of transactions that correspond with changes to the Index.[18] For example, the PHLX notes that an index mutual fund that tracks the Index currently would have to effect transactions either prior to the final share amount determinations (at speculated share amounts) or during non-business hours where decreased liquidity is present, hampering its ability to provide investors with a return that closely tracks the price performance of the Index.[19]

(c) *Calculation of Index Share Amounts—Replacement Stocks.* Occasionally, the PHLX must make Index stock replacements outside the normal quarterly rebalancing cycle due, for example, to mergers or acquisitions of the issuers of component stocks. The amount of stock of the replacement issue to be included in the Index is based upon the average dollar value of the remaining components at their closing prices as of the day prior to the replacement. The PHLX proposes to determine the average dollar amount of the remaining components based upon prices at the close of trading four business days in advance of the anticipated effective date of the replacement. The PHLX will also determine the share amounts of the replacement issue based on the closing price four business days prior to the date on which the divisor is adjusted.[20]

The PHLX proposes to apply this revised procedure to the addition of component stocks to the Index as well as to the replacement of component stocks.[21] In the case of both replacements of and additions to the component stocks of the Index, the PHLX will determine the average dollar amount of the remaining components (in the case of replacements) and existing components (in the case of additions), and consequently the share amount of the replacing or added component security, based upon prices at the close of trading four business days prior to the effectiveness of the replacement or addition.[22] The PHLX will determine any change in the divisor required to ensure Index continuity based upon closing prices the day before the effective date of the replacement.

As with the proposed change in quarterly rebalancings, the PHLX believes that it is in the interest of investors to announce changes in Index share amounts prior to their implementation because the announcement will provide investors with an opportunity to adjust any hedging positions in a more cost effective manner.[23] The PHLX notes that currently the Exchange officially determines share amounts for replacement stocks no earlier than the close of business on the business day prior to the effective date of the change. As a result, market participants must typically transact timely position adjustments either prior to the final share determinations (at speculated share amounts) or during non-business hours, thereby adding undue cost and risk to those who use the Index.[24] Under the PHLX's proposal, all investors will equally have the opportunity to effect portfolio adjustments at known share amounts and during normal business hours.[25]

(d) *The Role of TheStreet.com with respect to the Index.* According to the PHLX, TheStreet.com's role to date with respect to Index administration has been a consultation role with the Exchange with regard to ongoing company and industry analysis as it relates to Index component inclusion decisions. The PHLX now proposes that TheStreet.com share the responsibility of selecting component securities on an equal basis with the PHLX, so that final decisions with respect to component inclusion are made jointly. In the unlikely event that the PHLX and TheStreet.com were to differ in their judgments regarding the selection of component securities, the PHLX and the TheStreet.com would alternate the final decision making between them.

The PHLX believes that the proposed changes will enhance the Index will and could facilitate the development and implementation of potential new products based upon the Index. Except for the changes described in the current proposal, and in the PHLX's proposal to increase the number of Index components to 25,[26] the Index will retain the same attributes and remain subject to all of the maintenance criteria in the PHLX's original proposal to list options on the Index.

On October 12, 2001, the PHLX will post on its web site an information circular to members advising them that on October 16, 2001, the name of the Index will change to ''TheStreet.com Internet Sector Index'' and that TheStreet.com will become a co-stock selector with the PHLX of Index component securities.[27] In addition, the information circular will describe the changes in procedure regarding share amount determinations that also will be

[15] *See* Amendment No. 1, *supra* note 3.

[16] *See* Amendment No. 1, *supra* note 3.

[17] *See* Amendment No. 1, *supra* note 3. Due to changes in the market price of the component securities of the Index occurring between the close of trading on Tuesday (when the PHLX determines share amounts) and the close of trading on Friday (when the PHLX determines the prices to be used in the rebalancing), the Index may be less than perfectly equal dollar weighted upon implementation of the rebalancing. The PHLX believes that the advantages of the proposed change outweigh any resulting inexactness in the equal dollar weighting. In this regard, the PHLX notes that the Commission approved the continued listing and trading of options on the Nasdaq 100 Index (''Nasdaq 100'') after the Nasdaq Stock Market, Inc. (''Nasdaq''), the maintainer of the Nasdaq 100, implemented certain changes in the weighting methodology of the Nasdaq 100, including a change comparable to that proposed by the PHLX. *See* Securities Exchange Act Release No. 40642 (November 5, 1998), 63 FR 63759 (November 16, 1998) (order approving File No. SR–CBOE–98–43). Specifically, the PHLX notes that the changes to the Nasdaq 100 included making index share weight determinations in connection with the rebalancing of the Nasdaq 100 based upon the last sale prices and aggregate capitalization of the Nasdaq 100 at the close of trading on the Thursday in the week immediately preceding the week of the third Friday in March, June, September, and December, with changes to the Nasdaq 100 weights to be made effective after the close of trading on the third Friday in March, June, September, and December.

[18] *See* Amendment No. 1, *supra* note 3.

[19] *See* Amendment No. 1, *supra* note 3.

[20] *See* Amendment No. 1, *supra* note 3.

[21] *See* Amendment No. 1, *supra* note 3.

[22] *See* Amendment No. 1, *supra* note 3.

[23] *See* Amendment No. 1, *supra* note 3.

[24] *See* Amendment No. 1, *supra* note 3.

[25] *See* Amendment No. 1, *supra* note 3.

[26] *See* note 11, *supra.*

[27] *See* Amendment No. 2, *supra* note 4.

effective as of October 16, 2001.[28] The information circular will note that the PHLX is increasing the number of Index components to 25,[29] effective October 22, 2001, and that the PHLX will calculate the share amounts based on the October 16, 2001, closing prices for the Index's component securities, including the two new component securities.[30]

The PHLX does not propose to trade options on the current Index side-by-side with options on the revised Index.[31] While the PHLX asserts that Index user will gain significant benefits from the proposed changes, the PHLX states that side-by-side historical data analysis of the current share amount determination method and the proposed method over the past four quarters shows an aggregate performance differential of less than 1%.[32] In addition, the PHLX notes that the proposal does not change the Index's fundamental weighting methodology and method of stock selection.[33]

(2) Basis

The PHLX believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act, in particular, in that it is designed to promote just and equitable principles of trade, as well as to protect investors and the public interest, by making enhancements to the Index which should provide investors with an improved means of hedging exposure to market risks associated with the securities issued by companies in the Internet industry.

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

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change and Amendment Nos. 1 and 2 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 PHLX. All submissions should refer to file number SR–PHLX–00–75 and should be submitted by November 7, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The PHLX has asked the Commission to approve the proposal on an accelerated basis to allow the proposed changes to become effective as of October 16, 2001.[34]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[35] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and to protect investors and the public interest. Specifically, the Commission believes that the proposed changes to the quarterly rebalancing procedure and to the method for calculating Index share amounts for replacement stock and additional Index components will protect investors and contribute to the maintenance of a fair and orderly market by helping market participants to hedge their positions in Index options more effectively and efficiently. According to the PHLX, the PHLX's current quarterly rebalancing procedure and method for calculating the share amounts for replacement stocks and additional Index components require market participants to make timely adjustments to their hedging positions either prior to the share determinations at speculated share amounts or during non-business hours, thereby adding cost and risk to Index users. The PHLX states that the proposed changes will allow market participants to effect portfolio adjustments at a known share amount and during normal business hours. Accordingly, the Commission believes that the proposal should benefit market participants by helping them to hedge their positions in Index options effectively.

The Commission finds that the proposal to change the Index's name to TheStreet.com Internet Sector Index, the name by which the Index is more widely known in the marketplace, will contribute to the maintenance of a fair and orderly market by eliminating potential confusion and helping market participants to identify the Index as one of the sector indexes on which the PHLX trades options.

As discussed more fully above, the PHLX proposes to revise its procedures so that the PHLX and TheStreet.com will jointly make decisions concerning the inclusion of securities in the Index. The Commission notes that the PHLX and TheStreet.com have policies in place to prevent the potential misuse of material, non-public information in connection with the maintenance of the Index. Specifically, the PHLX prohibits the PHLX operations staff responsible for the maintenance of the Index from trading options on the Index and from trading component stocks of the Index without the prior written consent of the PHLX's Vice President of Market Surveillance.[36] TheStreet.com prohibits employees from transacting in any security whose value is derived, in whole or in part, from the value of the Index.[37] In addition, TheStreet.com prohibits employees and consultants in possession of non-public information concerning the addition, removal, or weighting adjustment of a component security of the Index from purchasing or selling the component security until the second business day following the public release of the information.[38] The Commission believes that the policies and procedures adopted by the PHLX and TheStreet.com address the unauthorized transfer and misuse of material, non-public information in

[28] *See* Amendment No. 2, *supra* note 4.

[29] *See* note 11, *supra*.

[30] *See* Amendment No. 2, *supra* note 4.

[31] *See* Amendment No. 1, *supra* note 3.

[32] *See* Amendment No. 1, *supra* note 3.

[33] *See* Amendment No. 1, *supra* note 3.

[34] *See* Amendment No. 2, *supra* note 4. As discussed more fully above, the revised share amounts for the Index's component securities will become effective prior to the opening of trading on October 22, 2001.

[35] 15 U.S.C. 78f(b)(5). In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[36] *See* Amendment No. 1, *supra* note 3.

[37] *See* note 5, *supra*.

[38] *See* note 5, *supra*.

connection with the maintenance of the Index.

As discussed more fully above, the PHLX will post an information circular on its web site advising members of the proposed changes to the Index prior to their implementation. The Commission believes that the information circular will help to ensure that market participants have been notified adequately about the impending changes to the Index prior to their implementation.

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal will allow investors to trade options on the revised Index beginning on October 22, 2001. As discussed more fully above, the revised procedures for calculating the share amounts of the Index's component securities should benefit investors by allowing them to hedge their Index options positions in a more efficient and cost effective manner. Amendment No. 1 strengthens the PHLX's proposal by, among other things, clarifying that the proposed changes to the procedures for calculating the share amounts of component Index securities may allow market participants to hedge their positions in Index options more effectively and by describing the PHLX's policies regarding the misuse of material, non-public information by PHLX staff responsible for maintaining the Index. Amendment No. 2 strengthens the proposal by clarifying the PHLX's schedule for implementing the proposed changes and ensuring that market participants will have notice of the proposed changes prior to their implementation. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[39] to approve the proposal and Amendment Nos. 1 and 2 to the proposal on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–PHLX–00–75), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[40]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26084 Filed 10–16–01; 8:45 am]

BILLING CODE 8010–01–M

[39] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44921;File No. SR–Phlx–00–70]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 by the Philadelphia Stock Exchange, Inc. Relating to TheStreet.com Internet Index

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 8, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The text of the proposal is available for inspection and copying at the places specified in Item III below. On September 14, 2001, Phlx filed Amendment No. 1 to the proposal.[3] On October 5, 2001, Phlx filed Amendment No. 2 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes that the approval of the listing and trading of options on the Index be continued upon the removal of a limitation that absent Commission approval, the Index be comprised of no less than 16 component securities and no more than 24 component securities. Under the proposal, the Exchange would instead apply the terms of Phlx Rule 1009A(c)(2) to the Index which specifies that the total number of component securities in an index may not increase or decrease by more than 33⅓% from the number of component securities in the index at the time of its initial listing.

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 the 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 III 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

Purpose

On November 17, 1998, the Commission issued a Notice of Filing and Immediate Effectiveness for a Phlx proposed rule change relating to listing and trading options on the Index.[5] Options on the Index were developed pursuant to Phlx Rule 1009A(b) in accordance with the Generic Index Approval Order for the listing and trading of narrow-based index options.[6] The Notice specified that absent Commission approval, the Exchange would not change the number of components to more than 24 or fewer than 16. The Index initially consisted of 20 component securities. The index is currently composed of 23 component securities.[7]

The Exchange proposes to remove the limitation on the number of the Index's component securities found in the Notice. Instead, the Phlx proposes that the number of the Index's component securities be governed by Phlx Rule 1009A(c)(2) which provides in relevant part that, for options listed on indices pursuant to Phlx Rule 1009A(b), the total number of component securities in the index may not increase or decrease by more than 33⅓% from the number of component securities in the index at the time of its initial listing. Thus,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, Phlx, to Marc McKayle, Special Counsel, Division of Market Regulation, Commission, dated September 12, 2001 (''Amendment No. 1''). In Amendment No. 1, the Phlx described component additions and subtractions to TheStreet.com Internet Index (''Index''), and listed the Index's 23 components and share weightings as of September 11, 2001. The Exchange also indicated that it intended to increase the number of Index components to 25 at the quarterly rebalancing, to become effective on October 22, 2001 (''Effective Date''). The Exchange will post an information circular on the Exchange website, at least ten days prior to the Effective Date, to notify its members of the two new component securities.

[4] This 19b–4 filing represents Amendment No. 2, which replaces the proposal as originally filed, but incorporates Amendment No. 1 to the filing.

[5] *See* Securities Exchange Act Release No. 40685 (November 17, 1998), 63 FR 65630 (November 27, 1998) (''Notice'').

[6] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 9, 1994) (order approving File Nos.SR–Amex–92–35; SR–CBOE–93–59; SR–NYSE–94–17; SR–PSE–94–07; and SR–Phlx–94–10) (''Generic Index Approval Order'').

[7] *See* Amendment No. 1, *supra* note 3.

under the proposal, in accordance with Phlx Rule 1009A(c)(2), the Exchange would not open any additional series for trading if the number of the Index's component securities is less than 14 or greater than 26.

Given the recent growth in the Internet industry and the proliferation of qualified potential Index constituents, the Exchange believes that the increased flexibility in assigning component stock to the Index as permitted by Phlx Rule 1009A(c)(2), as opposed to the limitation found in the Notice, is appropriate to ensure that Index maintains its intended market character. The Exchange believes that the proposal could enhance the Index and facilitate the development and implementation of new products based upon the Index. Except for the change described herein (and in a separate proposed rule change relating to the name and stock selection methodology of the Index and the determination of share amounts which is proposed to be implemented simultaneously with this proposed rule change),[8] the attributes of the Index and the options on the Index will remain as described in the Exchange's original proposed rule change to list options on the Index.

In eliminating the restriction that the Index shall have no fewer than 16 and no more than 24 securities without securing Commission approval, the Exchange believes that the Index and the options on the Index will continue to comply with the maintenance criteria set forth in Rule 1009A(c). Specifically, the Index will remain A.M. settled, the components of the Index will be reported securities in accordance with Rule 11Aa3–1 under the Act,[9] and the current underlying Index value will be reported at least once every fifteen seconds during the time the Index options are traded on the Exchange. In addition, 90% of the weight of the Index and 80% of the total number of components in the Index will satisfy the requirements of Phlx Rule 1009A(c) regarding options eligibility. The five highest weighted components will not in aggregate account for more than 50% of the weight of the Index pursuant to Phlx Rule 1009A(c)(1) and no single security will account for more than 25% of the weight of the Index. Pursuant to Phlx Rule 1009A(c)(2), the Exchange will not open any additional series for trading if the number of components is decreased to below 14 or increased to greater than 26. The Exchange will continue to rebalance the Index once every calendar quarter.[10]

The Exchange plans to increase the number of components securities in the Index as permitted by this proposed rule change during the quarterly rebalancing, which takes place following October expiration on October 19, 2001. On October 12, 2001, the Exchange will post to members an information circular on its website starting that the Exchange will be increasing the number of stocks in the Index to 25 effective Monday morning, October 22, 2001. The information circular, among other things, will identify the two new components securities.

2. Statutory Basis

Phlx believes the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, because it is designed to promote just and equitable principles of trade, as well as to protect investors and the public interest, by permitting the Exchange to continue listing and trading options on the Index after making enhancements to the Index which should providing investors with an improved means of hedging exposure to market risks associated with the securities issued by companies in the Internet industry.

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 solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 Phlx. All submissions should refer to File No. SR–Phlx–00–70 and should be submitted by November 7, 2001.

IV. Commission Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6(b)(5) of the Act.[13] Specifically, the Commission finds that the Phlx's proposal will prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[14] Phlx Rule 1009A(c)(2) is consistent with the objectives of the Generic Index Approval Order, which sets forth generic listing standards for options on narrow-based indexes, including the requirement that the number of component stocks may not increase or decrease by a number exceeding 33⅓ percent of the number of stocks comprising the index at the time of its initial listing. In approving the Generic Index Approval Order, the Commission found that the generic listing standards for narrow-based index options strike a reasonable balance between the Commission's mandates under section 6(b)(5) of the Act[15] to remove impediments to and perfect the mechanism of a free and open market and a national market system, while protecting investors and the public interest. Thus, as no new regulatory issues are raised by this proposal, the Commission believes it is appropriate to remove the component number limitations found in the Notice, and permit the Exchange to manage the

[8] *See* Securities Exchange Act Release No. 44920 (October 11, 2001) (Approval order for File No. SR–Phlx–00–75, which, among other things, renames the Index ''TheStreet.com Internet Sector Index'').

[9] 17 CFR 240.11Aa3–1.

[10] *See* Securities Exchange Act Release No. 44920, *supra* note 8.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.* In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

Index with greater flexibility under Phlx Rule 1009A(c)(2).

Accordingly, the commission finds good cause, consistent with section 6(b)(5) of the Act,[16] to approve the proposed rule change, and Amendment Nos. 1 and 2, on an accelerated basis prior to the thirtieth day after the date of publication of notice in the **Federal Register**, pursuant to section 19(b)(2) of the Act.[17]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Phlx–00–70), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–26085 Filed 10–16–01; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(5).

[18] *Id.*

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3798]

Notice of Meetings; United States International Telecommunication Advisory Committee, 2002 International Telecommunication Union, Plenipotentiary Conference, and 2002 World Telecommunication Development Conference

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union (ITU). The purpose of these meetings is to prepare for the 2002 Plenipotentiary Conference and the 2002 World Telecommunication Development Conference.

An ITAC meeting will be held on Tuesday, October 30, 2001, at the Federal Communications Commission in Room 6–B516 from 1:30 pm to 3 pm to initiate the review of ITU Plenipotentiary Conference issues. Additional meetings are scheduled concerning preparations for the Plenipotentiary Conference on Tuesday, November 27, 2001, on Tuesday, December 18, 2001, on Tuesday, January 15, 2002, on Tuesday, February 5, 2002, and on Tuesday, March 12, 2002. All of these subsequent meetings are scheduled to begin at 1:30 pm and will be at the Department of State in rooms yet to be determined.

An ITAC meeting concerned with preparations for the 2002 World Telecommunication Development Conference (WTDC) will be held on Thursday, November 1, 2001 from 2 pm to 4 pm in Room 1408 of the State Department. Additional meetings on preparations for the WTDC are scheduled for Thursday, November 15, 2001, Thursday, November 29, 2001, and Thursday, December 20, 2001. Other meeting dates will be announced at the initial meeting.

Members of the general public may attend these meetings. Directions to meeting location and actual room assignments may be determined by calling the ITAC Secretariat at (202) 647–0965/2592. Entrance to the State Department and the Federal Communications Commission is controlled; in order to get precleared for each meeting, people planning to attend should send an e-mail to williamscd@state.gov no later than 48 hours before the meeting. This e-mail should include the name of the meeting and date of meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission to the State Department and the Federal Communications Commission: U.S. driver's license, passport, U. S. Government identification card. Enter the Department of State from the C Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Attendees may join in the discussions, subject to the instructions of the Chair. Admission of participants will be limited to seating available.

Dated: October 11, 2001.

Doreen F. McGirr,

Director, Telecommunications Development, U.S. Department of State.

[FR Doc. 01–26310 Filed 10–15–01; 2:36 pm]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 3747]

Overseas Security Advisory Council (OSAC) Meeting Notice: Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on November 6, 7, and 8, in Washington, DC. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b[c] [1] and [4], it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda will include updated committee reports, a world threat overview and a round table discussion that calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–1003, phone: 202–663–0533.

Dated: September 25, 2001.

Peter E. Bergin,

Director of the Diplomatic Security Service, U.S. Department of State.

[FR Doc. 01–26119 Filed 10–16–01; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee; Extension of Deadline for the Submission of Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act, Title I of the Trade and Development Act of 2000

ACTION: Extension of deadline for submission of comments.

SUMMARY: The African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee (the ''Subcommittee'') is extending the deadline for the submission of written public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (AGOA) from October 10, 2001, to November 6, 2001.

DATES: The deadline for comments is November 6, 2001.

FOR FURTHER INFORMATION CONTACT: Office of African Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Room 501, Washington DC, 20508. Telephone (202) 395–9514.

SUPPLEMENTARY INFORMATION: On September 25, 2001, the Subcommittee published in the **Federal Register** a request for written public comments for the annual review of the eligibility of sub-Saharan African countries to receive the benefits of the AGOA (''Comments Request''). *See*, 66 FR 49059. According to the Comments Request, the deadline for the submission of all written comments was October 10, 2001. The Subcommittee is hereby extending that deadline until not later than November 6, 2001. Parties should refer to the Comments Request for an explanation of the AGOA, the benefits eligibility requirements, a list of current beneficiary and non-beneficiary countries, and instructions for the submission of written comments.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 01–26171 Filed 10–16–01; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending May 11, 2001

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2001–10757.
Date Filed: October 2, 2001.
Parties: Members of the International Air Transport Association.
Subject:
PTC COMP 0843 dated 3 August 2001;
Composite Resolutions r1–r19;
PTC COMP 0852 dated 31 August 2001—technical correction;
Minutes—PTC COMP 0870 dated 2 October 2001;
Intended effective date: 1 April 2002.

Docket Number: OST–2001–10776.
Date Filed: October 4, 2001.
Parties: Members of the International Air Transport Association.
Subject:
PTC2 EUR 0402 dated 21 September 2001;
TC2 Within Europe Expedited Resolutions r1–r11;
PTC2 EUR 0403 dated 21 September 2001;
TC2 Within Europe Expedited Resolutions r12–r30;
PTC2 EUR 0404 dated 21 September 2001;
TC2 Within Europe Expedited Resolutions r31–r34;
PTC2 EUR 0405 dated 21 September 2001;
TC2 Within Europe Expedited Resolution 002t–r35;
Minutes—PTC2 EUR 0406 dated 28 September 2001;
Table—None;
Intended effective dates: 15 October, 1 November,15 November, 1 December 2001.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–26146 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending October 5, 2001. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2001–10748.
Date Filed: October 1, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 22, 2001.
Description: Application of Pacific Airways, Inc. pursuant to 49 U.S.C. Section 41102 and Subpart B, requesting a certificate of public convenience and necessity authorizing interstate scheduled air transportation.

Docket Number: OST–2001–10792.
Date Filed: October 5, 2001.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 26, 2001.
Description: Application of Northwest Airlines, Inc. pursuant to 49 U.S.C. 41108, and 41102 and Subpart B, requesting issuance of a certificate of public convenience and necessity authorizing it to engage in the scheduled foreign air transportation of persons, property and mail between a point or points in the United States via intermediate points to a point or points in Italy and beyond. Northwest also requests that the Department integrate this certificate authority with all of Northwest's existing certificate and exemption authority to the extent consistent with U.S. bilateral agreements and Department policy.

Dorothy Y. Beard,

Federal Register Liaison.

[FR Doc. 01–26147 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on January 16, 2001 [66 FR 3645–3646].

DATES: Comments must be submitted on or before November 16, 2001.

FOR FURTHER INFORMATION CONTACT: Chris Flanigan at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–20), 202–366–4918. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Compliance Labeling of Retroreflective Materials for Heavy Trailer Conspicuity.
OMB Number: 2127–0569.
Type of Request: Extension of a currently approved collection.
Abstract: Federal Motor Vehicle Safety Standard No. 108 requires that large trailers be equipped with reflective markings. The material used must comply with certain performance and be labeled with a certification. The permanent marking of the letters

''DOT–C2, ADot–C3'' or ADOT–C4'' at least 3mm high at regular intervals on retroreflective sheeting material.

Affected Public: Business of other for profit organizations.

Estimated Total Annual Burden: 1.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–26157 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–01–10784]

Reports, Forms, and Record keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 17, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Jack Oates, NHTSA 400 Seventh Street, SW., room 5238, NSC–01, Washington, DC 20590. Mr. Oates's telephone number is (202) 366–2121. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Uniform Criteria for State Observational Surveys of Seat Belt Use.

OMB Control Number: 2127–0597.

Affected Public: The 50 States, the District of Columbia and Puerto Rico.

Form Number: N/A.

Abstract: This collection would require the respondents, which are the States, the District of Columbia, and Puerto Rico to provide seat belt use survey information to NHTSA before they receive grant money. To be eligible for funding, the surveys must be completed by the end of the calendar year and submitted to NHTSA by March 1 of the following calendar year.

Estimated Annual Burden: 17,942.

Number of Respondents: 52.

Adele Derby,

Associate Administrator for State and Community Services.

[FR Doc. 01–26075 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–01–10783]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before December 17, 2001.

ADDRESSES: Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Marlene Markison, NHTSA 400 Seventh Street, SW., room 5238, NSC–01,Washington, DC 20590. Ms. Markison's telephone number is (202) 366–2121. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: 23 CFR, part 1345, Occupant Protection Incentive Grant—Section 405.

OMB Control Number: 2127–0600.

Affected Public: The 50 States, The District of Columbia, Puerto Rico, American Samoa, Guam, Northern Marianas and Virgin Islands.

Form Number: HS–217 Highway Safety Program Cost Summary.

Abstract: An occupant protection incentive grant is available to states that can demonstrate compliance with at least four of six criteria. Demonstration of compliance requires submission of copies of relevant seat belt and child passenger protection statutes, plan and/or reports on statewide seatbelt enforcement and childseat education programs and possibly some traffic court records. In addition, States eligible to receive grant funds must submit a Program Cost Summary (Form 217), allocating section 405 funds to occupant protection programs.

Estimated Annual Burden: 1736.

Number of Respondents: 56.

Adele Derby,

Associate Administrator for State and Community Services.

[FR Doc. 01–26076 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** document with a 60-day comment period was published on April 23, 2001 [66 FR 20519–20520].

DATES: Comments must be submitted on or before November 16, 2001.

FOR FURTHER INFORMATION CONTACT: P.L. Moore at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–32), 202–366–5222. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR part 575.104; Uniform Tire Quality Grading Standard.

OMB Number: 2127–0519.

Type of Request: Extension of a currently approved information collection.

Abstract: Part 575 requires tire manufacturers and tire brand owners to submit reports to NHTSA regarding the UTQGS grades of all passenger car tire lines they offer for sale in the United States. This information issued by consumers of passenger car tires to compare tire quality in making their purchase decisions. The information is provided in several different ways to insure that the consumer can readily see and understand the tire grades: (1) The grades are molded into the sidewall of the tire so that they can reviewed on both the new and old tires that are to be replaced; (2) a paper label is affixed to the tread face of the new tires that provides the grades of that particular tireline along with an explanation of the grading system; (3) tire manufacturers provide dealers with brochures for public distribution listing the grades of all tirelines they offer for sale; (4) NHTSA compiles the grading information of all manufacturer's tirelines into a booklet that is available to the public both in printed form and on the website.

Affected Public: All passenger car tire manufacturers and brand name owners offering passenger car tires for sale in the United States.

Estimated Total Annual Burden: 79,650.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on September 27, 2001.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–26155 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** document with a 60-day comment period was published on February 28, 2001 [66 FR 12829–12830].

DATES: Comments must be submitted on or before November 16, 2001.

FOR FURTHER INFORMATION CONTACT: Walter Culbreath at the National Highway Traffic Safety Administration, Office of Administration (NAD–40), 202–366–1566. 400 Seventh Street, SW., Room 6132, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Fatal Accident Reporting System (FARS).

OMB Number: 2127–0006.

Type of Request: Extension of a currently approved collection.

Abstract: Under both the Highway Safety Act of 1966 and the National Traffic and Motor Vehicle Safety Act of 1966, the National Highway Traffic Safety Administration (NHTSA) has the responsibility to collect accident data that support the establishment and enforcement of motor vehicle regulations and highway safety programs. These regulations and programs are developed to reduce the severity of injury and the property damage associated with motor vehicle accidents. The Fatal Accident Reporting System (FARS) is a major system that acquires national fatality information directly from existing State files and documents. Since FARS is an on-going data acquisition system, reviews are conducted yearly to determine whether the data acquired are responsive to the total user population needs. The total user population includes Federal and State agencies and the private sector. Annual changes in the forms are minor in terms of operation and method of data acquisition, and do not affect the reporting burden of the respondent (State employees utilize existing State accident files). The changes usually involve clarification adjustments to aid statisticians in conducting more precise analyses and to remove potential ambiguity for the respondents.

Affected Public: State, Local, or Tribal Government.

Estimated Annual Burden: 79,550 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on September 27, 2001.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–26156 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on January 16, 2001 [66 FR 3643–3644].

DATES: Comments must be submitted on or before November 16, 2001.

FOR FURTHER INFORMATION CONTACT: Chris Flanigan at the National Highway Traffic Safety Administration, Office of Safety Performance Standards (NPS–20), 202–366–4923. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR 571.125, Warning Devices.

OMB Number: 2127–0506.

Type of Request: Extension of a currently approved collection.

Abstract: Manufacturers of warning triangles must label each device to comply with Standard No. 125. This standard establishes requirements for devices, without self-contained energy sources. Without proper deployment and use, the effectiveness of the devices may be greatly diminished, and may lead to serious injuries due to rear end collisions between moving traffic and disabled vehicles. The warning devices shall be permanently and legibly marked and also provide instructions for its erection and display.

Affected Public: Business of other for profit organizations.

Estimated Total Annual Burden:

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 01–26158 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2001–8761 (Notice No. 01–10)]

Notice of Information Collection Approval

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

ACTION: Notice of information collection approval.

SUMMARY: This notice announces OMB approval of information collection requests (ICRs) for OMB No. 2137–0022, ''Testing, Inspection and Marking Requirements for Cylinders'' OMB No. 2137–0039, ''Hazardous Materials Incident Reports'' OMB No. 2137–0542, ''Flammable Cryogenic Liquids'' OMB No. 2137–0572, ''Testing Requirements for Non-Bulk Packaging'' OMB No. 2137–0582, ''Container Certification Statement'' OMB No. 2137–0586, ''Hazardous Materials Public Sector Training and Planning Grants'' OMB No. 2137–0591, ''Response Plans for Shipments of Oil'' and OMB No. 2137–0595, ''Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service''.

DATES: The expiration dates for these ICRs are September 30, 2004 and October 31, 2004.

ADDRESSES: Requests for a copy of an information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Office of Management and Budget (OMB) regulations (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(s)) and specify that no person is required to respond to an information collection unless it displays a valid OMB control number. In accordance with the Paperwork Reduction Act of 1995, RSPA has received OMB approval for the following ICRs.

Title: Testing, Inspection and Marking Requirements for Cylinders.
OMB Control Number: 2137–0022.
Expiration Date: October 31, 2004.

Title: Hazardous Materials Incident Reports.
OMB Control Number: 2137–0039.
Expiration Date: October 31, 2004.

Title: Flammable Cryogenic Liquids.
OMB Control Number: 2137–0542.
Expiration Date: October 31, 2004.

Title: Testing Requirements for Non-bulk Packaging.
OMB Control Number: 2137–0572.
Expiration Date: September 30, 2004.

Title: Container Certification Statement.
OMB Control Number: 2137–0582.
Expiration Date: September 30, 2004.

Title: Hazardous Materials Public Sector Training and Planning Grants.
OMB Control Number: 2137–0586.
Expiration Date: September 30, 2004.

Title: Response Plans for Shipments of Oil.
OMB Control Number: 2137–0591.
Expiration Date: October 31, 2004.

Title: Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service.
OMB Control Number: 2137–0595.
Expiration Date: October 31, 2004.

Issued in Washington, DC on October 11, 2001.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 01–26148 Filed 10–16–01; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F 20984]

Stagecoach Holdings PLC and Coach USA, Inc., et al.—Control—St. Louis Executive Coach, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Stagecoach Group PLC (Stagecoach) and its subsidiary, Coach USA, Inc. (Coach), noncarriers, and various subsidiaries of each (collectively, applicants), filed an application under 49 U.S.C. 14303 to acquire control of St. Louis Executive Coach, Inc. (St. Louis Executive), a motor passenger carrier based in St. Louis, MO. Persons wishing to oppose this application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by November 30, 2001. Applicants may file a reply by December 17, 2001. If no comments are filed by November 30, 2001, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket. No. MC–F–20984 to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any comments to applicants' representative: Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW., Washington, DC 20036–1795.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600 [TDD for hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Stagecoach is a public limited corporation organized under the laws of Scotland.[1] With operations in several countries, Stagecoach is one of the world's largest providers of passenger transportation services. It had total revenues of $2.7 billion for the fiscal year ending April 30, 2001. Coach is a Delaware corporation that currently controls over 90 motor passenger carriers.

Stagecoach and its subsidiaries currently control Coach,[2] its noncarrier regional management subsidiaries, and the motor passenger carriers jointly controlled by Coach and the management subsidiaries.[3] In previous Board decisions, Coach management subsidiaries, including co-applicant Coach USA North Central, Inc., have obtained authority to control motor passenger carriers jointly with Coach.[4]

Applicants state that Coach formed St. Louis Executive as a Missouri corporation in August 2001.[5] Before St.

[1] Stagecoach was formerly known as Stagecoach Holdings PLC. It recently changed its name to Stagecoach Group PLC.

[2] Stagecoach controls Coach through various subsidiaries, namely, SCUSI Limited (formerly known as SUS 1 Limited); SCOTO Limited (formerly known as SUS 2 Limited); Stagecoach General Partnership and SCH US Holdings Corp.

[3] *See Stagecoach Holdings PLC—Control—Coach USA, Inc., et al.,* STB Docket No. MC–F–20948 (STB served July 22, 1999).

[4] *See Coach USA, Inc. and Coach USA North Central, Inc.—Control—Nine Motor Carriers of Passengers,* STB Docket No. MC–F–20931, *et al.* (STB served July 14, 1999).

[5] St. Louis Executive recently obtained federally issued operating authority from the Federal Motor Carrier Safety Administration in Docket No. MC–414193, authorizing it to provide charter and special services between points in the United States. St. Louis Executive will initially operate approximately 6 buses and minivans and employ approximately 10 drivers. It intends to initiate carrier operations soon and to date has no revenues. St. Louis Executive will provide charter and tour

Louis Executive obtained operating authority, Coach placed the stock of that entity into an independent voting trust.[6] The control transaction that is the subject of this application will not involve any transfer of the federal operating authority held by St. Louis Executive. St. Louis Executive would also be jointly controlled by Coach USA North Central, Inc, a management company wholly owned by Coach.

Applicants have submitted information, as required by 49 CFR 1182.2(a)(7), to demonstrate that the proposed acquisition of control is consistent with the public interest. Applicants state that the proposed acquisition of control will not reduce competitive options, adversely impact fixed charges, or adversely impact the interests of the employees of St. Louis Executive. They assert that granting the application will allow St. Louis Executive to take advantage of economies of scale and substantial benefits offered by applicants, including interest cost savings and reduced operating costs. In addition, applicants have submitted all of the other statements and certifications required by 49 CFR 1182.2. Additional information, including a copy of the application, may be obtained from the applicants' representative.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV*.

The decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on November 30, 2001, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW, Washington, DC 20590.

Decided: October 10, 2001.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 01–25972 Filed 10–16–01; 8:45 am]

BILLING CODE 4915–00–P

services in the St. Louis area and between that area and points in nearby states.

[6] Applicants submitted a copy of the voting trust agreement with their application.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC is soliciting comment concerning its information collection titled, ''(MA)—Management Official Interlocks—12 CFR 26.'' The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by November 16, 2001.

ADDRESSES: You should direct your comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0196, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Alexander T. Hunt, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: (MA)—Management Official Interlocks—12 CFR part 26.

OMB Number: 1557–0196.

Description: The OCC is requesting comment on its proposed extension, without change, of the information collection titled, ''(MA)-Management Official Interlocks—12 CFR part 26.''

Under the Interlocks Act, two competing depository institutions generally may not share management officials. However, the OCC has legal authority to implement exemptions to this general prohibition. This information collection is needed to prevent any management official interlock that would result in a monopoly or substantial lessening of competition, and to foster competition between unaffiliated institutions. The OCC uses the information to ensure that a proposed management interlock is permitted under statute, is eligible for an exemption, and does not have an anticompetitive effect. The OCC also uses the information to determine whether it can share a management official with a competing depository institution.

Type of Review: Extension of OMB approval.

Affected Public: Businesses or other for-profit (national banks).

Estimated Number of Respondents: 7.

Estimated Total Annual Responses: 7.

Frequency of Response: On occasion.

Estimated Time per Respondent: 3.66 hours.

Estimated Total Annual Burden: 29 hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Dated: October 11, 2001

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 01–26026 Filed 10–16–01; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 2401, will be held Wednesday, November 7, and Thursday, November 8, 2001, from 8:30 a.m. until 4:30 p.m., in Room 230 at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420. This will be the Committee's first meeting of Fiscal Year 2002.

The purpose of the Committee meeting is to review the administration of VA's cemeteries and burial benefits program. On Wednesday, November 7, Committee members will be briefed on National Cemetery Administration (NCA) issues, including the budget, issues related to the provision of headstones and markers, NCA's history program, and legislation, including The Veterans Millennium Health Care and Benefits Act of 1999.

On Thursday, November 8, members of the Committee will be informed about new cemetery construction, the State Cemetery Grants Program and issues related to the administration and maintenance of national cemeteries. Representatives from Arlington National Cemetery, the American Battle Monuments Commission and the National Park Service will provide updates on issues related to their cemeteries.

The meeting will be open to the public. Individuals wishing to attend the meeting should contact Mrs. Paige Lowther, Designated Federal Official, National Cemetery Administration, [phone (202) 273–5157] no latter than 12 noon (ET), October 30, 2001.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to Mrs. Paige Lowther, Designated Federal Official, National Cemetery Administration (40), 810 Vermont Avenue, NW, Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization, association or person(s) they represent. In addition, to the extent practicable, letters should indicate the subject matter to be discussed. Oral presentations should be limited to 10 minutes in duration. Individuals wishing to file written statements to be submitted to the Committee must also mail or deliver them to Mrs. Lowther.

Letters and written statements as discussed above must be mailed or delivered in time to reach Mrs. Lowther by 12 noon (ET), October 30, 2001. Oral statements will be heard between 10:00 a.m. and 10:30 a.m. (ET), November 7, 2001, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: October 5, 2001.

By Direction of the Secretary:

Nora E. Egan,

Committee Management Officer.

[FR Doc. 01–26058 Filed 10–16–01; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
October 17, 2001

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Flightcrew Compartment Access and Door Designs; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2001–10770; SFAR 92–1]

RIN 2120–AH52

Flightcrew Compartment Access and Door Designs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action supersedes SFAR 92 which was published October 9, 2001, by allowing certain air carriers to quickly modify the flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. This action temporarily authorizes variances from existing design standards for the doors and allows for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration. This action prohibits the possession of flightdeck compartment door keys by other than the flightcrew during flight. This action is being taken in the wake of the September 11, 2001, terrorist attacks against four U.S. commercial airplanes.

DATES: This action is effective October 17, 2001 and shall remain in effect until April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Kimberly Smith, Technical Programs Branch, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7242; e-mail address: *9-awa-avr-design@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy of this document from the Internet by taking the following steps:

Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

On the search page, type in the last four digits of the docket number shown at the beginning of this document. Click on ''search.''

On the next page, which contains the docket summary information, click on the item you want to see.

You can also get an electronic copy using the Internet through the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http:www.faa.gov/avr/arm/sbrefa.htm and send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Background

The September 11, 2001, hijacking events have demonstrated that some persons are willing to hijack airplanes and use them as weapons against the citizens of the United States. This is a safety and security threat that was not anticipated and, therefore, not considered in the design of transport airplanes. The recent hijackings make it clear that there is a critical need to improve the security of the flightcrew compartment. These improvements should deter terrorist activities and, if they are attempted, delay or deny access to the cockpit.

Flightcrew Compartment Door Designs

Flightcrew compartment doors on transport category airplanes have been designed principally to ensure privacy, so pilots could focus their entire attention to their normal and emergency flight duties. The doors have not been designed to provide an impenetrable barrier between the cabin and the flightcrew compartment. Doors have not been required to meet any significant security threat, such as small arms fire or shrapnel, or the exercise of brute force to enter the flightcrew compartment.

Besides affording an uninterrupted work environment for the flightcrew, flightcrew compartment doors often must meet other important safety standards. Should there be a sudden decompression of the airplane, separate compartments within the airplane, like the cabin and the crew compartment, must be designed so that the pressure differential that is created does not compromise the basic airplane structure. Certification standards require that airplane designs provide a method to compensate for decompression in a manner that avoids significant damage to the airplane. In many cases, flightcrew compartment doors provide the pressure compensation, by being vented or swinging open to equalize the pressure between the cabin and the flightcrew compartment.

In addition, design standards require that the flightcrew have a path to exit the flightcrew compartment in an emergency, if the cockpit window exits are not usable. Flightcrew compartment doors have been designed to provide this escape path. But this escape feature may also enable easier unauthorized entry into the flightcrew compartment from the cabin.

Operating regulations, in particular § 121.379(b) in the case of a major alteration, require the work to be done in accordance with technical data approved by the Administrator. Operating regulations for airlines also require that each crewmember have a key readily available to open doors between passengers and an emergency exit. Some airlines issue flightcrew compartment door keys to all their crewmembers. This allows flight attendants to enter the flightcrew compartment and assist the flightcrew in an emergency, such as incapacitation of a flight crewmember. But it also offers an opportunity for an individual to overpower or coerce a flight attendant, take away the key, and enter the flightcrew compartment.

Rapid Response Team

To evaluate what could be done to improve flightcrew compartment security, the Secretary of Transportation formed a Rapid Response Team for Aircraft Security. The Team included representatives of airplane designers, airline operators, airline pilots, and flight attendants. There was a clear consensus from this group, and agreement by the FAA, that immediate actions must be taken to strengthen the flightcrew compartment door. The short-term options, though, in one way or another could conflict with regulatory design requirements such as those discussed above.

The Rapid Response Team addressed the design issues and found the relative safety risks to be small in view of the emergent security risk of unauthorized flightcrew compartment entry. The FAA agrees with this conclusion. The Rapid

Response Team report also concluded, and the FAA agrees, that all existing design requirements should continue to be applied in the long term. Therefore, this SFAR allows a temporary period during which non-compliance with design requirements will be allowed when improvements to flightcrew compartment security are made. This relief is limited to 18 months, at which time the modified airplane must be brought back into full compliance with all design requirements. Airlines will submit reports within 180 days of the publication of the SFAR on how they will achieve this compliance.

This SFAR will provide airlines with maximum flexibility to incorporate door modifications rapidly. In addition to waiving specific airworthiness regulations, the FAA is waiving procedural requirements applicable to major alterations (§ 121.379(b)). In addition to the information obtained from the Rapid Response Team, the FAA has received technical information from airline operators and manufacturers regarding what modifications are possible and how quickly they can be incorporated. The technical data reviewed by the FAA reflect good design practices, and the FAA is confident that installations can be made without unduly compromising safety.

Given the urgency of the need to take action to reinforce the flightcrew compartment doors, the FAA finds that it is in the public interest to forgo the requirement that major alterations to accomplish this task have data previously approved by the Administrator. This portion of the SFAR is limited to 6 months. Major alterations performed after that date must be in accordance with approved data, and whatever the airline installs in the short term must ultimately be brought into full regulatory compliance for emergency egress and venting.

The SFAR requires reports to the FAA at 90 days and 180 days after the publication date of the SFAR, so the modifications can be monitored and corrective action taken if necessary. Because of the risk posed by having other than flightcrew members onboard the aircraft as allowed in § 121.583, FedEx on October 10, 2001, petitioned the FAA to take actions necessary to allow it to install additional door security measures in accordance with the provisions of SFAR 92 (66 FR 51546, October 9, 2001). The FAA has determined that the modifications requested by FedEx would apply to similarly situated cargo airplane operators and that the threat is similar to that of passenger airplanes.

The SFAR Provisions

The revised SFAR allows all air carriers under part 121 to install flightcrew compartment door improvements and to prohibit possession of flightcrew compartment keys by persons other than flight crewmembers during flight. It is very broad, to allow maximum short-term flexibility in crafting enhanced door security measures. It allows the doors to be modified and airplanes to be operated with modified doors.

The FAA has established an 18-month duration for the portions of the SFAR concerning airworthiness requirements. We expect this will give the industry sufficient time to design and install more permanent changes to door security and establish procedures for flightcrew compartment door access that meet regulatory requirements for egress and venting.

The SFAR requires operators to submit a report to the FAA within 90 days that details the specific modifications they have made to the flightcrew compartment door. This will allow the FAA to monitor what has been installed and take action if the installation creates an unacceptable safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR requires a report within 180 days of the publication date of the SFAR that describes how the operator will meet regulatory compliance for egress and venting.

We also expect that airframe manufacturers and modifiers will produce service information to assist operators in developing modifications to improve intrusion resistance to the flightcrew compartment. While service documents would not require separate approval under this SFAR, such modifications may also be installed in production airplanes. The modification authority granted by this SFAR also applies to manufacturers and other persons applying for airworthiness certificates to enable delivery of airplanes to the operators.

In addition, we understand that some operators may rely on suppliers to produce parts to support these modifications to the flightcrew doors. Under normal circumstances, such parts producers would be subject to the requirement to obtain parts manufacturer approvals in accordance with 14 CFR 21.303. However, to facilitate reinforcement of these doors, the SFAR includes a provision overriding the requirement for parts production approval in support of these activities.

Should any of the changes to the door constitute a major alteration, this SFAR temporarily relieves the operator of having to obtain prior approval of the data. This part of the SFAR terminates 180 days after the publication date of the SFAR. As soon as the design data is submitted (no later than 90 days from the publication date of the SFAR), the FAA will work with the operators to identify a mutually acceptable process and time to get the data approved. In the meantime, the airworthiness certificates on airplanes that have been modified will remain valid. In making returns to service of airplanes modified under this SFAR, documents can reflect compliance with regulatory requirements by citing the SFAR.

In addition to the above changes to harden the flightcrew compartment doors against intruders, the FAA also believes it is prudent to eliminate the ability of intruders to gain access by obtaining a flight attendant's key. For that reason, this SFAR temporarily changes the requirement in § 121.313(g) by stating that only flight crewmembers, and not cabin crewmembers, will have flight crew compartment keys during flight. This should lessen the opportunity for gaining unauthorized access and reduce the likelihood of attacks on flight attendants to obtain the key. The limitations on keys do not apply to cargo operators because flight attendants are only required on passenger airplanes. Note that this change to 121.313(g) will expire with this SFAR. Further rulemaking will be necessary to address this subject after expiration.

Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action by the FAA, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C 553(d) for making this rule effective immediately upon publication. This action is necessary to prevent a possible imminent hazard to airplanes and to protect persons and property within the United States.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this SFAR.

Paperwork Reduction Act

This emergency final SFAR contains information collection activities subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). In accordance with section 3507(j)(1)(B) of that statute, the FAA is requesting the Office of Management and Budget to grant an immediate emergency clearance on the paperwork package that it is submitting. As protection provided by the Paperwork Reduction Act, 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. Therefore, notification will be made to the public when a clearance is received. Following is a summary of the information collection activity.

Title: Flightcrew Compartment Access and Door Designs.

Summary/Need: The SFAR requires operators to submit a report to the FAA within 90 days that details the specific modifications. This will allow the FAA to monitor what has been installed and take action if the installation creates an unwarranted safety risk. Further, to monitor progress toward the goal of full compliance, the SFAR requires a report within 180 days of the SFAR that describes how the operator will come into full regulatory compliance.

Respondents: The respondents are an estimated 135 airplane operators covered under 14 CFR part 121.

Burden: The burden associated with this SFAR has not been determined prior to this publication, but will be submitted to OMB with the request for clearance.

Regulatory Analyses

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies the rule. At this time, the FAA is not able to assess whether this rule will have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. However, we will be conducting a regulatory analysis of the cost and benefits of this rulemaking, including any impact on small entities, at a later date.

Executive Order 13132, Federalism

The FAA has analyzed this SFAR under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' This SFAR does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this SFAR has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that this SFAR is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends 14 CFR part 121 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

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

Authority: 49 U.S.C. 106(g), 1153, 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

SFAR No. 92 [Removed]

2. Remove Special Federal Aviation Regulation (SFAR) No. 92.

3. Add Special Federal Aviation Regulation (SFAR) No. 92–1 to read as follows:

SPECIAL FEDERAL AVIATION REGULATION NO. 92–1—FLIGHTCREW COMPARTMENT ACCESS AND DOOR DESIGNS

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) applies to all operators that hold an air carrier certificate or operating certificate issued under 14 CFR part 119 and that conduct operations under part 121, except paragraph 4 of this SFAR does not apply to cargo operations. It applies to the operators specified in this SFAR that modify airplanes to improve the flightcrew compartment door installations to restrict the unwanted entry of persons into the flightcrew compartment. This SFAR also applies to production certificate holders and applicants for airworthiness certificates for airplanes to be operated by operators specified in this SFAR, and producers of parts to be used in such modifications.

2. *Regulatory Relief.* Contrary provisions of part 21, and §§ 121.153(a)(2) and 121.379(b), notwithstanding:

(a) An operator may operate airplanes modified to improve the flightcrew compartment door installations to restrict the unauthorized entry of persons into the flightcrew compartment without regard to the applicable airworthiness requirements and may modify those airplanes for that purpose, using technical data not previously approved by the Administrator, subject to the following conditions:

(i) Within 90 days after publication of this SFAR, submit to the Director, Aircraft Certification Service, a detailed description of the changes to the airplane that have been accomplished to enhance the intrusion resistance of the flightcrew compartment including identification of what major alterations have been done without previously approved data.

(ii) Within 180 days after publication of this SFAR, submit to the Director,

Aircraft Certification Service, a schedule for accomplishment of the changes necessary to restore compliance with all applicable airworthiness requirements, as well as a listing of the regulations not currently complied with. The schedule may not extend beyond the termination date of this SFAR.

(iii) If, upon reviewing the data submitted in paragraph 2(a)(i) of this SFAR, the Administrator determines that a door modification presents an unacceptable safety risk, the FAA may issue an order requiring changes to such modifications.

(b) An applicant for an airworthiness certificate may obtain such a certificate for modified airplanes to be operated by operators described in this SFAR.

(c) A holder of a production certificate may submit for airworthiness certification or approval, modified airplanes to be operated by operators described in this SFAR.

(d) A person may produce parts for installation on airplanes in connection with modifications described in this SFAR, without FAA parts manufacturer approval (PMA).

3. *Return to Service Documentation.* Where operators have modified airplanes as authorized in this SFAR, the affected airplane must be returned to service with a note that it was done under the provisions of this SFAR.

4. *Provision for Flightdeck Door Compartment Key.* Contrary to provisions of § 121.313(g), the following provision applies: A key for each door that separates a passenger compartment from an emergency exit identified to passengers in the briefing required by § 121.571(a)(1)(ii). The key required for access to the emergency exit must be readily available for each crewmember. No key to the flightcrew compartment shall be available to any crewmember during flight, except for flight crewmembers.

5. *Termination.* With respect to the ability to approve airplanes for return to service without data previously approved by the Administrator in the case of major alterations, this SFAR terminates on April 15, 2002. All other provisions of this SFAR terminate on April 9, 2003.

Issued in Washington, DC on October 12, 2001.

Jane F. Garvey,

Administrator.

[FR Doc. 01–26204 Filed 10–12–01; 5:05 pm]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
October 17, 2001

Part III

The President

Executive Order 13230—President's Advisory Commission on Educational Excellence for Hispanic Americans

Proclamation 7485—National School Lunch Week, 2001

Proclamation 7486—White Cane Safety Day, 2001

Federal Register
Vol. 66, No. 201
Wednesday, October 17, 2001

Presidential Documents

Title 3—

The President

Executive Order 13230 of October 12, 2001

President's Advisory Commission on Educational Excellence for Hispanic Americans

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for Hispanic Americans to participate in and benefit from Federal education programs, it is hereby ordered as follows:

Section 1. There is established, in the Department of Education, the President's Advisory Commission on Educational Excellence for Hispanic Americans (Commission). The Commission shall consist of not more than 25 members. Twenty-one of the members shall be appointed by the President. Those members shall be representatives of educational, business, professional, and community organizations who are committed to improving educational attainment within the Hispanic community, as well as other persons deemed appropriate by the President. The President shall designate two of the appointed members to serve as Co-Chairs of the Commission. The other four members of the Commission shall be ex officio members, one each from the Department of Education, the Department of Housing and Urban Development, the Department of the Treasury, and the Small Business Administration. The ex officio members shall be the respective Secretaries of those agencies and the Administrator of the Small Business Administration, or their designees.

Sec. 2. The Commission shall provide advice to the Secretary of Education (''Secretary'') and shall issue reports to the President, as described in section 7 below, concerning:

(a) the progress of Hispanic Americans in closing the academic achievement gap and attaining the goals established by the President's ''No Child Left Behind'' educational blueprint;

(b) the development, monitoring, and coordination of Federal efforts to promote high-quality education for Hispanic Americans;

(c) ways to increase parental, State and local, private sector, and community involvement in improving education; and

(d) ways to maximize the effectiveness of Federal education initiatives within the Hispanic community.

Sec. 3. There is established, in the Department of Education, an office called the White House Initiative on Educational Excellence for Hispanic Americans (Initiative). The Initiative shall be located at, staffed, and supported by the Department of Education, and headed by a Director, who shall be a senior level executive branch official who reports to the Secretary. The Initiative shall provide the necessary staff, resources, and assistance to the Commission and shall assist and advise the Secretary in carrying out his responsibilities under this order. The staff of the Initiative shall gather and disseminate information relating to the educational achievement gap of Hispanic Americans, using a variety of means, including conducting surveys, conferences, field hearings, and meetings, and other appropriate

vehicles designed to encourage the participation of organizations and individuals interested in such issues, including parents, community leaders, academicians, business leaders, teachers, employers, employees and public officials at the local, State, and Federal levels. To the extent permitted by law, executive branch departments and agencies shall cooperate in providing resources, including personnel detailed to the Initiative, to meet the objectives of this order. The Initiative shall include both career civil service and appointed staff with expertise in the area of education.

Sec. 4. Executive branch departments and agencies, to the extent permitted by law and practicable, shall provide any appropriate information requested by the Commission or the staff of the Initiative, including data relating to the eligibility for and participation by Hispanic Americans in Federal education programs and the progress of Hispanic Americans in closing the academic achievement gap and in achieving the goals of the President's ''No Child Left Behind'' education blueprint. Where adequate data are not available, the Commission shall suggest the means for collecting the data. In accordance with the accountability goals established by the President, executive branch departments and agencies involved in relevant programs shall report to the President through the Initiative by September 30, 2002, on:

(a) efforts to increase participation of Hispanic Americans in Federal education programs and services;

(b) efforts to include Hispanic-serving school districts, Hispanic-serving institutions, and other educational institutions for Hispanic Americans in Federal education programs and services;

(c) levels of participation attained by Hispanic Americans in Federal education programs and services; and

(d) the measurable impact resulting from these efforts and levels of participation. The Department of Education's report also shall describe the overall condition of Hispanic American education and such other aspects of the educational status of Hispanic Americans, as the Secretary considers appropriate.

Sec. 5. Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App), may apply to the Commission, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Department of Education in accordance with the guidelines that have been issued by the Administrator of General Services.

Sec. 6. (a) Members of the Commission shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(b) To the extent permitted by law, the Department of Education shall provide funding and administrative support for the Commission and the Initiative.

Sec. 7. The Commission shall prepare and submit an interim and final report to the President outlining its findings and recommendations as follows:

(a) The Commission shall submit an Interim Report no later than September 30, 2002. The Interim Report shall describe the Commission's examination of:

(i) available research and information on the effectiveness of current practices at the local, State, and Federal levels in closing the educational achievement gap for Hispanic Americans and attaining the goals established by the President's ''No Child Left Behind'' educational blueprint;

(ii) available research and information on the effectiveness of current practices involving Hispanic parents in the education of their children; and

(iii) the appropriate role of Federal agencies' education programs in helping Hispanic parents successfully prepare their children to graduate from high school and attend post secondary institutions.

(b) The Commission shall issue a Final Report no later than March 31, 2003. The Final Report shall set forth the Commission's recommendations regarding:

(i) a multi-year plan, based on the data collected concerning identification of barriers to and successful models for closing the educational achievement gap for Hispanic Americans, that provides for a coordinated effort among parents, community leaders, business leaders, educators, and public officials at the local, State, and Federal levels to close the educational achievement gap for Hispanic Americans and ensure attainment of the goals established by the President's ''No Child Left Behind'' educational blueprint.

(ii) the development of a monitoring system that measures and holds executive branch departments and agencies accountable for the coordination of Federal efforts among the designated executive departments and agencies to ensure the participation of Hispanic Americans in Federal education programs and promote high-quality education for Hispanic Americans;

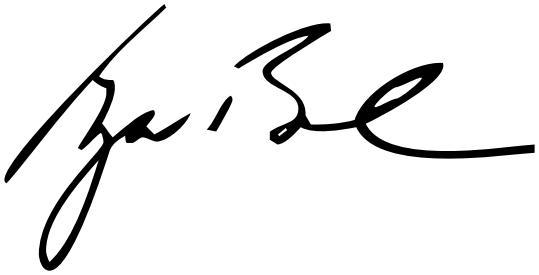
(iii) the identification of successful methods employed throughout the Nation in increasing parental, State and local, private sector, and community involvement in improving education for Hispanic Americans;

(iv) ways to improve on and measure the effectiveness of Federal agencies' education programs in ensuring that Hispanic Americans close the educational achievement gap and attain the goals established by the President's ''No Child Left Behind'' educational blueprint; and

(v) how Federal Government education programs can best be applied to ensure Hispanic parents successfully prepare their children to attend post secondary institutions.

Sec. 8. The Commission shall terminate 30 days after submitting its final report, unless extended by the President.

Sec. 9. Executive Order 12900 of February 22, 1994, as amended, is revoked.



THE WHITE HOUSE,
October 12, 2001.

[FR Doc. 01–26339
Filed 10–16–01; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7485 of October 15, 2001

National School Lunch Week, 2001

By the President of the United States of America

A Proclamation

Our Nation's future depends on fulfilling the promise in our children. As parents, teachers, community activists, governmental leaders, and concerned citizens, we must strongly commit ourselves to ensuring that our young people receive the care, education, and resources they need to realize their potential.

Since 1946, the National School Lunch Program has played an important part in pursuing that goal, by serving schoolchildren nutritious, well-balanced meals. Currently, the National School Lunch Program daily provides more than 27 million lunches in more than 97,700 schools. Of the children who participate in this program, 57 percent receive their meals for free or at a reduced price. For many of them, lunch is their only meal of the day that meets recommended nutritional guidelines.

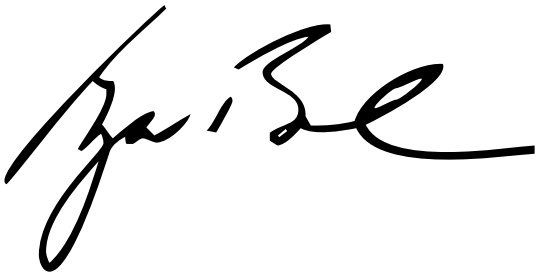
The National School Lunch Program contributes to the development of healthy eating habits among our children. The Program's Team Nutrition Initiative focuses on teaching and motivating children to make food choices that enhance their energy, growth, and potential.

The Program is vitally important to achieving our educational goals. Poorly fed children have more difficulty learning, are less attentive in class, and suffer more chronic problems, such as absenteeism and tardiness, than children who are properly nourished. By making nutritious meals available to all schoolchildren, the National School Lunch Program will help us ensure that we leave no child behind.

In recognition of the contributions of the National School Lunch Program to the health, education, and well-being of our Nation's children, the Congress, by joint resolution of October 9, 1962 (Public Law 87–780), has designated the week beginning on the second Sunday in October of each year as ''National School Lunch Week'' and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 14 through October 20, 2001, as National School Lunch Week. I call upon all Americans to join the dedicated individuals who lead child nutrition programs at the State and local levels in appropriate activities and celebrations that promote these programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–26340
Filed 10–16–01; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7486 of October 15, 2001

White Cane Safety Day, 2001

By the President of the United States of America

A Proclamation

National White Cane Safety Day, observed annually on October 15, is a day of special significance for blind and visually impaired Americans because it represents a declaration of freedom. It also signifies a commitment by the sighted community to improve access to basic services for blind and visually impaired persons.

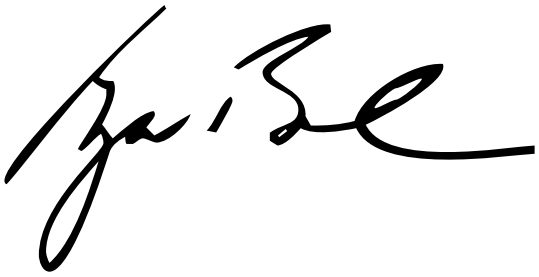
The familiar ''white cane'' is recognized as a tool of independence that enables the blind and visually impaired to participate in the facets of daily life. The core principles of our country promise freedom, justice, and hope; and these principles should guarantee the opportunity for every disabled American to live full and productive lives. The new millennium brings with it a renewed pledge to ensure that no citizen is prevented from realizing the American dream because of a disability.

Eleven years ago, when the Americans with Disabilities Act was enacted into law, America opened its doors to a new age of access for people with disabilities. To build on this landmark civil rights law, I have launched the ''New Freedom Initiative,'' which is intended to ensure that all Americans with disabilities can participate more fully in the life of their communities and of our country. As part of this initiative, my Administration has asked the Congress to increase significantly Federal funding for State low-interest loan programs, so Americans with disabilities can purchase new assistive technologies. To help researchers continue to develop these types of helpful technologies, we have asked the Congress to increase Federal investment in assistive technology research and development. All Americans must work together to break down barriers and obstacles that may impede the progress of individuals with disabilities; and we must provide them with ever greater access to the workplace and public transportation.

The Congress, by joint resolution approved on October 6, 1964, has designated October 15 of each year as White Cane Safety Day. I call upon every American to observe this day by joining with me in working to open the doors of opportunity further and making the American dream a reality for all blind and visually impaired citizens of our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 15, 2001, as White Cane Safety Day. I call upon public officials, educators, librarians, and all the people of the United States to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, in the year of our Lord two thousand one, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 01–26341
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Making further continuing appropriations for the fiscal year 2002, and for other purposes. (Oct. 12, 2001; 115 Stat. 261)

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