AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

3-21-90
Vol. 55 No. 55

federal register

Wednesday
March 21, 1990

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

3-21-90
Vol. 55 No. 55
Pages 10395-10596

federal register

Wednesday
March 21, 1990

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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

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

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WHEN: April 16, at 9:00 a.m.
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits: Medicare Eligible Individuals

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is rescinding the regulations defining Medicare-eligible individuals who were entitled to a reduced health insurance premium under the Medicare Catastrophic Coverage Act of 1988; this Act was repealed December 13, 1989.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, (202) 632–4634, ext 207.

SUPPLEMENTARY INFORMATION: The Medicare Catastrophic Coverage Act of 1988, Public Law 100–360, was enacted on July 1, 1988. It expanded benefits under Medicare parts A and B effective January 1, 1989, and January 1, 1990, respectively. Some of the additional coverage provided under the new law duplicated coverage provided under the Federal Employees Health Benefits Program (FEHBP). In order to avoid having Federal annuitants pay premiums for overlapping coverage, section 422 of the law provided for a reduction in FEHBP premium rates for Medicare-eligible Federal annuitants. The amount of the reduced premium and the manner in which it was administered were to be determined by the Office of Personnel Management.

On October 14, 1988, OPM published an interim regulation in the **Federal Register** (53 FR 40203) to define those individuals who would be eligible for the reduced premiums; the final regulation was published on May 25, 1989. The 1989 rate reduction was published on October 26, 1988 (53 FR 43308).

On December 13, 1989, Public Law 101–234 was signed, which repealed provisions of the Medicare Catastrophic Coverage Act of 1988, including section 422 of the law.

The purpose of this regulation is to remove the premium reduction for Medicare-eligible annuitants covered under the FEHBP.

Under section 553(b)(3)(B) and (d) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and the 30-day delay in effectiveness. The notice is being waived to remove requirements clearly repealed by Public Law 101–234. The 30-day delay is being waived since the repeal was effective January 1, 1990.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they primarily affect Federal employees, annuitants, and former spouses.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM amends 5 CFR part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; § 890.102 also issued under 5 U.S.C. 1104 and Pub. L. 100–654; § 890.803 also issued under sec. 303 of Pub. L. 99–569, 100 Stat. 3190, sec. 188 of Pub. L. 100–204, 101 Stat. 1331, and sec. 204 of Pub. L. 100–238, 101 Stat. 1744; subpart K also issued under title II of Pub. L. 100–654.

2. In part 890, subpart I is hereby removed, but reserved for future use.

Subpart I—[Reserved]

[FR Doc. 90–6448 Filed 3–20–90; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 245

[INS Number: 1269–90]

Adjustment of Status; Certain H–1 Nonimmigrant Nurses

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 2 of Public Law 101–238 by providing for the adjustment of status to that of lawful permanent resident for certain H–1 nonimmigrant nurses. This rule outlines the requirements for establishing eligibility for these benefits and the procedures involved in the application process. The statute requires promulgation of these regulations within ninety days of passage of Public Law 101–238, which was signed on December 18, 1989.

DATES: This interim rule is effective March 16, 1990. Comments must be received on or before April 16, 1990.

ADDRESSES: Written comments should be submitted, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street NW., Washington, DC 20536. Please include INS Number 1269–90 on the mailing envelope to ensure proper handling.

FOR FURTHER INFORMATION CONTACT: Joseph D. Cuddihy, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, Telephone (202) 633–5014.

SUPPLEMENTARY INFORMATION: Part 245 of title 8 is amended in four areas to implement different requirements of section 2 of Public Law 101–238. In § 245.1, a new paragraph (c)(2)(iv) is being added to include another situation to the definition of "technical violation". Congress intended the beneficiaries of

Public Law 100–658 (November 15, 1988) to benefit from the provisions of Public Law 101–238. (See *Report to Accompany H.R. 3259, Report 101–288,* pg. 4). Public Law 100–658 was an ameliorative statute, a portion of which reinstated certain H–1 nurses who were out of status back into lawful nonimmigrant status. A person who was ever out of status is generally ineligible for adjustment as a preference immigrant, unless the violation is deemed technical. Paragraph (c)(2)(iv) is being added to ensure that those beneficiaries of Public Law 100–658 who were out of status during the time period which was previously forgiven by Public Law 100–658, (from 1987 to the date of reinstatement), will not be denied adjustment of status.

In § 245.1, paragraph (d)(3) is added to describe the eligibility requirements outlined in paragraph (a) of section 2 of Public Law 101–238, and to describe the application process. An applicant must submit a blanket labor certification application (Form ETA 750) as a registered nurse (Schedule A, Group I), a preference immigrant visa petition, and an application for adjustment of status (Form I–485). An applicant must submit evidence of employment in the United States for three years as a registered nurse. This evidence is to be in the form of letters from employers stating the beginning and ending dates of periods of employment. The applicant must also submit evidence of licensure as a registered nurse for these periods of employment. An applicant must also meet all additional conditions for adjustment under section 245 of the Act, as currently contained in 8 CFR 245.2.

Parts 245.1(f)(1) and 245.2(a)(5) are both being amended to implement the requirement in Public Law 101–238 that adjustment be accomplished under section 245 of the Act, but without the restrictions of sections 201 and 202 of the Act. Section 201 sets the overall numerical limitations of preference immigrants at 270,000 per year. Section 202 sets the per country maximum at 20,000 per year and outlines the methodology and order of preference visa availability.

Part 245.1(f)(1) is amended to ensure that any applicant for adjustment who meets the conditions of Public Law 101–238 will have a visa considered "immediately available" to him or her, regardless of the date of submission of the accompanying visa petition.

Part 245.2(a)(5) is amended to allow for adjustment to occur without the allocation of a visa number (and the counting against the overall and per country totals) by the Department of State.

Since passage of Public Law 101–238, the Service has received a number of written and telephonic inquiries concerning the implementation of this statute. The Service is promulgating these regulations after consideration of these issues as discussed below.

1. Should beneficiaries of Public Law 101–238 be eligible to adjust as preference immigrants under section 203(a) of the Act, or as special immigrants as defined in section 101(a)(27) of the Act?

The regulation is written to require the applicant to adjust as a preference immigrant, not as a special immigrant. The Committee Report addresses this issue:

> The committee notes that many nurses entering the United States have available to them the ability to obtain permanent residence on the basis of a third preference petition as a member of the professions. In order to accommodate this demand for visas, the bill waives the numerical limitations for H–1 nurses seeking adjustment, thus placing nurses from all countries on the track toward permanent residence. The employer is still required to file a petition, and an application for adjustment of status based on that petition must be pursued by the nurse.

2. Are the beneficiaries of this legislation subject to section 245(c)(2) of the Act?

In accordance with the statutory language and the legislative history, the regulation cites only two instances where the provisions of section 245(c)(2) of the Act are not applicable. The first involves the beneficiaries of Public Law 101–238 who were also beneficiaries of Public Law 100–658, having been reinstated to H–1 nonimmigrant status. The period the applicant was out of status (from 1987 until the date of reinstatement) will be considered a technical violation of status by the Service. Second, the statute waives the "maintaining status" requirement for all beneficiaries of Public Law 100–658 from the period of December 31, 1989 to July 16, 1990. An applicant must have maintained lawful status for all other periods prior to filing an application for adjustment, and may not have engaged in unauthorized employment.

3. Can a nurse who meets all other requirements be issued an immigrant visa overseas, rather than adjusting status?

No, the statute specifically requires adjustment under section 245 of the Act, and does not provide for the issuance of an immigrant visa.

4. Can the spouse or child of a beneficiary of Public Law 101–238 benefit from this legislation?

A spouse or child is eligible to file for adjustment of status either concurrently or after the principal applicant. The spouse or child need not have been admitted in H–4 status. The spouse or child must meet all the requirements of section 245 of the Act, as contained in 8 CFR 245.2. The adjustment of the spouse or child occurs without regard to the numerical limitations of section 201 or 202 of the Act, just as the principal's adjustment.

5. Can the spouse or child of a beneficiary of Public Law 101–238, who is not in the United States, benefit from this legislation?

As described in the regulation, a principal applicant must submit a labor certification and a preference visa petition in support of the adjustment of status application. The approval of the preference visa petition accords the principal applicant a priority date under section 203(a) of the Act. A spouse or child of a principal alien acquired prior to the principal's adjustment acquires derivatively the priority date of the principal. The principal or a spouse or child in the U.S., under Public Law 101–238, may use that priority date as "immediately available". However, that derivative priority date cannot be used as "immediately available" by a spouse or child for the issuance of an immigrant visa abroad. The derivative priority date may be used by the spouse or child when it becomes current in accordance with existing limitations outlined in sections 201 and 202 of the Act. (See the Notes to 22 CFR 42.53 of the Department of State *Foreign Affairs Manual*). An individual outside the United States who is the spouse or child of a principal beneficiary of Public Law 101–238 is not eligible for admission to the U.S. as a nonimmigrant to file for adjustment to permanent resident status. Additionally, the Service does not intend to use the parole authority of section 212(d)(5) of the Act to allow such individuals entry into the U.S. to apply for adjustment of status and the benefits of Public Law 101–238.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date are impracticable and unnecessary as the changes have been mandated by the passage of Public Law 101–238. Early implementation will be advantageous to the intended beneficiaries.

In accordance with 8 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the

preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this regulation have been cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The Office of Management and Budget control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, part 245 of chapter I of title 8, of the Code of Federal Regulations is amended as follows:

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1154, 1182, 1186a, 1255, and 1257; 8 CFR part 2.

2. In § 245.1, paragraphs (c)(2)(iv) and (d)(3) are added, and paragraph (f)(1) is revised to read as follows:

§ 245.1 Eligibility.

* * * * *

(c) * * *

(2) * * *

(iv) A technical violation resulting from the Service's application of the maximum five/six year period of stay for certain H–1 nurses only if the applicant was subsequently reinstated to H–1 status in accordance with the terms of Public Law 100–658 (Immigration Amendments of 1988).

* * * * *

(d) * * *

(3) *Adjustment of certain nurses admitted in H–1 nonimmigrant status (Public Law 101–238)*—(i) *Eligibility.* Any alien, if otherwise qualified, is eligible for adjustment of status without regard to the numerical limitations of sections 201 and 202 of the Act if:

(A) The applicant had the status of a nonimmigrant under section 101(a)(15)(H)(i) of the Act as of September 1, 1989,

(B) The applicant has been employed in the United States as a registered nurse for a period of three years prior to the date of application for adjustment, and

(C) The applicant's continued employment as a registered nurse meets the standards established for the certification described in section 212(a)(14) of the Act.

(ii) *Application period.* In order to benefit from Public Law 101–238, an applicant must properly file an application for adjustment of status, (Form I–485) on or before March 15, 1995. An applicant must also be the beneficiary of a valid unexpired visa petition, filed in accordance with part 204 of this chapter, according him or her preference status under sections 203(a)(1) through (6) of the Act. This petition may be submitted simultaneously with the application for adjustment of status. An applicant must also submit a request for determination by the district director that the alien is qualified for and will be engaged in an occupation as a registered nurse, as currently listed on Schedule A (20 CFR part 656) simultaneously with the visa petition. To benefit from Public Law 101–238, the applicant must also include evidence of employment as a registered nurse in the U.S. for three years prior to filing the application for adjustment. This evidence is to be in the form of letters from employers stating the beginning and ending dates of periods of employment. The applicant must also submit evidence of licensure as a registered nurse for these periods of employment.

(iii) *Effect of section 245(c)(2).* An applicant for adjustment of status who benefits from the provisions of Public Law 101–238 cannot have engaged in unauthorized employment prior to filing the application for adjustment. An applicant for adjustment of status, who benefits from Public Law 101–238, also must have maintained lawful immigration status (other than through no fault of his or her own or for technical reasons) except for the period from December 31, 1989, to July 16, 1990.

(iv) *Effect of enactment on spouse or child.* The accompanying spouse or child of an applicant for adjustment of status who benefits from Public Law 101–238 may also apply for adjustment of status. All the benefits and limitations of this part apply equally to the principal applicant and his or her accompanying spouse or child.

(v) *Description of qualifying employment.* The employment as a registered nurse, described in paragraph (d)(3)(i)(B) of this section, may occur before, on, or after enactment of Public Law 101–238. The qualifying employment as a registered nurse may occur while the applicant is in any valid nonimmigrant status and is not limited solely to employment while in H–1 status.

* * * * *

(f) * * *

(1) *Availability of immigrant visas under section 245.* An alien is ineligible for the benefits of section 245 of the Act, unless an immigrant visa is immediately available to him or her at the time the application is filed. If the applicant is a preference or nonpreference alien, the current Department of State Visa Office Bulletin on Availability of Immigrant Visa Numbers will be consulted to determine whether an immigrant visa is immediately available. An immigrant visa is considered immediately available if the preference or nonpreference category applicant has a priority date on the waiting list which is no later than the date shown in the Bulletin, or the Bulletin shows that numbers for visa applicants in his or her category are current. An immigrant visa is also considered immediately available if the applicant establishes eligibility for the benefits of Public Law 101–238. Information about the immediate availability of an immigrant visa may be obtained at any Service office.

* * * * *

3. In § 245.2, paragraph (a)(5)(ii) is amended by revising the second sentence to read as follows:

§ 245.2 Application.

(a) * * *

(5) * * *

(ii) *Under section 245.* * * * An application for adjustment of status, as a preference or nonpreference alien, shall not be approved until an immigrant visa number has been allocated by the Department of State, except when the applicant has established eligibility for the benefits of Public Law 101–238. * * *

* * * * *

Dated: March 16, 1990.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 90–6516 Filed 3–19–90; 9:43 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 60, 61, 70, 72, and 150

RIN 3150–AD21

Preserving the Free Flow of Information to the Commission

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is revising its rules governing the conduct of all Commission licensees and license applicants. The final rule prohibits the imposition of

conditions in settlement agreements under section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage any employee or former employee from providing the Commission with information on potential violations or other hazardous conditions. This rule is necessary to prohibit the use of provisions which would inhibit the free flow of information to the Commission in agreements related to employment.

EFFECTIVE DATE: April 20, 1990.

FOR FURTHER INFORMATION CONTACT: Stuart A. Treby, Assistant General Counsel, Rulemaking and Fuel Cycle Division, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 492–1636.

SUPPLEMENTARY INFORMATION:

Background

Section 210 of the Energy Reorganization Act of 1974, as amended, was added as a new section to that Act in 1978 (Pub. L. 95–601). Section 210 offers protection to employees of a Commission licensee, or of a contractor or a subcontractor of a Commission licensee or applicant. The protection afforded is to those who have been fired or discriminated against as a result of the fact that, among other things, they have testified or given evidence on potential violations, or brought suit under section 210 of the Energy Reorganization Act. Employees who have been discriminated against for raising safety or other issues have the right to file complaints with the Department of Labor for the purpose of obtaining a remedy for the personal harm caused by the discrimination. Following the filing of a complaint, the Department of Labor performs an investigation. If either the employee or the employer is not satisfied with the outcome of the investigation, a hearing can be held before an Administrative Law Judge, with review by the Secretary of Labor. The Secretary of Labor can issue an order for the employee to be rehired, or otherwise compensated if the employee's case is justified.

In many cases, the employee and the employer reach settlement of the issues raised in the Department of Labor proceeding before completion of the formal process and a finding by the Secretary of Labor. In general the Commission supports settlements as they may provide appropriate remedies to employees without the need for litigation. However, a recent case has brought to the Commission's attention the potential for settlement agreements negotiated under section 210 to impose restrictions upon the freedom of employees or former employees protected by section 210 to testify or participate in NRC licensing and regulatory proceedings or to otherwise provide information on potential violations or other hazardous conditions to the Commission or the NRC staff. See *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station Units 1 and 2), CLI–88–12, 28 NRC 605 (1988); *Texas Utilities Electric Co.* (Comanche Peak Steam Electric Station Units 1 and 2), CLI–89–06, 29 NRC 348 (1989). The Commission's follow-up to the above case has confirmed that other instances of questionable restrictions do exist in a variety of settlement agreements, not limited to section 210 proceedings.

The Commission has concluded that a section 210 settlement agreement, or any other agreement affecting employment, which restricts the freedom of an employee or former employee from freely and fully communicating with the Nuclear Regulatory Commission about potential violations or other hazards falling within NRC's regulatory responsibility is unacceptable. These provisions may have a chilling effect on communications about nuclear safety, security, or other matters, and would restrict, impede, or frustrate full and candid disclosure to the Nuclear Regulatory Commission about matters of regulatory significance. Any such agreement under which a person contracts to withhold safety significant information or testimony from the Nuclear Regulatory Commission could itself be a threat to safety and therefore jeopardize the execution of the Agency's overall statutory duties. The same would be true of other information bearing on NRC's regulatory responsibilities, for example information regarding security or safeguards issues.

Accordingly, on July 18, 1989 (54 FR 30049), the Commission published a proposed rule amending its regulations to require licensees and license applicants to ensure that neither they, nor their contractors or subcontractors, impose conditions in settlement agreements under section 210 of the Energy Reorganization Act, or in other agreements affecting employment, that would prohibit, restrict, or otherwise discourage an employee from providing the Commission with information on potential violations or hazardous conditions.

The NRC has received 43 comments on the proposed rule from a variety of Commission licensees, private individuals, and industry organizations. A summary of those comments and the Commission's responses to those comments follows. Before discussing those comments, however, two additional events have occurred which, along with the comments, have resulted in changes in the content of the final rule.

First, on July 18, 1989, the Secretary of Labor issued a decision in a case filed under section 210 of the Energy Reorganization Act which addressed restrictive settlement agreements. See *Pollizi* v. *Gibbs & Hill, Inc.*, 87–ERA–38 (July 18, 1989). In that decision, the Secretary of Labor found unenforceable a clause in a settlement agreement which had the effect of drying-up channels of communication which were essential for Government agencies to carry out their responsibilities. Specifically of significance for this rulemaking, the Secretary found that Department of Labor Administrative Law Judges had a duty to review parties' settlement agreements before dismissing cases and that a restriction on voluntary appearance as a witness in a NRC proceeding was against public policy and, therefore, unenforceable. Particularly notable is the fact that the Secretary found the restrictive provision of the *Pollizi* settlement agreement unenforceable in spite of the fact that the provision in question explicitly stated that, other than appearing voluntarily as a witness in an NRC proceeding, Mr. Pollizi could bring all his safety concerns to the NRC.

The second event of significance to this rulemaking is that the Commission has received the replies of various licensees to the Commission's April 27, 1989, letter to nuclear power plant licensees, their contractors, and major nuclear materials and fuel cycle facility licensees concerning the existence of other settlement agreements with restrictive clauses. Although some licensees were expanding the scope of their reviews and may identify additional agreements in the future, initially more than a dozen agreements were identified that contained either restrictive language or questionable language concerning the provision of information to the NRC. The responses included not only agreements settling section 210 complaints, but also other agreements settling law suits in State and Federal Courts.

As will be discussed in responding to specific comments and suggested changes, the above two events, in combination with the comments received by the Commission, have resulted in modifications to the proposed rule, while at the same time confirming the Commission's view that a

specific rule concerning settlement agreements should be adopted.

Summary of Public Comments

Of the 43 comments received by the Commission on the proposed rule, no one indicated satisfaction with the rule as written. Thirty-six commenters specifically opposed the rule for a variety of reasons. Seven commenters favored the rule subject to certain modifications. It is noteworthy that virtually all commenters indicated their support for the Commission's goal of assuring the free flow of information to the Commission. A summary of comments with the Commission's responses appears below.

1. The Proposed Rule as Drafted Is Much Too Broad in Scope

Almost half the commenters complained that the scope of the rule was much too broad, rendering its implementation both unnecessary and impractical. The two areas most frequently mentioned as being too broadly written were the rule's reference to "contractors and subcontractors" and the application of the rule to "all settlement agreements." Each of those issues is individually addressed below.

a. Application of the Rule to Contractors and Subcontractors

Commenters that exhibited the most concern for the application of the rule to contractors and subcontractors were materials licensees, such as hospitals, whose overall activities involve only a small percentage of licensed activities. Given the extensive use of contractors in the conduct of licensed activities, a rule that applied only to conduct by licensees, and not to licensed activities carried out on their behalf by their contractors or subcontractors, would be of little value. Accordingly, the rule prohibition is broadly worded to cover all persons conducting licensed activities.

A separate but related concern is that, as proposed, the rule would require that licensees have procedures to oversee employee/employer agreements for hundreds of contractors and subcontractors that had nothing to do with their limited licensed activities. It is well established in Commission precedent that an applicant or licensee cannot avoid responsibility for compliance with the Atomic Energy Act or the Commission's regulations by delegation of performance of license related activities to independent agents or contractors. See *Virginia Electric and Power Company* (North Anna Power Station, Units 1 and 2), ALAB–324, 3 NRC 347 (April 15, 1976); *Illinois Power Company* (Clinton Power Station, Unit 1), LBP–81–61, 14 NRC 1735 (December 16, 1981). In fact, the Commission has specifically noted the responsibility of licensees for the conduct of their contractors with respect to cases of harassment by contractors of contractor employees. *Metropolitan Edison Company et al.* (Three Mile Island Station, Unit 1), CLI–85–2, 21 NRC 282, 329 (February 25, 1985).

Therefore, it is not necessary for the Commission to specifically require licensees to have procedures for assuring that their contractors and subcontractors comply with the Commission's regulations. Enforcement actions can be, and have been, taken against licensees for the misconduct of their contractors and subcontractors which results in violations of the Commission's regulations, including violation by contractors of employee discrimination regulations. Thus, the Commission need not require that formal procedures be developed to monitor contractor and subcontractor activity in order for licensees to be responsible for their contractors' and subcontractors' actions.

The Commission did not intend to create an unwieldy system which would require some licensees performing limited licensed activities to establish a system to monitor the employer/employee relations of hundreds of contractors and subcontractors who are not directly involved in licensed activities.

Accordingly, the final rule has been modified to directly prohibit agreements which prohibit, restrict, or otherwise discourage an employee from engaging in protected activity as defined in the Commission's employee protection regulations. Although the final rule requires that licensees notify contractors and subcontractors of this regulation's restrictions, the final rule has not retained the requirement that licensees develop specific procedures to assure compliance by contractors or subcontractors. However, the Commission reemphasizes the precedent noted above with respect to licensees' responsibilities for conduct of licensed activities by their contractors and subcontractors. The Commission will hold licensees responsible for violations of NRC regulatory requirements by contractors and subcontractors performing work related to the activities which are the responsibility of the licensee under the applicable statutes, regulations, orders, or licenses. The selection of means to ensure that violations do not occur, which could include development of written procedures, will be left to licensees.

b. Application of the Rule to All Settlement Agreements

The second area in which commenters were concerned with the scope of the proposed rule was in its application to all "agreements affecting the compensation, terms, conditions and privileges of employment." A number of commenters believe that the rule should be limited to settlement of complaints alleging violations of section 210 of the Energy Reorganization Act. The Commission finds no merit in this criticism of the proposed rule.

On April 27, 1989, the NRC staff requested nuclear power plant licensees and their contractors, and major nuclear materials and fuel cycle facility licensees, to review all settlement agreements or other agreements related to compensation, terms, conditions, and privileges of employment to which they were a party for potentially improper restrictive clauses. Although several of the licensees had not fully completed their review of all such agreements, initial responses to the Commission's inquiry identified more than a dozen agreements that contained language that was either restrictive in nature or was at least questionable concerning the provision of information to the NRC. These agreements were not, in fact, limited to section 210 complaints. They contained several settlements of cases filed on a variety of grounds before State and Federal Courts. The Commission has concluded that these agreements adequately demonstrate the potential for impeding the flow of information to the Commission through avenues other than section 210 agreements. The Commission is, therefore, maintaining in the final rule the application of its prohibitions to all agreements affecting the compensation, terms, conditions, and privileges of employment.

2. The Rule Is Unnecessary Because It Is Redundant

Commenters advancing this position generally cited the already existing restrictions in the Commission's regulations concerning section 210 of the Energy Reorganization Act. These include the requirement in 10 CFR part 19 that a "Form 3" be posted at all work sites informing employees of their right to bring safety concerns to the NRC and the requirement in 10 CFR part 21 creating an obligation on directors and responsible officers of licensees and vendors to report defects to the NRC. The commenters believe that it would

be redundant to add a restriction on settlement agreements to the regulations.

The courts have not explicitly addressed the issue of whether section 210 of the Energy Reorganization Act would prohibit restrictive settlement agreements and the Commission's own regulations do not specifically address the issue either. In the *Pollizi* case the Secretary of Labor did not specifically find that the restrictive provisions in the settlement agreements violated section 210. Rather, the Secretary indicated that the agreement's provisions were invalid because the provision was against public policy and was, therefore, unenforceable. See *Pollizi* v. *Gibbs & Hill, Inc.*, 87–ERA–38, Slip Opinion at 7 (July 18, 1989). In addition, based on the number of agreements already identified which contain questionable provisions, it would not appear that current regulations have prevented potentially improper agreements from being executed.

Rather than relying on the judgment of a variety of individuals attempting to determine which clauses might violate public policy, the Commission believes it is prudent to specifically prohibit by regulation all settlement agreements or other agreements affecting the compensation, terms, conditions and privileges of employment from restricting employees from bringing safety concerns to the attention of the NRC.

3. Comments Concerning the Reporting and Monitoring Aspects of the Proposed Rule

A number of commenters raised problems with the requirements in the proposed rule that contractors and subcontractors inform licensees of each section 210 complaint filed against the contractor or subcontractor, and that the licensee or license applicant have prior review of section 210 settlement agreements. Commenters generally felt that this procedure was unnecessary and would make it more difficult to settle cases. Given that settlements are generally encouraged, actions making it more difficult to settle cases would be detrimental to all parties involved in these disputes.

The Commission has determined that, as a result of the Secretary of Labors' decision in the *Pollizi* case, these requirements should be dropped. The reason for the Commission dropping this aspect of the proposed rule primarily results from two parts of the *Pollizi* decision. First, the Secretary in that case reiterated a decision in *Funcko and Yunker* v. *Georgia Power Co.*, 89–ERA–9, 10, (Secretary's Order to Submit Settlement Agreement issued March 23, 1989, at 2), that it was error for an Administrative Law Judge in a Department of Labor case to dismiss a case without reviewing a proposed settlement agreement. *Pollizi* slip op. at 2. In addition, the Secretary found that an agreement that restricted voluntary participation in NRC proceedings, even though it specifically noted that Mr. Pollizi was not in any manner restricted from providing information to the Commission on safety concerns, was against public policy and would not be enforceable. As a result of these two findings it is evident that the Department of Labor will be giving close scrutiny to section 210 settlement agreements. Licensees will be held responsible for contractor violations of the rule. All settlement agreements by contractors will be subject to the restrictions the Commission is adopting today. Licensees may use a variety of methods, such as notification to licensees of all contractor settlement agreements, placing requirements in contracts with individual contractors to prohibit restrictive agreements, or other procedural mechanisms to assure that their contractors comply with this requirement. The Commission is not specifying the method or methods that licensees should use. The Commission emphasizes, however, that licensees will be held responsible for violations associated with their licensed activities, whether or not they are specifically aware of a contractor's failure to comply with regulatory requirements. The Commission does not believe that the rule needs to prescribe procedures whereby contractors will report on, and licensees will monitor, the filing and settlement of section 210 cases.

Although the primary motive for these modifications to the proposed rule results from the *Pollizi* decision, a number of commenters identified additional problems created by the proposed requirement which support the modifications to the proposed rule. The Commission is including below a brief summary of those comments.

a. The Administrative Burden To Monitor Hundreds of Contractors and Subcontractors Is Onerous

b. Small Contractors May Cease Nuclear Work Rather Than Taking on the Additional Administrative Burden

The Commission has removed the most burdensome administrative aspects of the proposed rule. Although the Commission does not necessarily agree with some commenters views of the magnitude and affect of the burden that would have been imposed under the proposed rule, the *Pollizi* decision reduces the need to impose a monitoring burden on licensees and license applicants, or a reporting requirement on contractors and subcontractors, with respect to section 210 settlement agreements. However, the Commission reminds licensees and license applicants that the final rule will prohibit all agreements which restrict the bringing of safety or other concerns to the NRC. They are still responsible for assuring that regulated activity is performed in accordance with Commission regulatory requirements. The hiring of contractors or subcontractors to perform work will not relieve licensees or license applicants of that burden.

c. The NRC Is Exceeding Its Authority by Forcing Licensees To Become Involved in Third Party Contracts

d. The Requirement That Licensees and License Applicants Become Involved in Third Party Contracts Will Result in Licensees Fully Litigating Claims Rather Than Settling Claims. This Will Be Detrimental to the Employee

e. It Is Inappropriate To Require Licensees to Intrude Into Contractor Employee Negotiations

The Commission does not agree that it is beyond its authority or it is improper to require licensees to be responsible for the actions of third parties, which they directly or indirectly cause to be involved in licensed activity. As noted previously, it is well established that licensees and license applicants cannot delegate away their responsibility to comply with Commission requirements for performance of licensed activities. The Commission does not believe that the final rule intrudes into third party activities such that it will significantly, if at all, affect the ability of employees to obtain settlements in section 210 or similar cases.

f. Contractors and Subcontractors Who Are Also Licensees Should Not Be Covered by the Rule's Monitoring Requirements Because They Will Already Be Covered by the Principal Licensee

The Commission does not agree that contractors or subcontractors who are also licensees should have a reduced burden by virtue of the fact that they are being employed by another licensee. The final rule has eliminated the requirements for licensees to review settlement agreements in section 210 cases prior to their being executed. Nevertheless, licensees are responsible for assuring that regulated activities they are performing under their license are in accordance with NRC regulatory requirements and this responsibility cannot be delegated away. The fact that several entities within the chain of

responsibility may be licensees does not relieve any of them from the responsibility of assuring that activities performed under their licenses are performed in accordance with NRC regulatory requirements.

g. Contractor Working for Multiple Licensees Might Require Multiple Approvals To Execute a Settlement Agreement

The Commission agrees that, as originally drafted, the proposed rule could have resulted in a contractor having to obtain multiple reviews of proposed settlement agreements. This could have been a hindrance to an employee obtaining a satisfactory settlement. The Commission's desire was not to restrict the ability of employees to reach satisfactory settlement agreements with their employers. The Commission believes the objective of assuring that settlement agreements do not contain improper restrictions on employees bringing information to the NRC can be obtained without the need for multiple entities reviewing section 210 settlement agreements. The final rule has eliminated the requirement that licensees have a prior review of their contractors' section 210 settlement agreements.

4. One Instance Is Not a Sufficient Basis for Adopting a Rule

Several commenters believed that the one instance that was noted by the Commission in the proposed rulemaking was not sufficient to justify modifying the regulations. In fact, at the time the proposed regulation was published, the Commission had already learned that other agreements, apparently containing restrictive clauses, might have been executed. Concurrently with the proposed rulemaking, nuclear power plant licensees, their contractors, and major nuclear materials and fuel cycle licensees were requested pursuant to an April 27, 1989, letter from the NRC staff to review existing agreements to determine if they contained possibly impermissible restrictions. As a result of that review licensees initially identified more than a dozen additional agreements with language which could be interpreted as restricting communications with the NRC.

The Commission believes that the information received as a result of the staff's April 27, 1989, letter confirms the Commission's original belief that the problem of restrictive settlement agreements is serious enough to be directly addressed in our regulations.

5. The Proposed Rule Could Abrogate Proprietary Agreements

The Commission understands this comment to have been concerned with the rule's provisions requiring licensees to review proposed settlement agreements of their contractors and with concerns about employee communications with the NRC. The NRC has regulations to specifically protect proprietary information received by the Commission. See 10 CFR 2.790, 9.17, and 9.104. Thus, the Commission sees little merit to the concern that employees must be made to follow certain procedures before they can bring proprietary information to the Commission. In fact, such a restriction would be likely to inhibit an employee from coming to the NRC. With respect to communications with the NRC, employers should do no more than require employees to inform the NRC that information being provided may be proprietary so that the NRC can appropriately handle the information to prevent any inappropriate public disclosure.

With respect to concern over licensees reviewing contractor/employee settlement agreements that may contain proprietary information, the final rule has eliminated the specific requirement for such reviews. But, to the extent that, in a licensee's judgment, compliance with the rule requires that it obtain access to proprietary information from its contractors, then access must be provided. In NRC's view, assuring free flow of safety information overrides commenters concerns about disclosure of proprietary information to licensees.

6. A Backfit Analysis Is Required

As originally drafted, the proposed rule specifically required that licensees develop procedures to ensure that licensees' contractors and subcontractors did not place in settlement agreements any restrictions on employees coming to the NRC with information. This included specifically requiring that licensees have procedures to require contractors to notify them if a section 210 complaint was filed with the Department of Labor and that any proposed settlement be forwarded to the licensee prior to its execution. Several commenters believed that this requirement for changes in procedures amounted to a backfit requiring a backfit analysis. Given the Secretary of Labor's decision in the *Pollizi* case that such agreements are against public policy, there is some question as to whether the proposed regulation would have imposed a new requirement on licensees or contractors. In any event, the final rule has eliminated any specific requirement for procedural changes.

The final rule declares, consistent with the *Pollizi* decision, that agreements which place restrictions on employees communicating information with the NRC are prohibited. Licensees may or may not choose to modify existing procedures to assure compliance with the final rule's requirements. Some licensees may, in fact, already have procedures in place addressing these issues as a result of the staff's April 27, 1989, letter notifying them of the NRC's concerns. It is for licensees themselves to decide how the prohibition on restrictive agreements is to be implemented.

With the requirement to develop procedures removed, the rule merely prohibits potential barriers to communication with NRC. As such it does not fall within the definition of backfit in § 50.109. The backfit rule does not apply to NRC information requests (see § 50.54(f)) and it would be anomalous to apply the backfit rule to similar NRC measures to ensure that information is brought to its attention.

7. The Commission Should Issue a Policy Statement Instead of a Rule

One commenter suggested that a policy statement was sufficient to accomplish the Commission's purposes and that the rule was unnecessary. The Commission does not agree that a policy statement would be appropriate in this instance. This is not an area in which the Commission needs to gain experience with application of a policy statement before a final rule can be developed. The Commission is not aware of any other reason that might make a policy statement preferable to a rule in this case. The Commission concludes that it is appropriate to proceed with formal rulemaking to address this issue.

8. Add Language to the NRC Form 3 Concerning Settlement Agreements

Under 10 CFR part 19, licensees are required to post an NRC Form 3 at all work sites. This form informs employees of their rights and protections in bringing safety information to the NRC. One commenter has suggested that the NRC add language to this form telling workers that settlement agreements may not impose restrictions on their bringing safety information to the NRC. The NRC will consider adding such language to the NRC Form 3 in future revisions of the form to reflect the restrictions contained in this rulemaking.

9. The Proposed Rule Would Interfere With the Duty of Employees To Inform Their Management of Safety Issues

The Commission believes it is preferable for employees to bring safety or other concerns to the attention of their management. It is the employees' management that can most promptly act to address these issues. Thus, if an employee lacks confidence in his management and feels compelled to come to the NRC first, a delay in addressing a safety issue will inevitably result. However, in those cases where employees do not feel that they can talk about a safety problem with their management, they must be free of any restriction which would prevent their raising the issue with the NRC. The proposed rule does not introduce any unwarranted intrusion into the employer/employee relationship. The rule does not prohibit employees from going to management first with their safety concerns. It is up to licensees to create a work atmosphere in which employees feel confident in bringing safety concerns directly to their management.

10. Responses to the Questions in the Proposed Rule

The majority of commenters did not specifically comment on the two questions posed by the Commission in the proposed rule. To a large extent their comments on the proposed rule itself superseded any need to specifically address the questions proposed. The Commission summarizes below the specific comments that were received on the questions presented in the proposed rule.

a. Should the Rule Prohibit All Restrictions on Information to the Commission, or Should Limitations on an Individual Appearing Before a Commission Adjudicatory Board (e.g., Requiring an Individual To Resist a Subpoena) Be Permissible as Long as Other Avenues for Providing Information to the Commission are Available?

Five commenters believed that some restrictions should be allowed if there is at least one avenue open to communicate with the NRC. Four commenters believed that no restrictions on communications should be allowed.

The Commission believes that no restrictions on bringing information to the Commission should be allowed. In the *Pollizi* decision the Secretary of Labor noted that, even when a provision specifically included a statement that safety information could be brought to the NRC's attention, restrictions on voluntarily appearing as a witness in NRC proceedings would be against public policy. Given the numerous possible restrictions that could be put into settlement agreements, it would be difficult, if not impossible, to design guidance which could differentiate between a "good" restriction and a "bad" restriction, even if the Commission were inclined to do so. The Commission has chosen to ban all restrictions on coming to the NRC with information bearing on its regulatory responsibilities rather than engaging in that attempt.

b. Should the Rule Impose an Additional Requirement That Licensees and License Applicants Must Ensure That All Agreements Affecting Employment, Including Those of Their Contractors or Subcontractors, Contain a Provision Stating That the Agreement in No Way Restricts the Employee From Providing Information to the Commission?

Of the comments received on this question, four commenters opposed requiring an affirmative statement in all settlement agreements and four commenters favored requiring such a statement. For the most part, those opposing the requirement felt it was unduly burdensome and would unnecessarily interfere with the employee/employer relationship. Those in favor of this requirement felt that it would be beneficial in clarifying for employees what their rights were and it would also remove any ambiguity caused by other parts of the settlement agreement.

The Commission has decided not to require a specific clause in settlement agreements. The utility of such a clause is somewhat suspect given that a clause specifically providing that the employee had the right to bring safety concerns to the NRC was not sufficient to make the restrictive clause in the *Pollizi* case acceptable. In addition, given that the Commission already requires that employees be notified through the posting of an NRC Form 3 that they have the right to come to the NRC, it is not evident that the benefit to be gained by requiring such a clause in settlement agreements would justify this type of intrusion into the employer/employee relationship.

12. Additional Comments and Revisions

One commenter provided a detailed discussion of the Commission's policies with respect to enforcement of the current NRC regulations on employee protection. Those comments, although related, go beyond the scope of the specific action being considered in this rulemaking. However, those specific comments have been forwarded to the NRC Office of Enforcement for its consideration.

In addition, comments included suggestions to file all settlement agreements in the docket for the facility in question; to require that the ban on restrictions apply to communications by an employee with anyone, not just NRC; and to require that all future contracts by a licensee with contractors or subcontractors contain contractual obligations to prohibit restrictive agreements.

The Commission has considered these suggestions and has concluded that the most efficient method of achieving the goal of the rulemaking, which involves the minimum necessary instrusion on the employee/employer relationship and the relationship between licensees and their contractors or subcontractors, is to imply prohibit provisions in a settlement agreement with an employee which would in any way restrict that employee from coming to the NRC with safety information bearing on NRC regulatory responsibilities. The Commission is not convinced that requiring the filing of agreements in the NRC docket files, prohibiting restrictions on communications with entities other than the NRC, or requiring specific clauses in licensee/contractor contracts would significantly improve the Commission's ability to achieve the goals of this rulemaking.

The last line of the first paragraph being added to parts 30, 40, 50, 60, 61, 70, and 72 of the regulations has been modified by referencing the definition of "protected activity" which appears in each part of the regulations. This was done to assure that the employee protection provisions consistently protect the same employee conduct.

Finally, in publishing the proposed rule, comparable revisions to 10 CFR part 61 were inadvertently not included in the proposed rule. Part 61 contains, at § 61.9, comparable restrictions with respect to employee protections as appear in the other parts of the Commission's regulations. Accordingly, the appropriate revisions to part 61 are included in this final rulemaking.

Additional Comments of Commissioner Curtiss

While I am reluctantly supporting the approach adopted in this rule, particularly in view of the fact that the Department of Labor has adopted the argument that the NRC championed in our letter of May 3, 1989, I nevertheless remain concerned about the potential precedential scope of this approach and of the rationale that underpins the final rule. Specifically, I am not persuaded

that a logical case has been—or can be—made to support the distinction between settlement agreements arising out of an employer-employee relationship and settlement agreements where no employer-employee relationship exists. If we are troubled by the imposition of any restriction on an individual's right to communicate with the Commission—even where the individual nevertheless retains the right to communicate in some manner with the Commission—the fact that those restrictions arise out of the settlement of an employer-employee dispute seems to me to be irrelevant to the ultimate objective that we are seeking to accomplish in this rule—preserving the Commission's ability, unencumbered, to obtain information on health and safety matters.[1] Indeed, in view of the decision that the Commission has reached here, I find it most improbable that the Commission would—or could—accept a settlement agreement that restricted in any way an individual's ability to communicate with the Commission, on the ground that the settlement agreement did not involve an employer-employee relationship. In short, the logic of this rule appears to compel the conclusion that any restriction on an individual's right to communicate with the Commission contained in a settlement agreement—whether or not an employer-employee relationship exists—is unacceptable. While this rule, by its terms, does not address this situation, we nevertheless should recognize that our action here moves us in that direction.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule falls within the scope of the actions described in categorical exclusion 10 CFR 51.10(d). This amendment provides the Commission with the ability to take enforcement action for agreements which have already been declared to be against public policy. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

[1] If the Commission is seeking to ensure that the channels of communication for health and safety information remain unencumbered, the fact that one individual is an employee and another is not should have no bearing on whether we would countenance any restrictions on the communication of such information to the Commission, even though it may ultimately turn out that the employee's information is more accurate or valuable because of the special access that such an individual might have.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Existing requirements were approved by the Office of Management and Budget approval numbers 3150–0017, 3150–0020, 3150–0011, 3150–0127, 3150–0009, 3150–0132, and 3150–0032.

Regulatory Analysis

The final rule prohibits provisions in agreements affecting employment that restrict employees from providing information to the Commission. The objectives of the final rule are to ensure that such agreements do not restrict the free flow of safety or other information to the Commission and that the intent of section 210 of the Energy Reorganization Act is not frustrated. The Commission believes that the clearest and most effective method of achieving these objectives, and avoiding potential uncertainty and conflict regarding the interpretation of specific provisions, is to prohibit provisions in these agreements that in any way restrict the flow of information to the Commission, the Commission's adjudicatory boards, or the NRC staff. The alternative of imposing an additional requirement on licensees and license applicants to require any agreement affecting employment to include a provision stating that the agreement in no way restricts the employee from providing information to the Commission was rejected as unnecessary to achieve the objectives of the rule. The final rule will not impose any substantial costs on licensees or license applicants.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (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. Although the proposed rule would have imposed procedural requirements on a wide range of Commission licensees of varying size, the final rule prohibits agreements that restrict employees who are performing or have performed work related to licensed activities from providing information to the Commission on potential violations or hazards. The final rule does not require licensees to develop detailed procedures for review of all contractor and subcontractor settlement agreements. The Commission believes that the final rule does not impose a significant economic impact on Commission licensees who would be considered "small entities."

Backfit Analysis

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

List of Subjects

10 CFR Part 30

Byproduct material, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Penalty, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 40

Government contracts, Hazardous materials—transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, Uranium.

10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 61

Low-level waste, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 70

Hazardous materials—transportation, Nuclear materials, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

10 CFR Part 72

Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

10 CFR Part 150

Hazardous materials—transportation, Intergovernmental relations, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Security measures, Source material, Special nuclear material.

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 parts 30, 40, 50, 60, 61, 70, 72 and 150.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 is revised to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Public Law 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 30.3, 30.7(g), 30.34 (b), (c) and (f), 30.41 (a) and (c), and 30.53 are issued under secs. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950 as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); and §§ 30.6, 30.9, 30.36, 30.51, 30.52, 30.55, and 30.56 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 30.7, the introductory text of paragraph (c) is revised and a new paragraph (g) is added to read as follows:

§ 30.7 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (g) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

* * * * *

(g) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. The authority citation for part 40 is revised to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Public Law 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Public Law 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Public Law 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Public Law 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.7(g), 40.25(d) (1)–(3), 40.35 (a)–(d) and (f), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under secs. 161b, 161i and 161o, 68 Stat. 948, 949, and 950 as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); and §§ 40.5, 40.9, 40.25 (c), (d) (3), and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64, and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 40.7, the introductory text of paragraph (c) is revised and a new paragraph (g) is added to read as follows:

§ 40.7 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (g) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

* * * * *

(g) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for part 50 is revised to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd) and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 through 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.7(f), 50.46 (a) and (b), and 50.54(c) are issued under secs. 161b, 161i, and 161o, 68 Stat. 948, 949, and 950 as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); §§ 50.7(a), 50.10 (a)–(c), 50.34 (a) and (e), 50.44 (a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54 (a), (i), (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a (a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

6. In § 50.7, the introductory text of paragraph (c) is revised and a new paragraph (f) is added to read as follows:

§ 50.7 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

* * * * *

(f) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

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

7. The authority citation for part 60 is revised to read as follows:

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

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 60.9(f), 60.10, 60.71 are issued under secs. 161i and 161o, 68 Stat. 949 and 950, as amended (42 U.S.C. 2201(i) and 2201(o)).

8. In § 60.9, the introductory text of paragraph (c) is revised and a new paragraph (f) is added to read as follows:

§ 60.9 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

* * * * *

(f) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

9. The authority citation for part 61 is revised to read as follows:

Authority: Secs. 53, 57, 62, 63, 65, 81, 161, 182, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273; Tables 1 and 2, §§ 61.3, 61.9(f), 61.24, 61.25, 61.27(a), 61.41 through 61.43, 61.52, 61.53, 61.55, 61.56, and 61.61 through 61.63 are issued under secs. 161b. 161i and 161o, 68 Stat. 948, 949, and 950 as amended (42 U.S.C. 2201(b), 2201(i) and 2201(o)); §§ 61.9a, 61.10 through 61.16, 61.24 and 61.80 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

10. In § 61.9, the introductory text of paragraph (c) is revised and a new paragraph (f) is added to read as follows:

§ 61.9 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (f) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

* * * * *

(f) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

11. The authority citation for part 70 is revised to read as follows:

Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 70.3, 70.7(g), 70.19(c), 70.21(c), 70.22 (a), (b), (d)–(k), 70.24 (a) and (b), 70.32 (a) (3), (5), (6), (d), and (i), 70.36, 70.39 (b) and (c), 70.41(a), 70.42 (a) and (c), 70.56, 70.57 (b), (c), and (d), 70.58 (a)–(g)(3), and (h)–(j) are issued under secs. 161b. 161i, and 161o, 68 Stat. 948, 949, and 950 as amended (42 U.S.C. 2201(b), 2201(i), and 2201(o)); §§ 70.7, 70.20a (a) and (d), 70.20b (c) and (e), 70.21(c), 70.24(b), 70.32 (a)(6), (c), (d), (e), and (g), 70.36, 70.51 (c)–(g), 70.56, 70.57 (b) and (d), and 70.58 (a)–(g)(3) and (h)–(j) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 70.5, 70.9, 70.20b (d) and (e), 70.38, 70.51 (b) and (i), 70.52, 70.53, 70.54, 70.55, 70.58 (g)(4), (k), and (l), 70.59, and 70.60 (b) and (c) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

12. In § 70.7, the introductory text of paragraph (c) is revised and a new paragraph (g) is added to read as follows:

§ 70.7 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (g) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

* * * * *

(g) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

13. The authority citation for part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as

amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10151, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 149 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 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). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224, (42 U.S.C. 10101, 10137(a), 10161(h)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 72.6, 72.10(f), 72.22, 72.24, 72.26, 72.28(d), 72.30, 72.32, 72.44 (a), (b) (1), (4), (5), (c), (d) (1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.72 (b), (c), 72.74 (a), (b), 72.76, 72.78, 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140 (b), (c), 72.148, 72.154, 72.156, 72.160, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.184, 72.186 are issued under sec. 161b, 69 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 72.10 (a), (e), 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44 (a), (b) (1), (4), (5), (c), (d) (1), (2), (e), (f), 72.48(a), 72.50(a), 72.52(b), 72.90 (a)–(d), 72.92, 72.94, 72.98, 72.100, 72.102 (c), (d), (f), 72.104, 72.106, 72.120, 72.122, 72.124, 72.126, 72.128, 72.130, 72.140 (b), (c), 72.142, 72.144, 72.146, 72.148, 72.150, 72.152, 72.154, 72.156, 72.158, 72.160, 72.162, 72.164, 72.166, 72.168, 72.170, 72.172, 72.176, 72.180, 72.182, 72.184, 72.186, 72.190, 72.192, 72.194 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)) and §§ 72.10(e), 72.11, 72.16, 72.22, 72.24, 72.26, 72.28, 72.30, 72.32, 72.44 (b)(3), (c)(5), (d)(3), (e), (f), 72.48 (b), (c), 72.50(b), 72.54 (a), (b), (c), 72.56, 72.70, 72.72, 72.74 (a), (b), 72.76(a), 72.78(a), 72.80, 72.82, 72.92(b), 72.94(b), 72.140 (b), (c), (d), 72.144(a), 72.146, 72.148, 72.150, 72.152, 72.154 (a), (b), 72.156, 72.160, 72.162, 72.168, 72.170, 72.172, 72.174, 72.176, 72.180, 72.184, 72.186, 72.192 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

14. In § 72.10, the introductory text of paragraph (c) is revised and a new paragraph (f) is added to read as follows:

§ 71.10 Employee protection.

* * * * *

(c) A violation of paragraph (a) or paragraph (g) of this section by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant may be grounds for—

* * * * *

(f) No agreement affecting the compensation, terms, conditions and privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 210 of the Energy Reorganization Act of 1974, may contain any provision which would prohibit, restrict, or otherwise discourage, an employee from participating in protected activity as defined in paragraph (a)(1) of this section, including, but not limited to, providing information to the NRC on potential violations or other matters within NRC's regulatory responsibilities.

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

15. The authority citation for part 150 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 274, 73 Stat. 688 (42 U.S.C. 2201, 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Sections 150.3, 150.15, 150.15a, 150.31, 150.32 also issued under secs. 11e(2), 81, 68 Stat. 923, 935, as amended, secs. 83, 84 , 92 Stat. 3033, 3039 (42 U.S.C. 2014e(2), 2111, 2113, 2114). Section 150.14 also issued under sec. 53, 68 Stat. 930, as amended (42 U.S.C. 2073). Section 150.15 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 150.17a also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 150.30 also issued under sec. 234, 83 Stat. 444 (42 U.S.C. 2282).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 150.20(b) (2)–(4) and 150.21 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 150.14 is issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 150.16–150.19 and 150.20(b)(1) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

16. In § 150.20, the introductory text of paragraph (b) is revised to read as follows:

§ 150.20 Recognition of agreement state licenses.

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person engaging in activities in a non-Agreement State or in offshore waters under the general licenses provided in this section, the general licenses provided in this section are subject to the provisions of §§ 30.7 (a) through (g), 30.9, 30.14(d), 30.34, 30.41, 30.51 to 30.63, inclusive, of part 30 of this chapter; §§ 40.7 (a) through (g), 40.9, 40.41, 40.51, 40.61, 40.63 inclusive, 40.71 and 40.81 of part 40 of this chapter; and §§ 70.7 (a) through (g), 70.9, 70.32, 70.42, 70.51 to 70.56, inclusive, §§ 70.60 to 70.62, inclusive, and § 70.7 of part 70 of this chapter; and to the provisions of 10 CFR part 19, 20 and 71 and subpart B of part 34 of this chapter. In addition, any person engaging in activities in non-Agreement States or in offshore waters under the general licenses provided in this section:

* * * * *

Dated at Rockville, MD, this 15th day of March 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90–6424 Filed 3–20–90; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 312

RIN 3064–AA99

Assessment of Fees Upon Entrance to or Exit From the Bank Insurance Fund or the Savings Association Insurance Fund

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule prescribes the exit fee, and amends the previously prescribed entrance fee, that must be paid by insured depository institutions participating in "conversion transactions" that result in the transfer of insured deposits from the Savings Association Insurance Fund ("SAIF") to the Bank Insurance Fund ("BIF"). In addition, minor revisions are being made to the entrance and exit fees that must be paid by insured depository institutions participating in conversion transactions that result in the transfer of insured deposits from BIF to SAIF. This interim rule also imposes entrance and exit fees on insured deposit transfers. This interim rule implements provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, authorizing exit and entrance fees for participants in conversion transactions. The fees are being prescribed under an interim rule, with an immediate effective date, in order to permit institutions interested in participating in certain branch sales, thrift resolutions, and other permitted "conversion transactions" to evaluate the potential costs of those transactions and to allow those transactions to go forward without further delay; however, the public is invited to comment on the fee structure set forth in the interim rule, and a final

regulation will be issued following the expiration of the public comment period. Changes to the fee structure set forth in the interim rule may be made as a result of the comments received. Changes to the SAIF to BIF exit fee structure set forth in this interim rule may be made after joint consideration by the FDIC and the Secretary of the Treasury.

DATES: The interim rule is effective March 21, 1990. Comments must be submitted by May 21, 1990.

ADDRESSES: Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room 6097 on business days between 8:30 a.m. and 5 p.m. Comments may also be inspected in Room 6097 between 8:30 a.m. and 5:00 p.m. on business days. (FAX number: (202) 347–2773 or 2775.)

FOR FURTHER INFORMATION CONTACT: (For information on legal issues) Alan J. Kaplan, Senior Counsel, Legal Division, (202) 898–3734, or Valerie Jean Best, Senior Attorney, Legal Division, (202) 898–3812; (for information on supervisory issues) Garfield Gimber, Examination Specialist, Division of Bank Supervision, (202) 898–6913; (for information on economic issues) John O'Keefe, Financial Economist, Division of Research and Statistics, (202) 898–3945; Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in this interim rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the interim rule would not have a significant impact on a substantial number of small entities.

Reason for Interim Rule

The expeditious resolution of failed savings associations (thrift institutions) is a fundamental objective of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. It is imperative that the FDIC, as manager of the Resolution Trust Corporation, the agency charged with managing and resolving thrift failures, proceed expeditiously to arrange and complete resolutions, some of which will necessarily involve conversion transactions. The longer these defaulting institutions go unresolved, the greater the cost to the American taxpayers. Therefore, it is in the public interest to expedite, not delay, these thrift resolutions. Similarly, although perhaps not as urgent a matter as resolving failed thrifts, numerous transactions are pending which involve the sale of savings association branches to banks. These transactions, many of which are awaiting or have already received regulatory approval, cannot be completed until any applicable fees called for by the new legislation have been set.

For these reasons, the FDIC Board of Directors has determined that the notice and public participation that are ordinarily required by the Administrative Procedure Act (5 U.S.C. 553) before a regulation may take effect would, in this case, be contrary to the public interest and that good cause exists for waiving the customary 30-day delayed effective date. Nevertheless, the Board desires to have the benefit of public comment before adoption of a final rule on this subject, and so invites interested persons to submit comments during a 60-day comment period. In adopting a final regulation, the Board will make such revisions in the interim rule as may be appropriate based on the comments received. In adopting a final regulation governing exit fees for SAIF to BIF transactions, the Board and the Secretary of the Treasury will make such revisions as may be appropriate based on the comments received.

Statutory Background

Section 206(a)(7) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRRE Act" or "FIRREA") adds a new subsection 5(d) to the Federal Deposit Insurance Act ("FDI Act") that, among other things, authorizes the FDIC to assess insurance fees in two situations. First, FIRREA provides that any institution that becomes insured by the FDIC, and any noninsured branch of a foreign bank that becomes insured by the FDIC, shall pay to the FDIC "any fee which the (FDIC) may by regulation prescribe * * *." This entrance fee is to be prescribed "after giving due consideration to the need to establish and maintain reserve ratios in the Bank Insurance Fund ("BIF") and the Savings Association Insurance Fund ("SAIF") as required by section 7 of the Federal Deposit Insurance Act." The entrance fee is to be paid into the appropriate fund (*i.e.*, into BIF if the depository institution becomes a "BIF member" and into SAIF if the depository institution becomes a "SAIF member"). Generally speaking, any savings association (*e.g.*, a savings and loan) other than a Federal savings bank chartered under section 5(o) of the Home Owners Loan Act is a member of SAIF, and any bank is a member of BIF. Savings associations that were insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") on August 8, 1989, the day before the date of enactment of FIRREA, and thereby became "automatically" insured by the FDIC by operation of law, do not have to pay an entrance fee as a result of their transfer from FSLIC to SAIF.

Second, FIRREA requires the FDIC to prescribe, by regulation, procedures for assessing entrance and exit fees for insured depository institutions that participate in "conversion transactions." Generally speaking, a conversion transaction is defined to include a change of status (by charter conversion or otherwise) from a SAIF member to a BIF member of vice versa; the merger or consolidation of a SAIF member with a BIF member; the assumption of deposit liabilities of a SAIF member by a BIF member, or vice versa; and the transfer of assets in consideration of such a deposit assumption. Under FIRREA, there is a five-year moratorium on conversion transactions, with limited exception for (1) conversion transactions that affect an insubstantial portion of the total deposits of each participating institution, and (2) certain conversions involving institutions in default or in danger of default. The FDIC must approve any such excepted conversion.

The first exception is intended to exempt from the moratorium, subject to FDIC approval, branch sales and other transfers of deposits between depository institutions that are members of different insurance funds (SAIF or BIF) and which are regarded as insubstantial when measured against the total deposits of each participating institution. For example, this exception would cover the sale of a branch or branches of an insured savings association (a SAIF member) to an insured bank (a BIF member), where the volume of deposits being transferred meets the insubstantiality test prescribed in the statute.

The second exception covers conversions that occur as part of an acquisition of an insured depository institution in default or in danger of default, if the FDIC determines that the estimated financial benefits to the fund the institution is leaving (or the Resolution Trust Coporation ("RTC"), if the institution is a savings association)

equal or exceed the FDIC's estimate of loss of assessment income to that fund during the years remaining in the moratorium period, and (in the case of a savings association) if the RTC concurs in the FDIC's determination. This exception is intended to permit conversion transactions to occur as a means of resolving savings association (thrift institution) and bank failures, notwithstanding the moratorium, if the requisite findings can be made.

Paragraph 5(d)(2)(E) of the FDI Act, as added by the FIRRE Act, requires among other things, that each insured depository institution participating in a conversion transaction pay an entrance fee in an amount to be determined by the FDIC. The fee is to be in the "approximate amount which the [FDIC] calculates as necessary to prevent dilution" of the fund (BIF or SAIF) of which the resulting or acquiring depository institution is a member (in other words, the fund being entered), and is to be paid to that fund. Thus, for example, where a thrift failure is resolved by an insured bank (BIF member) acquiring assets from and assuming deposit liabilities of the failed savings association (SAIF member), the entrance fee would be set at the approximate amount which the FDIC calculates is necessary to prevent dilution of BIF. Similarly, where an insured bank assumes deposit liabilities from an insured savings association through the sale of branches (and assuming the FDIC has approved this conversion transaction), the entrance fee would be the approximate amount necessary to offset the dilution of BIF that would result from the transfer of those deposits from SAIF insurance to BIF insurance.

The FDIC is also authorized to prescribe procedures for charging exit fees to insured depository institutions that participate in conversion transactions. For transactions in which the resulting or acquiring institution is a BIF member, any such exit fee is to be paid into SAIF (or to the Financing Corporation, if the Secretary of the Treasury so orders after determining that the Financing Corporation has exhausted all other sources of funding for interest payments on its obligations). For "SAIF-to-BIF" conversion transactions consummated before January 1, 1997, the FDIC and the Secretary of the Treasury jointly determine the amount of any exit fee; for those consummated after that date, the FDIC alone determines the amount.

Paragraph 5(d)(2)(G) of the FDI Act, as added by FIRREA, expressly provides that the conversion of a SAIF member savings association to a bank charter is not considered to be a "conversion transaction" if the bank elects to remain a SAIF member and thereby continues to pay assessments to SAIF. In such situations, no entrance or exit fees would be required unless and until, following expiration of the moratorium, the bank switches from SAIF to BIF insurance. A SAIF-insured bank, however, is not required to switch insurance funds after the expiration of the conversion moratorium.

Paragraph 5(d)(3) of the FDI Act, as added by FIRREA, provides that the merger of a SAIF member savings association into a BIF member bank is permitted, notwithstanding the moratorium, if the bank is a subsidiary of a bank holding company that controls the savings association. The Board of Governors of the Federal Reserve System, as well as the appropriate Federal banking agency (as defined in the Federal Deposit Insurance Act), would have to approve the transaction. The resulting or acquiring bank would have to continue to pay assessments to SAIF on that portion of its deposits that are attributable to the former savings association, under a formula prescribed in FIRREA which includes a seven percent adjustment for growth. The payment of assessments to SAIF could be discontinued if, after the five-year moratorium period expires, the FDIC approves an application by the bank to treat the merger transaction as a conversion transaction and the bank pays any entrance and exit fees prescribed by the FDIC. Such a bank, however, is not required to convert its SAIF-assessed deposits to BIF-assessments after the expiration of the conversion moratorium.

Joint Determination of FDIC and Treasury

FIRREA provides that the FDIC and the Secretary of the Treasury must jointly determine the amount of any exit fee assessed for SAIF-to-BIF conversion transactions consummated before January 1, 1997. On September 26, 1989, the FDIC Board of Directors adopted a proposal of the Treasury prescribing the exit fees required to be paid for conversion transactions resulting in a transfer of deposits from a SAIF member to a BIF member. This action set the exit fee on such conversions at .90 percent (90 "basis points") of the deposit base transferred. In most other respects, the proposal paralleled the interim rule for entrance fees for conversions from SAIF to BIF issued by the FDIC on September 22, 1989. 54 FR 40377 (Oct. 2, 1989).

The proposal adopted on September 26, 1989, was not immediately incorporated into a mutually acceptable written interim rule, however, due to ongoing discussions with the Department of the Treasury as to the proper treatment of "insured deposit transfers." The FDIC and the Treasury have arrived at an agreement as to the proper treatment of "insured deposit transfers." Accordingly, by means of this interim rule, the exit fee for SAIF-to-BIF conversion transactions is being prescribed, as jointly determined by the FDIC and the Secretary of the Treasury. As a consequence, this interim rule imposes entrance and exit fees on insured deposit transfers. As evidence of this joint determination, the Secretary of the Treasury has furnished the FDIC with a letter indicating his agreement with the content of this interim rule. The exit fee and the treatment to be accorded insured deposit transfers are outlined below.

SAIF-to-BIF Exit Fees

For purposes of the interim rule, the FDIC and the Secretary of the Treasury have jointly determined to set the exit fee for SAIF-to-BIF conversions at .90 percent (or 90 "basis points") of the deposit base being transferred from SAIF to BIF insurance. As is explained in greater detail below, the amount set for the exit fee represents the approximate present value of each SAIF member's pro rata share of interest expense on the obligations of the Financing Corporation ("FICO"), projected over the next thirty years. The FDIC and the Secretary of the Treasury intend to revisit the 90-basis-point figure annually and may adjust it upward or downward as circumstances warrant. Any such adjustments will be prospective only.

In most other respects, the exit fee would parallel the interim rule on entrance fees. For example, the resulting or acquiring institution shall be liable for the payment of the exit and entrance fees; where the sum of the entrance and exit fees exceeds $5,000, a resulting or acquiring institution may pay the fees in equal annual installments, interest-free, over a period of not more than five years. The deposit base against which the 90-basis-point exit fee is to be applied would depend upon the type of transaction involved. For "non-resolution" conversion transactions, such as branch sales involving the assumption of deposit liabilities of a "healthy" operating thrift by an insured bank, the deposit base would be the total dollar amount of the deposits being transferred from SAIF to BIF insurance, measured as of the date of transfer. However, in "resolution" cases (*i.e.*,

where the conversion transaction is one which is being arranged by the RTC to dispose of or otherwise deal with an insured savings association in default or in danger of default (including any insured savings association in conservatorship)), the interim rule permits the use of a "retained deposit base" in determining the exit fee, but not the entrance fee. The retained deposit base is defined by this interim rule as the total deposits transferred from a SAIF member to a BIF member, or vice versa, less (i) deposits acquired through any deposit broker, and (ii) any portion of any deposit account exceeding $80,000. The dollar amount of the retained deposit base would be calculated by the FDIC on a case-by-case basis at the time RTC prepares the "bid package" for the particular thrift resolution in question, and would be announced to prospective bidders at the time proposals for acquisition are solicited; however, the FDIC may adjust its calculation of the retained deposit base as necessary over the course of the bidding process. The appropriate deposit base for purposes of calculating entrance fees in resolution cases is outlined later in this document.

The basis upon which the exit fee is being set at 90 basis points is explained as follows.

The Competitive Equality Banking Act of 1987 ("CEBA") created FICO as a vehicle for recapitalizing the Federal Savings and Loan Insurance Corporation ("FSLIC") and, for this purpose, authorized FICO to sell up to $10.825 billion in 30-year bonds. The proceeds from the bonds were to be invested in capital of FSLIC. FICO is authorized to impose assessments on each FSLIC-insured institution in order to pay interest on and issuance costs of its obligations. (Principal expense on FICO debt is to be paid by the Federal Home Loan Banks.) The recapitalization of FSLIC through FICO allowed thrifts insured by FSLIC to spread over time the cost of funding FSLIC. SAIF members who exit the SAIF fund escape any future assessments imposed by FICO.

The 90 basis points exit fee represents the approximate present value of each SAIF member's pro rata share of remaining FICO interest expense. It is anticipated that exit fees will be periodically revisited and may be re-adjusted as FICO debt approaches maturity.

FIRREA requires that the exit fee for any SAIF-to-BIF conversion transaction be paid into SAIF (or to FICO, if the Secretary of the Treasury so orders after determining that FICO has exhausted all other sources of funding for interest payments on its obligations). Exit fees paid to SAIF prior to the issuance of an order by the Secretary of the Treasury, will be held in a reserve account in SAIF until such time as the FDIC and the Secretary of the Treasury determine that it is no longer necessary to reserve such funds for the possible payment of interest on the obligations of the FICO.

The interim rule provides that the resulting or acquiring institution would be liable for payment of the exit fee; however, in a two-party transaction, the two institutions may agree to divide the payment and may arrange among themselves who is to pay what share. So long as the entire fee is paid, FDIC will accept payment from either party; if, however, some or all of the fee is not paid, the FDIC will look to the resulting or acquiring institution for payment. In other words, the FDIC will seek to enforce the obligation of the resulting or acquiring institution to pay the entire amount of the exit fee, leaving that institution to enforce any contractual or other arrangements it may have made with any other participating institution.

Setting the exit fee for conversion transactions at this time by means of an interim rule will enable those banks that seek to acquire troubled savings associations from the RTC or those that seek to acquire branches of operating thrifts to evaluate the costs of those transactions. Since potential buyers and investors need to know with some degree of certainty what the costs of acquisition will be, the FDIC and the Secretary of the Treasury have agreed that if, following the public comment period, the final regulation prescribes an exit fee that would be greater than the exit fee prescribed in the interim rule, a bank that participated in a conversion transaction during the period the interim rule was in effect will not have to pay the higher amount; if the exit fee prescribed in the final regulation is less than the fee prescribed in the interim rule, the difference will be refunded to the bank or, if the fee is being paid in installments, the amount of each installment subsequently paid will be adjusted accordingly. Thus, banks that participate in transactions in reliance on the interim rule will not suffer any subsequent increase in the exit fee, nor will they miss out on any subsequent decrease, that results from consideration of public comment on this issue.

Insured Deposit Transfers

The FDIC and the Treasury have agreed to assess entrance and exit fees against insured deposit transfers involving the transfer of insured deposits from one insurance fund member to the other, but only to the amount of the premium. As explained in more detail below, insured deposit transfers are arrangements whereby the insurer uses an insured depository institution as paying agent on insured accounts. The FDIC and the Treasury have determined that, for purposes of subsection 5(d) of the FDI Act only,[1] insured deposit transfers should be treated as conversion transactions and are therefore subject to conversion fees.

Section 11(f) of the FDI Act (12 U.S.C. 1821(f)), requires the FDIC to pay, as soon as possible, the insured deposits of a failed insured depository institution in liquidation. Section 11(f) allows these payments to be made in cash or by making available a transferred deposit in another insured depository institution. Pursuant to section 12(b) of the FDI Act (12 U.S.C. 1822(b)), cash payment or deposit transfer discharges the FDIC from liability. An insured deposit transfer is therefore one method by which the FDIC can discharge its liability to depositors of a failed depository institution.

Section 3(n) of the FDI Act (12 U.S.C. 1813(n)) defines a "transferred deposit" as: "[A] deposit in a new bank or other insured depository institution made available to a depositor by the Corporation as payment of the insured deposit of such depositor in a closed bank, and assumed by such a new bank or other insured depository institution." In an insured deposit transfer, the FDIC enters into an agreement with an insured depository institution (paying agent). The standard insured deposit transfer agreement provides that the paying agent agrees to accept from the FDIC a payment in the amount of the failed institution's insured deposits. The amount of this payment represents the dollar amount of insured deposits disclosed on the books of the failed institution on the date of closing, plus interest accrued to that date. The paying agent then acts as a conduit by which these funds are transferred to the insured depositors. The paying agent agrees to open a transferred deposit account in the name of the depositors in the amount of each such transferred deposit. The paying agent agrees to commerce payment of or otherwise make available to each depositor the transferred deposit upon demand and without penalty on the paying agent's first business day following the closing of the failed institution. The depositors

[1] Insured deposit transfers ordinarily do not involve the assumption of deposit liabilities for purposes of section 18(c) of the FDI Act, 12 U.S.C. 1828(c), and are therefore not subject to section 18(c) of the FDI Act.

then have the option of withdrawing their funds from, or starting a new account with, the paying agent. An insured deposit transfer allows the FDIC to discharge its liability to insured depositors without incurring the expense of writing thousands of checks to depositors and, at the same time, it causes a minimum of disruption to the financial affairs of the depositors.

An insured depository institution that agrees to act as paying agent on behalf of the FDIC or the RTC generally pays a premium for the right to act as agent. The paying agent's willingness to pay a premium indicates that it has an expectation that some portion of the insured deposits transferred to it by the FDIC or the RTC will remain in the paying agent institution. Not all depositors will take a cash payment from the paying agent; some portion of the failed institution's depositor base will elect to remain with the paying agent institution. The amount of the premium paid therefore represents the value the paying agent attaches to the potential for depositors of the failed depository institution to remain in the paying agent institution.

The FDIC and the Treasury have agreed to assess entrance and exit fees against insured deposit transfers but only to the amount of the premium. The paying agent institution will be liable for the entrance and exit fees, but will pay the fees out of the premium bid for the insured deposit transfer. In addition, the paying agent will not be liable for the amount of the entrance and exit fees that exceeds the premium. The premium received from the paying agent will be allocated in payment of the entrance and exit fees as follows: First, the premium will be allocated in payment of the exit fee to one-third of the premium received. Second, the remaining premium will be allocated to the entrance fee. Third, if any premium remains it will be applied to the remaining balance (if any) owing on the exit fee. Fourth, any amount remaining after application pursuant to steps one through three will be allocated to the RTC.

As noted previously, FIRREA requires that the exit fee for any SAIF-to-BIF conversion transaction be paid into SAIF (or to FICO, if the Secretary of the Treasury so orders after determining that FICO has exhausted all other sources of funding for interest payments on its obligations). Consistent with the treatment of exit fees paid as a result of SAIF-to-BIF conversion transactions, exit fees paid to SAIF as a result of an insured deposit transfer and prior to the issuance of an order by the Secretary of the Treasury, will be held in a reserve account in SAIF until such time as the FDIC and the Secretary of the Treasury determine that it is no longer necessary to reserve such funds for the possible payment of interest on the obligations of the FICO.

Insured deposit transfers occurring before the effective date of this interim rule will not be subject to the assessment of entrance or exit fees. Insured deposit transfers occurring on or after the effective date of this interim rule will be subject to entrance and exit fees as described herein.

Entrance Fees for SAIF-to-BIF Conversion Transactions

The FDIC has determined to revised the factors used in calculating the entrance fee for SAIF-to-BIF and BIF-to-SAIF conversion transactions. Specifically, the applicable reserve ratio will be based upon the ratio of the net worth of the insurance fund being entered to the value of the aggregate total deposits held in all such insurance fund members. In addition, the FDIC has determined that additional factors should be taken into account when calculating the deposit base to be used for purposes of computing the entrance fees in resolution cases. These changes to the factors used when calculating entrance fees are further explained below.

On September 22, 1989, the FDIC Board of Directors approved the issuance of an interim rule prescribing the entrance fees to be paid by insured depository institutions participating in conversion transactions that involve the transfer of deposits from SAIF to BIF. 54 FR 40377 (Oct. 2, 1989). Essentially, the entrance fee for SAIF-to-BIF conversions was set at the product of the "reserve ratio" of the fund being entered (*i.e.*, BIF) multiplied by the deposit base being transferred from SAIF to BIF insurance. Consistent with section 7(*l*)(6) of the FDI Act (12 U.S.C. 1817(*l*)(6)), the BIF "reserve ratio" was defined as the ratio of the net worth of the Bank Insurance Fund to the value of the aggregate estimated insured deposits held in all Bank Insurance Fund members. This definition was used when calculating the entrance fees for "non-resolution" branch sales involving the assumption of deposit liabilities of a "healthy" operating thrift by an insured bank, and to "resolution" cases or other RTC-arranged conversion transactions. The interim rule provided that the reserve ratio used would be the most recent publicly available reserve ratio (as of the date of transfer) computed by the FDIC on the basis of its most recent audited year-end financial statements (currently .80 percent, or 80 basis points).

In the interim rule setting entrance fees for SAIF-to-BIF conversion transactions, the FDIC asked if the entrance fee should be based on the ratio of reserves to total deposits rather than reserves to insured deposits. The FDIC has received twelve comment letters in response to the interim rule. Of these twelve letters, three specifically address this issue. Two of these three commentators, including the Independent Bankers Association of America, recommend that the ratio be based upon total deposits. They contend that use of the insured deposit ratio results in unrealistically high fees. One commentator argues that lower entrance fees would enable more community depository institutions to participate in the acquisition process while protecting the insurance fund from dilution. This commentator argues that, in light of the fact that the FDIC uses total deposits when calculating deposit insurance assessments, the total deposit ratio should likewise be used when calculating entrance fees. The other commentator writes that it would be more accurate to use the total deposit ratio since many failed bank resolutions have the effect of protecting all depositors, including those with deposits in excess of $100,000. The third commentator contends that the insurance deposit ratio should be used because any deposits in excess of $100,000 would not be insured and so not dilute the fund being entered. Of the nine remaining letters, three specifically complain that the entrance fee is too high and could therefore preclude the consummation of otherwise permitted conversion transactions. The remaining letters raise a variety of concerns, some unrelated to the entrance fee. These concerns included tax treatment, netting, uninsured institutions, general opposition to the imposition of exit fees, and merger of the two insurance funds. The arguments raised in the comment letters will be further discussed when a final rule setting the entrance and exit fees for conversion transactions is adopted by the FDIC.

Upon further consideration, and in light of the comments received, the FDIC has determined to use the ratio of the net worth of the Bank Insurance Fund to the value of the aggregate *total* domestic deposits held in all Bank Insurance Fund members when calculating the entrance fee in SAIF-to-BIF conversion transactions. As of this writing, the BIF reserve ratio based on insured deposits is 60 basis points (0.0060), and is based on the FDIC's audited year-end 1988

financial statements. This ratio would be used for purposes of calculating the entrance fee in SAIF-to-BIF transactions until a new figure has been announced based on the FDIC's audited year-end 1989 financial statements.

The FDIC has also determined that the net worth of the Savings Association Insurance Fund to the value of the aggregate *total* domestic deposits held in all Savings Association Insurance Fund members will be used when calculating the entrance fee for BIF-to-SAIF conversions. This decision impacts the interim rule adopted by the FDIC on December 12, 1989, prescribing the entrance and exit fees to be paid in conversion transactions resulting in the transfer of deposits from BIF to SAFI. 54 FR 52923 (Dec. 26, 1989). The December 12, 1989, interim rule set the entrance fee as the product of the reserve ratio of the fund being entered (*i.e.*, SAIF), or one basis point (0.0001), whichever is greater, multiplied by the deposit base being transferred from BIF to SAIF insurance. At that time, the reserve ratio was defined as the ratio of the net worth of the fund to the value of the aggregate estimated insured deposits held in all members of SAIF. Consistent with the approach taken for SAIF-to-BIF conversion transactions, the net worth of the Savings Association Insurance Fund to the value of the aggregate *total* domestic deposits held in all Savings Association Insurance Fund members will be used when calculating the entrance fee for BIF-to-SAIF conversions. A SAIF reserve ratio based on insured domestic deposits has not yet been calculated and made publicly available. Until such time as the SAIF insured deposit reserve ratio becomes publicly available, the entrance fee in BIF-to-SAIF transactions is therefore calculated by using one basis point (0.0001), as further explained in 54 FR 52923 (Dec. 26, 1989).

Since this interim regulation prescribes fees that may be less than the fees prescribed in the previous interim rules, a bank that participated in a conversion transaction during the period the previous interim rule was in effect will not have to pay the higher amount; if the fees prescribed in the previous interim rules are less than the fees prescribed in this interim rule and have been paid in full, the difference will be refunded to the bank or, if the fee is being paid in installments, the amount of the remaining installments will be adjusted to reflect the lower fees prescribed in this interim rule.

Determination of Appropriate Deposit Base

As explained above, FIRREA requires the entrance fees to be set in an approximately amount which the FDIC calculates as necessary to prevent dilution of the fund being entered. Thus, for example, where a thrift failure is resolved by an insured bank (BIF member) acquiring assets from and assuming deposit liabilities of a failed savings association (SAIF member), the entrance fee would be set at the approximate amount which the FDIC calculates is necessary to prevent dilution of BIF. Similarly, where an insured bank assumes deposit liabilities from an insured saving association through the sale of branches (and assuming the FDIC has approved this conversion transaction), the entrance fee would be the approximate amount necessary to offset the dilution of BIF that would result from the transfer of those deposits from SAIF insurance to BIF insurance.

On September 22, 1989, the FDIC issued an interim rule prescribing the entrance fee for SAIF-to-BIF conversion transactions. At the time this interim rule was promulgated, the FDIC determined that one method of measuring dilution of the fund being entered was to multiply the deposit base being transferred from one insurance fund to the other by the reserve ratio of the fund being entered.

The interim rule provided that the deposit base against which the reserve ratio is to be applied would depend upon the type of transaction involved. For "non-resolution" conversion transactions, such as branch sales involving the assumption of deposit liabilities of a "healthy" operating thrift by an insured bank, the appropriate deposit base was determined to be the total dollar amount of the deposits being transferred from one insurance fund to the other measured as of the date of transfer. However, in "resolution" cases (*i.e.*, where the conversion transaction is one which is being arranged by the RTC to dispose of or otherwise deal with an insured depository institution in default or in danger of default) a certain amount of deposit "run-off" can be expected to occur following the transaction. It was determined that it would be inappropriate to assess a fee against deposits that were unlikely to remain in the acquiring depository institution for some period beyond the date of transfer. The dilutive effect of the transaction to the insurance fund being entered may be prevented by charging an entrance fee only against those deposits likely to be retained by the acquiring depository institution. Thus, that interim rule permitted the use of an estimated "retained deposit base" in determining the appropriate entrance fee for resolution transactions. The interim rule previously issued by the FDIC described the "retained deposit base" as generally referring to those deposits which the FDIC, in its discretion, estimates to have a high probability of remaining with the acquiring depository institution for a reasonable period of time following the acquisition.

FDIC staff has reconsidered the rationale underlying the calculation of the deposit base and has concluded that additional factors, as further explained below, should be taken into account when calculating the deposit base for purposes of computing the entrance fees in resolution cases.

The basic means available to RTC for resolving institutions in default or in danger of default is to pay off insured depositors to the statutory limit and liquidate assets of the failed institution. In such cases, RTC would pay in cash or check to each insured depositor and secured creditor the amount of valid claims. Other creditors, including RTC standing in the place of insured and secured creditors, would share on a pro rata basis in the proceeds of liquidated assets.

In a payoff, recipients of cash payments from RTC would allocate these payments among various investment alternatives, including deposits in SAIF-insured and BIF-insured institutions, money market and other mutual funds, and direct debt and equity instruments. BIF would be "diluted" to the extent that former depositors of the SAIF-insured institution chose to become depositors in BIF-insured institutions.

Staff has concluded that dilution to the insurance fund being entered can more accurately be measured in resolution cases by comparing the projected results of a purchase and assumption with the projected results of a payoff. In other words, the estimated amount of deposits obtained by the acquiring depository institution by virtue of a purchase and assumption will be compared to the estimated amount of deposits that would have been drawn into insured depository institutions belonging to SAIF had the failed institution been handled by means of a payoff. One way of measuring the impact of a purchase and assumption versus a payoff is to consider the ratio of the total deposits held in SAIF members in the normal market area of the failed SAIF depository institution whose deposits are being acquired, to

the total deposits held in an insured depository institutions in the normal market area of the depository institution whose deposits are being acquired. The FDIC anticipates that other methods of measuring the impact of a purchase and assumption versus a payoff will be developed. This necessarily requires estimating the "entrance fee deposit base" on a case-by-case basis for each failed institution.

For the same reasons as outlined above, the FDIC has determined to use the "entrance fee deposit base" when calculating the entrance fee in resolution cases involving the transfer of insured deposits from BIF to SAIF. This decision impacts the interim rule prescribing the entrance fee for BIF-to-SAIF conversion transactions issued by the FDIC on December 12, 1989.

The FDIC has also determined to clarify the meaning of the term "retained deposit base" used in calculating exit fees in resolution cases by specifically providing that deposits acquired through a deposit broker, and any portion of any deposit account in excess of $80,000, will be excluded from the total deposits transferred, and the resulting amount will be the retained deposit base. The retained deposit base is used for purposes of calculating the entrance and exit fees in insured deposit transfers and the exit fees in SAIF-to-BIF and BIF-to-SAIF conversion transactions resulting from resolutions. As noted above, the "entrance fee deposit base" is used for purposes of calculating the entrance fees in SAIF-to-BIF and BIF-to-SAIF resolution conversion transactions.

Payment of Entrance and Exit Fees

With the exception of insured deposit transfers and *de minimis* fees, the FDIC is eliminating the previously prescribed requirement that an insured depository institution desiring to pay conversion fees in installments obtain the FDIC's prior consent. In most instances, institutions desiring to pay conversion fees in installments now must simply notify the FDIC. However, where the sum of the exit and entrance fees due equals $5,000 or less, the sum of both the entrance and exit fees must be paid in one lump sum. In addition, insured depository institutions owing entrance and exit fees as a result of an insured deposit transfer are not permitted to pay the fees in installments.

By this interim rule, the FDIC is also revising the date on which entrance and exit fees are due. This change is being made in order to facilitate FDIC recordkeeping. Formerly, entrance and exit fees were due on the resulting or acquiring institution's first regular semiannual assessment following the date the deposit liabilities were transferred. Because of the volume of records that must be managed during the assesment date period, however, it has been determined that entrance and exit fee payments should be received at an alternate time. The FDIC has therefore determined that entrance and exit fees will be due on either March 31st or September 30th, whichever occurs first following the expiration of 30 days from the date the deposits liabilities are transferred. However, the interim rule permits the resulting or acquiring institution, at its option, and upon notification to the FDIC, to pay the exit fee in equal annual installments over a period of not more than five years, interest-free, with the first installment due on the date described in the preceding sentence. Ordinarily, it is expected that entrance and exit fees will follow the same payment schedule.

Request for Public Comment

The FDIC is hereby requesting comment on all aspects of the interim rule. In addition, the FDIC invites comment on the following specific issues:

1. The interim rule permits institutions to pay the exit fee over a five-year period, interest-free. Should immediate payment be required? If payment over time is permitted, how long should the payment period be? Should interest be charged? If so, at what rate?

2. The interim rule places liability for payment of the exit fee on the resulting or acquiring institution. Is this appropriate, or should the institution being acquired (or whose branches are being acquired) be primarily liable for the exit fee?

3. How might this regulation affect the types of bids submitted by potential buyers of failed institutions?

List of Subjects in 12 CFR Part 312

Assessments, Bank deposit insurance, Banks, banking, Savings and loan associations, Savings associations.

For the reasons set out in the preamble, title 12, chapter III, subchapter A, part 312 of the Code of Federal Regulations, is amended as set forth below.

PART 312—ASSESSMENT OF FEES UPON ENTRANCE TO OR EXIT FROM THE BANK INSURANCE FUND OR THE SAVINGS ASSOCIATION INSURANCE FUND

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

Authority: Pub. L. No. 101–73, 206(a)(7), 103 Stat. 183, 196–201 (1989) (12 U.S.C. 1815(d)); 12 U.S.C. 1819.

2. Section 312.1 is amended by revising paragraph (c) and adding new paragraphs (f), (g), (h), (i) and (j) to read as follows:

§ 312.1 Definitions.

* * * * *

(c) The term "Bank Insurance Fund reserve ratio" shall mean the ratio of the net worth of the Bank Insurance Fund to the value of the aggregate total domestic deposits held in all Bank Insurance Fund members. The term "Savings Association Insurance Fund reserve ratio" shall mean the ratio of the value of the net worth of the Savings Association Insurance Fund to the value of the aggregate total domestic deposits held in all Savings Association Insurance Fund members.

* * * * *

(f) The term "deposit broker" shall have the meaning given it in section 29 of the Federal Deposit Insurance Act, 12 U.S.C. 1831f.

(g) The term "entrance fee deposit base" generally refers to those deposits which the Federal Deposit Insurance Corporation, in its discretion, estimates to have a high probability of remaining with the acquiring or resulting depository institution for a reasonable period of time following the acquisition, in excess of those deposits that would have remained in the insurance fund of the depository institution in default or in danger of default had such institution been resolved by means of an insured deposit transfer. The estimated dollar amount of the entrance fee deposit base shall be determined on a case-by-case basis by the Federal Deposit Insurance Corporation at the time offers to acquire an insured depository institution (or any part thereof) are solicited by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation.

(h) The term "insured deposit transfer" shall mean a transaction wherein the insured deposits of an insured depository institution in default or in danger of default, are paid by means of a transferred deposit pursuant to a written agreement between the Federal Deposit Insurance Corporation or the Resolution Trust Corporation and an insured depository institution. The term "transferred deposit" shall have the meaning given it in section 3(n) of the Federal Deposit Insurance Act, 12 U.S.C. 1813 (n).

(i) The term "premium" shall mean the amount paid by an insured depository institution in consideration for the right to enter into an insured deposit transfer agreement. The premium shall not include the amount of any transferred deposits, nor shall the premium include

any amount paid for the purchase of assets or the right to purchase assets of a depository institution in default or in danger of default.

(j) The term "retained deposit base" shall mean the total deposits transferred from a Savings Association Insurance Fund Member to a Bank Insurance Fund Member, or from a Bank Insurance Fund member to a Savings Association Insurance Fund member, less the following deposits:

(1) Any deposit acquired, directly or indirectly, by or through any deposit broker; and

(2) Any portion of any deposit account exceeding $80,000.

3. Section 312.4 is revised to read as follows:

§ 312.4 Entrance fees assessed in connection with conversion transactions from the Savings Association Insurance Fund to the Bank Insurance Fund.

(a) Each insured depository institution participating in a conversion transaction as a result of which insured deposits are transferred from a Savings Association Insurance Fund member to a Bank Insurance Fund member shall pay an entrance fee to the Bank Insurance Fund.

(b) The entrance fee shall be the product derived by multiplying the dollar amount of total deposits transferred from the Savings Association Insurance Fund member to the Bank Insurance Fund member by the Bank Insurance Fund reserve ratio.

(c) Notwithstanding paragraph (b) of this section, the entrance fee to be assessed against an insured depository institution participating in a conversion transaction:

(1) Occurring in connection with the acquisition of a Savings Association Insurance Fund member in default or in danger of default, or

(2) Otherwise arranged by the Federal Deposit Insurance Corporation in its capacity as exclusive manager of the Resolution Trust Corporation,

shall be the product derived by multiplying the dollar amount of the entrance fee deposit base transferred from the Savings Association Insurance Fund member to the Bank Insurance Fund member by the Bank Insurance Fund ratio.

4. A new § 312.5 is added to read as follows:

§ 312.5 Exit fees assessed in connection with conversion transactions from the Savings Association Insurance Fund to the Bank Insurance Fund.

(a) Each insured depository institution participating in a conversion transaction as a result of which insured deposits are transferred from a Savings Association Insurance Fund member to a Bank Insurance Fund member shall pay an exit fee.

(b) The exit fee shall be the product derived by multiplying the dollar amount of total deposits transferred from the Savings Association Insurance Fund member to the Bank Insurance Fund member by 0.90 percent (0.0090).

(c) Notwithstanding paragraph (b) of this section, the exit fee to be assessed against an insured depository institution participating in a conversion transaction:

(1) Occurring in connection with the acquisition of a Savings Association Insurance Fund member in default or in danger of default, or

(2) Otherwise arranged by the Federal Deposit Insurance Corporation in its capacity as exclusive manager of the Resolution Trust Corporation,

shall be the product derived by multiplying the dollar amount of the retained deposit base transferred from the Savings Association Insurance Fund member to the Bank Insurance Fund member by 0.90 percent (0.0090).

(d) The exit fee required to be paid by this section shall be paid to the Savings Association Insurance Fund or, if the Secretary of the Treasury determines that the Financing Corporation has exhausted all other sources of funding for interest payments on the obligations of the Financing Corporation and orders that such exit fee be paid to the Financing Corporation.

(e) Exit fees paid to the Savings Association Insurance Fund pursuant to paragraph (d) of this section shall be held in a reserve account until such time as the Federal Deposit Insurance Corporation and the Secretary of the Treasury determine that it is not necessary to reserve such funds for the payment of interest on the obligations of the Financing Corporation.

(f) Before January 1, 1997, amendments to this section shall be determined jointly by the Federal Deposit Insurance Corporation and the Secretary of the Treasury.

5. Section 312.6 is revised to read as follows:

§ 312.6 Entrance fees assessed in connection with conversion transactions from the Bank Insurance Fund to the Savings Association Insurance Fund.

(a) Each insured depository institution participating in a conversion transaction as a result of which insured deposits are transferred from a Bank Insurance Fund member to a Savings Association Insurance Fund member shall pay an entrance fee to the Savings Association Insurance Fund.

(b) The entrance fee shall be the product derived by multiplying the dollar amount of total deposits transferred from the Bank Insurance Fund member to the Savings Association Insurance Fund member by the Savings Association Insurance Fund reserve ratio, or by .01 percent (0.0001), whichever is greater.

(c) Notwithstanding paragraph (b) of this section, the entrance fee to be assessed against an insured depository institution participating in a conversion transaction occurring in connection with the acquisition of a Bank Insurance Fund member in default or in danger of default shall be the product derived by multiplying the dollar amount of the entrance fee deposit base transferred from the Bank Insurance Fund member to the Savings Association Insurance Fund member by the Savings Association Insurance Fund reserve ratio, or by .01 percent (0.0001), whichever is greater.

(d) *Interim entrance fee until initial calculation of Savings Association Insurance Fund reserve ratio.* Notwithstanding paragraphs (b) and (c) of this section, until such time as the Savings Association Insurance Fund reserve ratio is initially calculated and made publicly available, the entrance fee for all conversions from the Bank Insurance Fund to the Savings Association Insurance Fund shall be the product derived by multiplying the dollar amount of total deposits transferred from the Bank Insurance Fund member to the Savings Association Insurance Fund member by .01 percent (0.0001), unless the conversion transaction is occurring in connection with the acquisition of a Bank Insurance Fund member in default or in danger of default, where it shall be the product derived by multiplying the dollar amount of the entrance fee deposit base transferred from the Bank Insurance Fund member to the Savings Association Insurance Fund member by 0.01 percent (0.0001).

6. Section 312.7 is revised to read as follows:

§ 312.7 Exit fees assessed in connection with conversion transactions from the Bank Insurance Fund to the Savings Association Insurance Fund.

(a) Each insured depository institution participating in a conversion transaction as a result of which insured deposits are transferred from a Bank Insurance Fund member to a Savings Association Insurance Fund member shall pay an exit fee to the Bank Insurance Fund.

(b) The exit fee shall be the product derived by multiplying the dollar

amount of total deposits transferred from the Bank Insurance Fund member to the Savings Association Insurance Fund member by .01 percent (0.0001).

(c) Notwithstanding paragraph (b) of this section, the exit fee to be assessed against an insured depository institution participating in a conversion transaction occurring in connection with the acquisition of a Bank Insurance Fund member in default or in danger of default shall be the product derived by multiplying the dollar amount of the retained deposit base transferred from the Bank Insurance Fund member to the Savings Association Insurance Fund member by 0.01 percent (0.0001).

7. A new § 312.8 is added to read as follows:

§ 312.8 Entrance and exit fees assessed in connection with insured deposit transfers from the Savings Association Insurance Fund to the Bank Insurance Fund.

(a) Insured deposit transfers resulting in a transfer of insured deposits from a Savings Association Insurance Fund member to a Bank Insurance Fund member, shall be subject to an entrance fee and an exit fee.

(b) The entrance fee shall be the product derived by multiplying the dollar amount of the retained deposit base of the Savings Association Insurance Fund member in default or in danger of default by the Bank Insurance Fund ratio.

(c) The exit fee shall be the product derived by multiplying the dollar amount of the retained deposit base of the Savings Association Insurance Fund member in default or in danger of default by 0.90 percent (0.0090).

(d) Notwithstanding paragraphs (a), (b), and (c) of this section, the sum total of the entrance fee and the exit fee required by this section shall in no event exceed the amount of the premium.

(e) The entrance and exit fees required by this section shall be paid by the acquiring institution from the premium as follows. First, the premium shall be allocated in payment of the exit fee to one-third of the premium received. Second, the remaining premium shall be allocated to the entrance fee. Third, if any premium remains, it shall be applied to the remaining balance (if any) owing on the exit fee. Fourth, any amount remaining after application pursuant to steps one through three shall be allocated to the Resolution Trust Corporation.

(f) The entrance fee required by this section shall be paid to the Bank Insurance Fund. The exit fee required by this section shall be paid to the Savings Association Insurance Fund or, if the Secretary of the Treasury determines that the Financing Corporaiton has exhausted all other sources of funding for interest payments on the obligations of the Financing Corporation and orders that such exit fee be paid to the Financing Corporation.

(g) Exit fees paid to the Savings Association Insurance Fund pursuant to paragraph (f) of this section shall be held in a reserve account until such time as the Federal Deposit Insurance Corporation and the Secretary of the Treasury determine that it is not necessary to reserve such funds for the payment of interest on the obligations of the Financing Corporation.

(h) Insured deposit transfers occurring before March 21, 1990 shall not be subject to the assessment of entrance or exit fees.

(i) Before January 1, 1997, amendments to this section concerning exit fees assessed in connection with insured deposit transfers from the Savings Association Insurance Fund to the Bank Insurance Fund shall be determined jointly by the Federal Deposit Insurance Corporation and the Secretary of the Treasury.

8. A new § 312.9 is added to read as follows:

§ 312.9 Entrance and exit fees assessed in connection with insured deposit transfers from the Bank Insurance Fund to the Savings Association Insurance Fund.

(a) Insured deposit transfers resulting in a transfer of insured deposits from a Bank Insurance Fund member to a Savings Association Insurance Fund member, shall be subject to an entrance fee and in exit fee.

(b) The entrance fee shall be the product derived by multiplying the dollar amount of the retained deposit base of the Bank Insurance Fund member in default or in danger of default by the Savings Association Insurance Fund ratio or by .01 percent (0.0001), whichever is greater.

(c) The exit fee shall be the product derived by multiplying the dollar amount of the retained deposit base of the Bank Insurance Fund member by 0.01 percent (0.0001).

(d) Notwithstanding paragraphs (a), (b), and (c) of this section, the sum total of the entrance fee and the exit fee required by this section shall in no event exceed the amount of the premium.

(e) The entrance and exit fees required by this section shall be paid by the acquiring institution from the premium as follows. First, the premium shall be allocated in payment of the exit fee to one-third of the premium received. Second, the remaining premium will be allocated to the entrance fee. Third, if any premium remains, it shall be applied to the remaining balance (if any) owing on the exit fee. Fourth, any amount remaining after application pursuant to steps one through three shall be allocated to the Federal Deposit Insurance Corporation.

(f) The entrance fee required by this section shall be paid to the Savings Association Insurance Fund. The exit fee required by this section shall be paid to the Bank Insurance Fund.

(g) Insured deposit transfers occurring before March 21, 1990 shall not be subject to the assessment of entrance or exit fees.

9. A new § 312.10 is added to read as follows:

§ 312.10 Payment of entrance and exit fees.

(a) A resulting or acquiring depository institution shall be liable for the payment of the entrance and exit fees required by this part.

(b) Notwithstanding paragraph (a) of this section, an acquiring depository institution participating in an insured deposit transfer pursuant to § 312.8 or § 312.9 of this part shall pay the entrance and exit fees from the premium, and in any event, shall not be liable for the payment of that portion of the entrance and exit fees that exceeds the premium paid by such acquiring depository institution.

(c) The "conversion transaction payment date" shall be either March 31st or September 30th, whichever occurs first following the expiration of 30 days from the date the deposits are transferred.

(d) A resulting or acquiring depository institution shall pay the entrance and exit fees required by this part on the conversion transaction payment date.

(e) Notwithstanding paragraph (d) of this section, where the sum of the entrance and exit fees required to be paid by an insured depository institution pursuant to §§ 312.4, 312.5, 312.6, or 312.7 of this part exceeds $5,000, a resulting or acquiring depository institution may, at its option, and upon notification to the Federal Deposit Insurance Corporation, pay the entrance and exit fees in equal annual installments, interest-free, over a period of not more than five years. The first such installment shall be paid on the date described in paragraph (c) of this section.

(f) Entrance and exit fees required to be paid by an insured depository institution as the result of an insured deposit transfer pursuant to §§ 312.8 or 312.9 of this part shall be paid on the conversion transaction payment date

described in paragraph (c) of this section.

By order of the Board of Directors.

Dated at Washington, DC, this 13th day of March, 1990.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 90–6327 Filed 3–20–90; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

RIN 0960–AC47

[Regulation No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Real Property Which Is Not Counted When It Cannot Be Sold and Transfer of Assets for Less Than Fair Market Value

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These regulations, under the Supplemental Security Income (SSI) program, reflect sections 9103 and 9104 of Public Law 100–203 (the Omnibus Budget Reconciliation Act of 1987) dealing with the disposition and transfer of resources in determining eligibility for SSI benefits. Both provisions were effective April 1, 1988. We are also amending regulations to implement sections 303 (c) and (g)(3) of Public Law 100–360 (the Medicare Catastrophic Coverage Act of 1988) which repealed the statutory provision regarding treatment, for SSI purposes, of resources transferred for less than fair market value. This repeal only applies to transfers which occur on or after July 1, 1988. The effect of these regulations is to liberalize our policies in determining SSI benefits by not requiring the sale or transfer of real property under certain conditions.

EFFECTIVE DATE: These rules are effective on March 21, 1990.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, telephone (301) 965–8470.

SUPPLEMENTARY INFORMATION: Regulations implementing section 9103 and 9104 of Public Law 100–203, were published as interim rules in the **Federal Register** on April 22, 1988 (53 FR 13254). Several comments were received and are answered later in this preamble to the regulations.

Under existing provisions of title XVI of the Social Security Act (the Act), the resources that an individual owns, with certain exceptions, are counted in determining an individual's eligibility for SSI. Sections 9103 and 9104 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, made certain changes to the statutory resource provisions.

These final regulations also affect applicants for and recipients of the Medical Assistance Program (Medicaid) under title XIX of the Act. The purpose of the Medicaid program is to provide assistance to States for payments of Medical Assistance on behalf of individuals with low income, including cash assistance recipients and, in certain States, other medically needy, who, except for income and resources, would be eligible for cash assistance. The program is funded from general revenues.

Section 9103

Section 9103 amended section 1613(b) of the Act to add a new paragraph (2) which provides that notwithstanding the provisions of paragraph (1) (the conditional payment provision of section 1613(b)) the sale of real property shall not be required for so long as the property cannot be sold because: (1) It is jointly owned and its sale would cause undue hardship due to loss of housing for the other owner(s); (2) its sale is barred by a legal impediment; or (3) as determined by regulations issued by the Secretary, the owner's reasonable efforts to sell it have been unsuccessful. These statutory changes were effective April 1, 1988.

Loss of Housing for Joint Owner

Under regulations in effect prior to the publication on April 22, 1988, of the interim rules implementing section 9103 of Public Law 100–203, if an individual had the legal right to sell property jointly owned with another, we considered the property to be a countable resource to the individual. There was no provision in the regulations for waiving the requirement to dispose of excess resources in the form of real property on the basis of undue hardship to a co-owner. An individual who owned excess nonliquid resources (real or personal) could not receive regular SSI benefits, but could receive time-limited benefits conditioned on the agreement to dispose of the property; in return, we did not consider the excess property in determining the individual's eligibility for SSI benefits subject to repayment of the benefits received from the proceeds of the disposition.

Under these final regulations, as under the interim rules, we will not count excess real property as a resource for conditional benefits purposes for so long as:

- It is jointly owned; and
- Sale of the property would cause the other owner undue hardship due to loss of housing. We are defining undue hardship as occurring when the property serves as the principal place of residence for one (or more) of the other owners; sale of the property would result in loss of that residence; and no other housing would be readily available for the displaced other owner (e.g., the other owner does not own another house that is legally available for occupancy.) However, if undue hardship ceases to exist, the value of the eligible individual's interest in the property will be included in his or her countable resources effective with the month following the month the hardship ceased.

Sale Barred by Legal Impediment

Although the Act does not define "resources" for SSI purposes, regulations at 20 CFR 416.1201 have contained the same basic definition since the beginning of the program. Under these regulations, resources are (in addition to cash and liquid assets) any real or personal property that an individual owns and could convert to cash to be used for his or her support and maintenance. If an individual has the right, authority, or power to liquidate property, or his or her share of the property, it is considered a resource. Conversely, if an individual does not have the right, authority, or power to liquidate property (e.g., there is a legal impediment to its sale), the property is not considered a resource at all. Accordingly, since this statutory amendment which added section 1613(b)(2)(B) reflects current policy, no regulatory change is required to implement it.

Reasonable Efforts To Sell

Regulations in effect prior to the publication of interim rules on April 22, 1988, at § 416.1240(c) provided that, if an individual failed to dispose of excess real property within 6 months (or 9 months if there is good cause for an extension), regardless of the efforts made to dispose of it, we counted the property for SSI purposes and the individual was ineligible for benefits. In counting the resource, we used the

original estimate of current market value (i.e., the estimate which resulted in the determination of excess resources and led to the individual's choice of conditional benefits) unless the individual submitted evidence establishing a lower value. The value estimate applied retroactively to the beginning of the conditional benefits period. The resultant overpayment calculated under the original estimate of current market value, or the revised estimate if there was one, had to be refunded.

Like the interim rules, these final regulations at § 416.1245 provide that we will not consider excess real property in an individual's countable resources for so long as the owner's reasonable efforts to sell it have been unsuccessful. The basis for our determining whether efforts to sell are reasonable, as well as unsuccessful, is the conditional benefits period. The conditional benefits period for real property was revised in the interim rules to 9 months which parallels the prior 6-month basic disposal period plus 3-month extension granted for good cause. We chose 9 months for the conditional payment period for real property since that was the maximum period previously allowed for disposing of real property. We believe it is reasonable to use this maximum disposition period to evaluate the reasonableness of the individual's efforts to sell. We believe this requirement of a conditional payment period is provided for under section 1613(b)(2)(C) of the Act, which authorizes the Secretary to determine by regulation whether the owner has been making reasonable efforts to sell which have been unsuccessful. We believe it is reasonable first to require an individual to enter into a conditional payment agreement and attempt to sell excess real property because section 9103 and its legislative history (H.R. Rep. No. 495, 100th Cong., 1st Sess. 822–23 (1987)) do not suggest that conditional payments should not first be required in order for real property not to be included in countable resources. Rather, they merely provide that once reasonable efforts have been demonstrated (as defined by the Secretary in regulations), and such efforts have proven unsuccessful, the individual's eligibility for SSI benefits is no longer conditioned upon the disposal of the individual's property; instead, the property will not be counted as a resource and the individual will be eligible for SSI benefits for so long as he or she continues reasonable efforts to sell. Until such time as reasonable efforts to sell are determined to be unsuccessful, we will condition benefits on the disposition of the property pursuant to section 1613(b)(1). If we determine that reasonable efforts to sell have been unsuccessful, further SSI payments will not be subject to repayment if the property is ever sold; only the 9 months' conditional benefits will be subject to recovery.

Under these final regulations, a conditional benefits period involving excess real property begins as described at § 416.1242(a). The conditional benefits period ends at the earliest of the following:

- Sale of the property;
- Lack of continued reasonable efforts to sell;
- The individual's written request for cancellation of the agreement;
- Countable resources, even without the conditional exclusion, fall below the applicable limit (e.g., liquid resources have been depleted); or
- The 9 months of conditional benefits have been paid.

In addition, these regulations specify that reasonable efforts to sell property consist of taking all necessary steps to sell it in the geographic area covered by the media serving the area in which the property is located. (As under current policy, the asking price is to be no higher than the latest estimate of current market value.) More specifically, making a reasonable effort to sell would mean that:

- Except for gaps of no more than 1 week, an individual must attempt to sell the property by listing it with a real estate agent or by undertaking to sell it personally;
- Within 30 days of signing a conditional benefits agreement, and absent good cause for not doing so, the individual must have:

Listed the property with an agent; or

Begun to advertise it in at least one of the appropriate local media, placed a "For Sale" sign on the property (if permitted), begun to conduct "open houses", or otherwise show the property to interested parties on a continuous basis, and attempted any other appropriate methods of sale; and

- The individual does not decline any reasonable offer to buy and accepts the burden of demonstrating that when an offer is rejected it is because the offer was not reasonable. We are requiring the individual to submit additional evidence of why an offer of at least two-thirds of the latest current market value was not accepted in order to permit the rejection of frivolous offers and still account for changing market conditions.

We will contact the individual periodically to verify the existence of reasonable efforts to sell. For so long as the individual is making reasonable efforts to sell, the property in question is not counted as a resource. Should the individual cease his reasonable efforts to sell, the property is countable effective with the month following cessation of such efforts.

These final regulations, like the interim rules, include a definition of good cause to encompass situations where circumstances beyond an individual's control prevent taking the required action to accomplish "reasonable efforts to sell."

In applying this reasonable efforts to sell provision, an individual who has received 9 months of conditional benefits and whose benefits have been suspended as described at § 416.1321 for reasons unrelated to the property not counted under the conditional benefits agreement, but whose eligibility has not been terminated as defined at §§ 416.1331 through 416.1335, can continue to have the excess real property not included in countable resources upon reinstatement of SSI payments if reasonable efforts to sell the property resume within 1 week of reinstatement. Such an individual will not have to go through a subsequent conditional benefits period.

If a conditional benefits period is in effect when an individual's benefits are suspended for reasons unrelated to reasonable efforts to sell, the 9-month conditional benefits/evaluation period will not include any months for which benefits were suspended. While we stated this policy in the preamble to the interim rules published April 22, 1988, for clarity the regulations at § 416.1242 are being amended in these final rules to include this information. When the suspension has ended, the remainder of the 9-month period will begin to run. However, an individual whose eligibility has been terminated as defined at §§ 416.1331 through 416.1335 and who subsequently reapplies would be subject to a new conditional benefits period if he or she still owns excess real property. This requirement for a new conditional benefits period is based on the fact that in the termination situation the individual will be proceeding with a new application while in the suspension situation the original application is still in effect. This approach is consistent with the statutory distinction between suspension and termination (section 1631(e) of the Act) as well as with our longstanding administrative distinction between those situations.

Section 9104

Section 9104 of Public Law 100–203 amended section 1613(c) of the Act by

adding a new paragraph (4). That paragraph requires that the Secretary, by regulation, provide for suspending the application of the transfer of assets provision of section 1613(c)(1) of the Act in any instance that the Secretary determines that such suspension is necessary to avoid undue hardship. These statutory changes were effective April 1, 1988.

Section 1613 (c)(1) through (3) of the Act, prior to amendment by section 303 of Public Law 100–360 as discussed below, required counting as a resource the uncompensated value of an asset which an eligible individual (or eligible spouse) owned and has given away or sold for less than fair market value. If the individual could present convincing evidence that the transfer occurred exclusively for a reason other than establishing eligibility for SSI and/or Medicaid benefits, then the uncompensated value will not be counted. Otherwise, the uncompensated value would be counted as a resource for 24 months from the date of transfer, even if the transfer occurred prior to filing for benefits. Prior to the enactment of Public Law 100–203, there was no provision for waiver of the counting requirement in situations where application of the transfer of assets rule resulted in undue hardship.

Under these final regulations, we will:

- Suspend counting the uncompensated value of the transferred resource for any month in the statutory 24-month period where such counting would cause the individual undue hardship;
- Resume counting the uncompensated value for any month of the 24-month period remaining for which counting would not cause undue hardship; and
- Make no change in the way the 24-month period is determined when counting is suspended for 1 or more months.

Undue hardship will be found to exist when: (1) An individual alleges that failure to receive SSI benefits would deprive him or her of food or shelter; and (2) the applicable Federal benefit rate (plus the federally-administered State supplementary payment level) exceeds the sum of: The individual's monthly countable and excludable income and monthly countable and excludable liquid resources.

These final rules regarding undue hardship apply only on or after April 1, 1988, the effective date of section 9104, and to transfers made prior to July 1, 1988, since section 303 (c) and (g)(3) of Public Law 100–360 (the Medicare Catastrophic Coverage Act of 1988) deleted section 1613(c) of the Act transfers occurring on or after July 1, 1988. Section 1613(c) had required that the uncompensated value of resources transferred at less than fair market value within the preceding 24 months be counted toward the SSI resource limit. Therefore, we are amending § 416.1246 to provide that the section only applies to transfers which occurred prior to July 1, 1988, and that paragraphs (d)(2) and (d)(3) of that section regarding undue hardship apply to such transfers for the months beginning on or after April 1, 1988.

Justification for Dispensing With Rulemaking Procedures

We are publishing amendments to the regulations implementing section 303 (c) and (g)(3) of Public Law 100–360 as final rules instead of proposed rules.

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures. Section 553(b)(3)(B) of the APA exempts application of notice and comment rulemaking procedures "when the agency for good cause finds * * * that notice and public procedures thereon are impracticable, unnecessary, or contrary to the public interest." We are dispensing with notice and comment rulemaking in the case of these rules because such rulemaking is unnecessary since this change merely conforms the regulation to the controlling statute, does not involve administrative discretion, and does not independently affect the rights of claimants.

Public Comments and Responses to Interim Rules Published in the Federal Register April 22, 1988 (53 FR 13254)

We received comments from two law centers and two State departments for human/social services. A summary of the comments from the four commenters and our responses follow:

Jointly Owned Property

Comment: When property becomes a countable resource because the joint owner will no longer suffer undue hardship if the property is sold, a conditional period of eligibility should be triggered.

Response: Should a previously excluded jointly owned property become a countable resource, the individual will be given the option of a conditional benefits period if he or she meets the necessary requirements.

Comment: Two commenters state that defining the joint owner's undue hardship in terms of the legal availability of other housing may be too restrictive an interpretation. The Social Security Administration (SSA) should take a practical approach and consider all factors when making an undue hardship determination.

Response: The commenters appear to have misconstrued the example of "legal availability" as being the only condition for determining the availability of other housing. SSA intends to consider all factors peculiar to a joint owner's situation when making an undue hardship determination. The intent of the regulation is to prevent hardship from being found in situations where individuals with multiple properties available for occupancy simply choose not to move elsewhere.

Reasonable Effort To Sell

Comment: The rules to establish reasonable efforts to sell are too difficult and costly.

Response: The requirement to advertise in the local media can be met easily and inexpensively by circulating handwritten fliers or advertising through community bulletin boards.

Comment: Expand the definition of good cause to include situations where:

- Expert opinion or past experience indicates no market for the property; or
- The property cannot be marketed due to the individual's age, illness, indigence, lack of proximity to the property, or lack of realtor interest.

Response: Section 416.1245(b)(4) of the regulations already covers the factors requested by the commenter by permitting a finding of "good cause" whenever an individual was prevented from taking steps to sell excess real property by circumstances beyond his or her control. For example, good cause could be found when illness prevents an individual from taking the necessary steps within the prescribed timeframes to establish reasonable efforts to sell.

Comment: When determining whether an individual has received a reasonable offer for the property, SSA should use a figure of 80 percent rather than two-thirds of estimated market value.

Response: We believe that the two-thirds figure is reasonable and conforms with the intent of the legislation to not count as a resource property that cannot be sold. The effect of using a higher figure would be to maintain SSI payments while an individual owns property which can presumably be sold at a reasonable amount, the converse of

the legislation's intent. In addition, the regulation permits an individual to demonstrate the unreasonableness of the two-thirds figure, e.g., the individual has another contract pending for 85 percent of market value but the deal has not yet been closed.

Reasonable Efforts to Sell/Conditional Benefits Period

Comment: Section 9103 of Public Law 100–203 does not mention conditional eligibility. Reconsider using a conditional benefits period as the means of determining real property that cannot be sold since individuals may be prevented from being eligible for Medicaid benefits.

Response: Section 9103 amended section 1613(b) of the Act, which authorizes the Secretary to prescribe conditions under which various kinds of property must be disposed of in order not to be included in determining eligibility. Congress provided, in section 9103, the link between the conditional benefits period and the determination that an individual's reasonable efforts to sell real property have been unsuccessful. Consequently, it is reasonable to require the individual to enter into a conditional payment agreement and attempt to sell excess real property prior to determining that such efforts have proven unsuccessful, and that SSI eligibility is no longer conditioned upon disposal of the property.

The application of section 9103 solely to the receipt of conditional payments does not prevent the State from applying a reasonable effort to sell rule to its medical assistance only population. It is true that section 9103 is only applicable in the SSI program to conditional payments, and so is not generally applicable under Medicaid. However, section 303(e) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) added to title XIX of the Act a new section 1902(r)(2). This new section provides that States may use eligibility criteria which are more liberal, but not more restrictive, than the cash assistance programs' criteria. This section applies to all eligibility groups with the exception of actual cash assistance recipients and certain deemed groups. Thus, under section 1902(r)(2) of the Act a State can, it if wishes, adopt a reasonable effort to sell policy similar to that in section 9103 and apply it to the State's medical assistance only population.

Notice

Comment: SSA should provide detailed written notice of a person's obligations regarding reasonable efforts to sell.

Response: SSA fully intends to provide claimants with written notice of their obligations regarding reasonable efforts to sell. As always, SSA field employees are also available to answer questions on this subject.

"Undue Hardship" Exception to the Transfer of Assets Penalty

Comment: Because of the catastrophic health care legislation, the transfer of assets penalty should be eliminated for all SSI recipients as of July 1, 1988.

Response: That recent legislation repeals the penalty with respect to all property transferred on or after July 1, 1988, but does not eliminate the penalty for property transferred prior to that date. It is beyond the Secretary's authority under title XVI to extend the repeal to transfers made prior to July 1, 1988.

Effective Dates

Comment: The regulations should state that its provisions are effective April 1, 1988, for all SSI cases and not April 22, 1988, the date of publication.

Response: Although the regulations were published April 22, 1988, they provide the policy for implementing sections 9103 and 9104 of Public Law 100–203, which have an effective date for all SSI cases of April 1, 1988.

Transfer of Assets

Comment: The inclusion of excludable income and liquid resources in the definition of undue hardship contravenes the statutory and regulatory scheme of SSI eligibility.

Response: We believe that inclusion of excludable income and liquid resources to determine undue hardship is consistent with the SSI program. Consistent with the program's purpose to provide a minimum amount to meet certain needs, the test of hardship should reflect the person's ability to meet his immediate basic needs for food, clothing, and shelter without benefit of SSI monies. Since excludable income and liquid resources are available to the person for such purposes, they should be considered when determining if hardship exists. The Federal benefit rate (and any appropriate State supplementation) is used as the test for determining hardship because Congress (and the respective State legislature) has declared that rate to be the minimum amount needed to obtain those basic needs.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 since the program and administrative costs of these regulations will be insignificant and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These regulations impose no additional reporting and recordkeeping requirement subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals and States. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplementary Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental security income.

Dated: November 7, 1989.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: December 12, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

Accordingly, the interim rule amending 20 CFR part 416, subpart L, which was published at 53 FR 13254 on Friday, April 22, 1988, is adopted as a final rule with the following changes:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart L—Resources and Exclusions

1. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1242 is amended by revising paragraphs (a) and (b) and adding paragraph (d) to read as follows:

§ 416.1242 Time limits for disposition of resources.

(a) In order for payment conditioned on the disposition of nonliquid resources to be made, the individual must agree in writing to dispose of real property within 9 months and personal property within 3 months. The time period will begin on the date the written agreement to dispose of the resources is signed by the individual and submitted to us. However, in the case of an individual who is disabled, the time period will begin with the date the individual is determined to be disabled.

(b) The 3-month time period for disposition of personal property will be extended an additional 3 months where it is found that the individual had "good cause" for failing to dispose of the resources within the original time period. The rules on the valuation of real property not disposed of within 9 months are described in § 416.1245(b).

* * * * *

(d) In determining whether the appropriate time limits discussed in paragraphs (a) and (b) of this section have elapsed, no month will be counted for which an individual's benefits have been suspended as described in § 416.1321, provided that the reason for the suspension is unrelated to the requirements in § 416.1245(b) and that the individual's eligibility has not been terminated as defined in §§ 416.1331 through 416.1335.

3. Section 416.1245 is revised to read as follows:

§ 416.1245 Exceptions to required disposition of real property.

(a) *Loss of housing for joint owner.* Excess real property which would be a resource under § 416.1201 is not a countable resource for conditional benefit purposes when: it is jointly owned; and sale of the property by an individual would cause the other owner undue hardship due to loss of housing. Undue hardship would result when the property serves as the principal place of residence for one (or more) of the other owners, sale of the property would result in loss of that residence, and no other housing would be readily available for the displaced other owner (e.g., the other owner does not own another house that is legally available for occupancy). However, if undue hardship ceases to exist, its value will be included in countable resources as described in § 416.1207.

(b) *Reasonable efforts to sell.* (1) Excess real property is not included in countable resources for so long as the individual's reasonable efforts to sell it have been unsuccessful. The basis for determining whether efforts to sell are reasonable, as well as unsuccessful, will be a 9-month conditional benefits period described in § 416.1242. If it is determined that reasonable efforts to sell have been unsuccessful, further SSI payments will not be conditioned on the disposition of the property and only the 9 months of conditional benefits will be subject to recovery. In order to be eligible for payments after the conditional benefits period, the individual must continue to make reasonable efforts to sell.

(2) A conditional benefits period involving excess real property begins as described at § 416.1242(a). The conditional benefits period ends at the earliest of the following times:

(i) Sale of the property;

(ii) Lack of continued reasonable efforts to sell;

(iii) The individual's written request for cancellation of the agreement;

(iv) Countable resources, even without the conditional exclusion, fall below the applicable limit (e.g., liquid resources have been depleted); or

(v) The 9 months of conditional benefits have been paid.

(3) Reasonable efforts to sell property consist of taking all necessary steps to sell it in the geographic area covered by the media serving the area in which the property is located, unless the individual has good cause for not taking these steps. More specifically, making a reasonable effort to sell means that:

(i) Except for gaps of no more than 1 week, an individual must attempt to sell the property by listing it with a real estate agent or by undertaking to sell it himself;

(ii) Within 30 days of signing a conditional benefits agreement, and absent good cause for not doing so, the individual must:

(A) List the property with an agent; or

(B) Begin to advertise it in at least one of the appropriate local media, place a "For Sale" sign on the property (if permitted), begin to conduct "open houses" or otherwise show the property to interested parties on a continuous basis, and attempt any other appropriate methods of sale; and

(iii) The individual accepts any reasonable offer to buy and has the burden of demonstrating that an offer was rejected because it was not reasonable. If the individual receives an offer that is at least two-thirds of the latest estimate of current market value, the individual must present evidence to establish that the offer was unreasonable and was rejected.

(4) An individual will be found to have "good cause" for failing to make reasonable efforts to sell under paragraph (b)(3) of this section if he or she was prevented by circumstances beyond his or her control from taking the steps specified in paragraphs (b)(3)(i) through (ii) of this section.

(5) An individual who has received 9 months of conditional benefits and whose benefits have been suspended as described at § 416.1321 for reasons unrelated to the property excluded under the conditional benefits agreement, but whose eligibility has not been terminated as defined at §§ 416.1331 through 416.1335, can continue to have the excess real property not included in countable resources upon reinstatement of SSI payments if reasonable efforts to sell the property resume within 1 week of reinstatement. Such an individual will not have to go through a subsequent conditional benefits period. However, the individual whose eligibility has been terminated as defined as §§ 416.1331 through 416.1335 and who subsequently reapplies would be subject to a new conditional benefits period if there is still excess real property.

4. Section 416.1246 is amended by revising paragraphs (d) and (f) to read as follows:

§ 416.1246 Disposal of resources at less than fair market value.

* * * * *

(d)(1) *Uncompensated value—General.* The uncompensated value is the fair market value of a resource at the time of transfer minus the amount of compensation received by the individual (or eligible spouse) in exchange for the resource. However, if the transferred resource was partially excluded, we will not count uncompensated value in an amount greater than the countable value of the resources at the time of transfer.

(2) *Suspension of counting as a resource the uncompensated value where necessary to avoid undue hardship.* We will suspend counting as a resource the uncompensated value of the transferred asset for any month in the 24-month period if such counting will result in undue hardship. We will resume counting the uncompensated value as a resource for any month of the 24-month period in which counting will not result in undue hardship. We will treat as part of the 24-month period any months during which we suspend the counting of uncompensated value.

(3) *When undue hardship exists.* Undue hardship exists when:

(i) An individual alleges that failure to receive SSI benefits would deprive the individual of food or shelter; and

(ii) The applicable Federal benefit rate (plus the federally-administered State

supplementary payment level) exceeds the sum of: The individual's monthly countable and excludable income and monthly countable and excludable liquid resources.

* * * * *

(f) *Applicability.* This section applies only to transfers of resources that occurred before July 1, 1988. Paragraphs (d)(2) and (d)(3) of this section, regarding undue hardship, are effective for such transfers on or after April 1, 1988.

[FR Doc. 90–6198 Filed 3–20–90; 8:45 am]
BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Parts 610 and 640

[Docket No. 88N–0433]

Blood and Blood Products; Amendment To Allow for Alternative Procedures; Removal of a Labeling Requirement

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the biologics regulations governing the collection and manufacture of blood, blood components, and blood products by allowing these products to be licensed, collected, processed, tested, stored, and distributed in ways alternative to those specified in the biologics regulations upon approval by the Director, Center for Biologics Evaluation and Research (CBER). FDA is also amending its regulations to remove a labeling requirement applicable to injectable products prepared from human blood, plasma, or serum. The agency is taking these actions to provide the flexibility needed to accommodate rapid changes in biotechnology and to assure the continued availability of blood and blood products.

DATES: Effective March 21, 1990. For changing the labeling of injectable products prepared from human blood, licensed establishments should submit draft labeling before July 19, 1990. For blood products initially manufactured for interstate distribution on or after March 21, 1991, the products shall be labeled consistent with this final rule.

ADDRESSES: Draft revised labeling should be sent to the Director, Center for Biologics Evaluation and Research (HFB–240), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892. Requests to allow alternative procedures or criteria should be sent to the Director, Center for Biologics Evaluation and Research (HFB–1), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Andrea Chamblee, Center for Biologics Evaluation and Research (HFB–130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8188.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of July 18, 1989 (54 FR 30093), FDA proposed to revise the current biologics regulations that prescribe test methods and manufacturing processes for licensed biological products related to the safety, purity, potency, and effectiveness of the products. In the July 18, 1989, proposal, FDA proposed that blood, blood components, and blood products may be licensed, collected, tested, stored, and distributed in ways alternative to those specified in these biologics regulations, upon approval of the Director, CBER. FDA also proposed to remove a labeling requirement that a biological product prepared from human blood, plasma, or serum include in the labeling a statement that the product was prepared from blood that was nonreactive when tested for hepatitis B surface antigen.

II. Alternative Procedures

In the **Federal Register** of July 18, 1989, FDA proposed to amend the current biologics regulations to add § 640.120 Alternative Procedures to provide that blood, blood components, and blood products may be licensed, collected, tested, labeled, stored, and distributed in ways alternative to those specified in the biologics regulations, only upon approval of the Director, CBER.

Provisions applicable to blood, blood components, or blood products appear in title 21, chapter I, subchapter F of the Code of Federal Regulations (CFR). For example, the additional standards in 21 CFR part 640 apply specifically to various blood, blood components, and blood derivative products. The provisions of 21 CFR part 606 detail current good manufacturing practice requirements (CGMP's) for blood and blood components. 21 CFR part 610 also contains requirements applicable to blood and blood products.

FDA recognizes that as technology and scientific knowledge advance, and the demands placed on the blood industry change, there will continue to be instances when a regulation will become outdated or where unanticipated circumstances may warrant a departure from an approach detailed in the regulations. In order to be more responsive to improved technologies, increased scientific knowledge, and concerns about the continued availability of blood and blood products, the Director, CBER, should have the clear authority to approve alternatives to particular regulatory requirements when adequate information is available to support the alternatives.

FDA regulations already provide for the use of alternative procedures or criteria in some circumstances, for example, §§ 640.75, 606.110, and 610.9. However, these regulations do not necessarily apply to all aspects of licensing, collecting, processing, testing, storing, and distributing blood, blood components, and blood products. Under § 640.120, as revised, the Director, CBER, may approve an exception or alternative to the requirements in the biologics regulations applicable to blood, blood components, or blood products. The Director would approve such exception or alternative only if, in the judgment of the Director, the safety, purity, potency, and effectiveness of the final product is adequately assured. The Director, CBER, may request additional data or information from the person who has requested permission for an exception or alternative before granting the request.

Under § 640.120, requests for exceptions or alternatives should be in writing; however, oral requests and approvals would be permitted on rare occasions if necessary because of time restraints. The requester must submit written confirmation of the oral request immediately afterwards. Oral approval will also be confirmed in writing, after receipt of the written request. Whether the approval is given in writing or orally, the approval must be obtained prior to distribution of any affected blood, blood component, or blood product. For blood, blood components, or blood products where distribution has begun, the distribution may not continue unless approval has been obtained.

Because revised § 640.120 can be used in all circumstances for which alternative procedures under § 640.75 may be granted, FDA is removing § 640.75. Blood establishments granted an alternative procedure under § 640.75 will not be required to reapply for the same alternative procedure under § 640.120. However, a prospective alternative procedure differing from the previously approved alternative procedure will require approval pursuant to § 640.120.

FDA notes that the final rule will apply to both licensed and registered unlicensed establishments. However, a registered unlicensed establishment may be required to submit more information than a licensed establishment in support of an alternative procedure. Each licensed establishment has on file with FDA, under its establishment and product licenses, a description of the facilities and significant procedures used in the manufacture of each licensed product. Each licensed establishment must also promptly report to FDA significant changes in the facilities, personnel, or procedures concerning a licensed product (see 21 CFR 601.12). Thus, FDA will have additional information in the establishment's license that can be reviewed when considering a request for an alternative procedure and can thereafter better monitor the procedures of the establishment, including any changes occurring after the alternative procedure has been approved. Indeed, most requests for alternative procedures from licensed establishments will be treated by FDA as a request for an amendment to the establishment's license.

With a registered unlicensed blood establishment, FDA will not have the benefit of the additional information that would be available in a license file, nor would the agency have the ability to monitor continually the procedures of the establishment equivalent to its ability to monitor a licensed establishment. Therefore, many requests for alternative procedures by unlicensed establishments may require the submission of additional information and, in some cases, alternative procedures may be approvable only for licensed establishments.

III. Labeling Removal

Part 610 of title 21 of the Code of Federal Regulations (21 CFR part 610) provides general standards for the processing, testing, and labeling of biological products. Section 610.61 prescribes requirements for the labeling of biological products.

Under § 610.61(s), FDA required that the package label for injectable products prepared from human blood, plasma, or serum contain a statement that the product was prepared from blood that was found nonreactive when tested for hepatitis B surface antigen (HBsAg). Injectable products prepared from blood or blood components include fractionation products such as Albumin (Human), Plasma Protein Fraction (Human), Antihemophilic Factor (Human), and various immunoglobulin products. Section 610.61(s) did not apply to blood or blood components intended for transfusion or plasma for further manufacturing use.

The purpose of product labeling is to provide the user of the product with information necessary for its safe and effective use. FDA believes that the labeling statement required by § 610.61(s) only reaffirms that the final product adheres to Federal requirements, and the statement does not provide information necessary for the product's proper use. Therefore, FDA is revising the regulations to remove this requirement.

This change does not affect the requirement, under § 610.40(a), that each donation of blood, plasma, or serum to be used in preparing a biological product must be tested for the presence of HBSAg. Blood, plasma, or serum that is reactive when tested for HBsAg, ordinarily may not be used in manufacturing a biological product except under limited circumstances provided in § 610.40(d).

Under the revision, FDA labeling requirements will be consistent with other current requirements for the labeling of fractionation products. The results of other tests required by Federal regulation, such as the test for antibody to human immunodeficiency virus, type 1 (HIV–1) or a serologic test for syphilis, are not required to be included in the product labeling. Therefore, FDA believes that the requirement for the labeling statement concerning hepatitis B testing should be removed because the requirement is not useful and is unnecessarily burdensome and because the requirements for labeling concerning required tests should be consistent.

Upon the effective date of this final rule, the labeling statement concerning HBsAg testing will no longer be required. FDA is requiring that the labeling statement be removed from the labeling accompanying any biological product manufactured for interstate commerce 1 year from the effective date of this final rule.

IV. Comments

FDA provided interested persons 60 days to submit written comments on the July 18, 1989, proposed rule. In response to the proposed rule, FDA received four letters of comment. The comments generally supported the proposed rule. A summary of the comments and FDA's responses follow.

A. Public Notification of Approved Alternative Procedures and Exceptions

1. Two comments on proposed § 610.120 suggested that, in addition to the implementing procedures described in the proposed rule, the agency should publish notice of approvals of alternative procedures and exceptions in the **Federal Register.**

The agency agrees that, in general, information regarding approved alternative procedures and exceptions should be available to the public. Such notice would provide information for other manufacturers who may wish to apply for a similar alternative procedure or exception. FDA will periodically publish a notice in the **Federal Register** providing a list of alternative procedures and exceptions granted since the last notice. Initially, FDA will publish such a notice every 6 months, but the interval for such notices may be changed as FDA deems appropriate.

Occasionally, FDA may determine that an alternative procedure or exception may be appropriate for use by a number of establishments in the blood industry. In such a case, FDA may issue a memorandum to the blood establishments describing the criteria and information necessary to obtain approval of such an alternative procedure or exceptions. A copy of the memorandum will be filed for public review at the Dockets Management Branch, Food and Drug Administration, Rm. 6–62, 5600 Fishers Lane, Rockville, MD 20857, and would be identified in the next **Federal Register** notice of alternative procedure and exception approvals. Thereafter, individual approvals of alternative procedures and exceptions granted according to the terms of the memorandum would no longer be listed in the **Federal Register** notice of alternative procedure and exception approvals.

In order to assure that the public is aware that the information regarding approval of alternative procedures and exceptions will be available, FDA is adding new § 640.120(b) which provides that FDA will periodically publish a list of such approvals in the **Federal Register.** Proposed § 640.120 is redesignated as § 640.120(a) in the final rule.

The information regarding approved alternative procedures and exceptions being made available will assist potential future applicants in determining whether they may want to apply for a similar alternative procedure or exception. FDA cautions, however, that publication in the **Federal Register** does not indicate that FDA has approved the procedure or criteria for use by organizations other than the approved establishment. Prior approval of the Director, CBER, is necessary for each individual applicant unless otherwise explicitly stated. The Director's discretionary decision to

allow each alternative procedure or exception will depend on many individual factors, such as the nature of the product, the particular manufacturing process used by the applicant, or other information presented in each alternative procedure request. The Director, CBER, will approve each exception or alternative only if, in the judgment of the Director, the safety, purity, potency, and effectiveness of the final product is adequately assured.

2. One comment on proposed § 640.120 recommended that the agency provide preapproval notice of alternative procedures, and opportunity for emergency hearings.

This procedure would be inconsistent with the agency's intention to provide expeditious FDA review of alternative procedure requests. The public health will be protected by the requirement of review and approval by the Director, CBER, prior to the approval of the alternative procedure or exception. Lengthy public review procedures prior to approval of alternative procedure requests could lead to serious shortages of needed blood products. Certain blood products also have very limited expiration dating periods that could be exceeded during protracted review periods. FDA may, as appropriate, present any significant issue raised in a request for discussion with an advisory committee or at other public meetings. The suggestion is also inconsistent with other FDA regulations replaced or supplemented by this rule, that already provide for the use of alternative procedures or criteria in some circumstances without prior notice to the public. For example, alternative procedures for Source Plasma were granted without requiring prior notice.

B. Subsequent Rulemaking

3. Two comments on proposed § 640.120 requested that upon approval of an alternative procedure, FDA should simultaneously begin the process to amend existing regulations to include the procedures addressed in that alternative procedure.

An alternative procedure may be appropriate only for an individual establishment or for a specific product, and the existing regulations may remain appropriate in general for the regulation of blood and blood products. Therefore, the agency does not believe that it should necessarily amend the regulations when an alternative request procedure is granted. However, FDA will monitor the alternative procedures being approved and will propose to revise the regulations accordingly when appropriate.

C. Information Collection and Product Labeling

4. One comment on proposed § 640.120 and the proposed removal of § 640.61(s) requested that FDA establish and maintain a file of information in a readily accessible form for public dissemination which will attest to the safety of blood-derived products with respect to all potential pathogens, based upon the method of manufacture of the products. If such an information file were established, the comment anticipated that products could be labeled with the following statement: "This product has been rendered free of all pathogenic organisms through processing and/or donor screening (data on file at FDA)." The comment suggested this action would eliminate inquiries by the customer to the manufacturer regarding potential pathogens.

FDA does not agree with the comment that the agency should maintain such a public file. It remains the responsibility of the manufacturer to maintain data that establish the safety and efficacy of its products and its manufacturing process, and to provide information to its customers regarding the qualities of its products.

The suggested labeling concerning pathogenic organisms only reaffirms that the product meets Federal requirements, and, like the labeling regarding HBsAg, which is removed pursuant to this rule, the suggested statement would not provide additional information for assuring the proper use of the product.

V. Effective Date

Under 5 U.S.C. 553(d) and 21 CFR 10.40(c)(4), the effective date of a final rule may not be less than 30 days after the date of publication in the **Federal Register**, except when the regulation grants an exemption or relieves a restriction, or when the Commissioner finds good cause exists for an earlier effective date. A purpose of the final rule is to authorize FDA to consider requests to use alternative procedures where the safety, purity, and potency of the product is adequately assured, with no adverse effects on public health. The rule allows the application of new technologies or different approaches to efficient use of blood resources. The rule relieves a regulatory restriction without loss of consumer protection. Accordingly, the Commissioner has determined that there is good cause to enable the agency to consider such requests immediately, and is making the final rule effective immediately, except for the delayed effective date for labeling changes.

VI. Economic and Environmental Considerations

The agency has determined under 21 CFR 25.24(c)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this final rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354).

Specifically, this rule removes an unnecessary labeling requirement. The rule also provides manufacturers of blood, blood components, and blood products an opportunity to collect, process test, and distribute their products in ways alternative to those specified in the biologics regulations, upon approval of the Director, CBER. The immediate effect of the rule allowing exceptions or alternative procedures is neutral; i.e., it neither adds nor removes requirements from the standard for blood products.

FDA cannot at this time quantify the benefits of the rule. A manufacturer, however, may benefit from the flexibility permitted under the rule by gaining FDA approval of an exception or an alternative approach that could better conserve blood resources, improve the product through the use of new technologies, or require the use of less time or resources than may be required by a method or process described in detail in the biologics regulations. The anticipated costs are insufficient to warrant designation of this final rule as a major rule under any of the criteria specified under section 1(b) of Executive Order 12291. Under section 605(b) of the Regulatory Flexibility Act, the Commissioner of Food and Drugs certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Accordingly, FDA is adopting the proposed rule, with the provision in § 640.120(b) in the final rule providing that FDA will periodically notify the public of alternative procedures that have been granted.

List of subjects

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 610 and 640 are amended as follows:

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

1. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

§ 610.61 [Amended]

2. Section 610.61 Package Label is amended by removing paragraph (s) and by redesignating paragraph (t) as paragraph (s).

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

3. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371); secs. 215, 351, 352, 353, 361 of the Public Health Service Act (42 U.S.C. 216, 262, 263, 263a, 264).

§ 640.75 [Removed]

4. Section 640.75 Alternate Procedures is removed from subpart G.

5. New subpart L consisting of § 640.120 is added to read as follows:

Subpart L—Alternative Procedures

§ 640.120 Alternative procedures.

(a) The Director, Center for Biologics Evaluation and Research, may approve an exception or alternative to any requirement in subchapter F of chapter I of title 21 of the Code of Federal Regulations regarding blood, blood components, or blood products. Requests for such exceptions or alternatives should ordinarily be made in writing. However, in limited circumstances such requests may be made orally and permission may be given orally by the Director. Oral requests and approvals must be followed by written requests and written approvals. Approval of a request for an exception or alternative must be obtained from the Director prior to the distribution of any affected blood, blood component, or blood product.

(b) FDA will publish a list of approved alternative procedures and exceptions periodically in the **Federal Register.**

Dated: January 26, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-6342 Filed 3-20-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 228 and 261

RIN 0596-0101

Oil and Gas Resources

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This rule contains newly developed procedures the Forest Service, USDA will use to accomplish the purposes of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, and other applicable mineral leasing and environmental protection statutes, in offering oil and gas leases and managing the development of oil and gas resources on National Forest System lands. The Leasing Reform Act authorizes the Secretary of Agriculture to develop procedures and regulations governing leasing for oil and gas resources, including bonding and reclamation requirements, within the National Forest System. This authority was formerly exercised by the Bureau of Land Management. These regulations achieve our primary objectives of ensuring effective compliance with all applicable environmental protection statutes, as most recently construed by the Federal Courts, in conjunction with meeting the intent of Congress codified in the Leasing Reform Act. These regulations have been designed to work in coordination with similar regulations of the Department of the Interior, and to promote a cooperative process between the Federal agencies, the oil and gas industry, and members of the public who are interested in the management of Federal lands and resources.

EFFECTIVE DATE: April 20, 1990.

FOR FURTHER INFORMATION CONTACT: Stanley Kurcaba, Minerals and Geology Management Staff, Forest Service, U.S. Department of Agriculture, (703) 235-9715.

SUPPLEMENTARY INFORMATION: A proposed oil and gas leasing rule was published in the **Federal Register** on January 23, 1989 (54 FR 3326).

The proposed rule described the role the Forest Service would play in the issuance of oil and gas leases, set forth a process for approving operations on the leasehold, and established rules governing administration of operations. The proposed rule provided for a process for making decisions as to whether to authorize the Bureau of Land Management to offer National Forest System lands for leasing. The process required the use of a standard stipulation by which the Forest Service would retain the right to approve or deny operations after lease issuance. The proposed rule described the post-lease process, by which the authorized Forest officer would evaluate and make a decision on a surface use plan of operations. The proposal required the authorized Forest officer to comply with National Environmental Policy Act at both the leasing and operational stages. The proposed rule also established certain standards for the acceptable conduct of operations on National Forest System lands. In addition, the proposed rule infomed the public of the procedures the Forest Service would use to administer operations, including inspection and enforcement, and the method the Forest Service would use to fulfill its responsibilities under the Leasing Reform Act for determining whether an entity is in material noncompliance with the standards in the surface use plan of operations. Lastly, the proposed rule provided for posting of notices on future leases, applications for permits to drill, and modifications of stipulations.

Analysis of Public Comments

A 60-day comment period was provided on the proposed rule and subsequently extended for an additional 60 days in response to public request (54 FR 11969). The Forest Service received 84 letters, containing 1,034 comments. Seven types of respondents, as shown below, provided input:

Respondent type	Number of letters
Federal agencies	10
State agencies	13
Elected Federal officials (1 letter co-authored by 7 Congressmen)	1
Oil and gas industry-related institutes/associations	10
Environmental/Preservation groups	10
Businesses/Business groups	28
Individuals	12
Total	84

Responses received are available for review in the Office of the Director, Minerals and Geology Management Staff, Room 606, 1621 North Kent Street, Arlington, Virginia, during regular business hours (8 a.m. to 5 p.m.) Monday through Friday.

Many of the letters received seemed to be group efforts, using similar or identical language to identify and describe respondents' interests, concerns, and suggested modifications to the proposed rule. These letters included endorsements of other respondents' statements, sometimes including them as enclosures.

The majority of the comments concerned five provisions of the proposed rule: the determination of lands suitable for leasing; use of the standard stipulation at the lease issuance stage; compliance with the National Environmental Policy Act; processing of plans of operation, and bonding requirements. Other comments were more general in nature. Some requested technical changes for clarity or for consistency with Bureau of Land Management regulations.

It was apparent from the nature and tone of many of the comments received on the five major areas that there was considerable misunderstanding of the intent and the practical effect of the proposed rule. While many respondents were pleased that the Forest Service was promulgating regulations, some thought it was only in response to the Leasing Reform Act. They did not seem to appreciate the other statutory and legal requirements which had to be considered in the development of the regulations, even though this was explained in the preamble.

General comments. A number of comments were not specific to a particular section of the proposed rule. These are presented below with a response provided for each group.

Scope of the proposed rule. Many expressed the view that the proposed rule had gone beyond what was intended by Congress in the Leasing Reform Act and that the Forest Service was attempting to exercise authority that it had not been granted. Some said the rule was implementing provisions that Congress had specifically rejected before passage of the Leasing Reform Act, especially with respect to pre-lease environmental compliance and planning procedures. Others said that existing procedures between the Forest Service and the Bureau of Land Management should be retained and that the rule should adopt the regulations, Operating Orders, and policies of the Bureau of Land Management to the maximum extent possible. However, a countervailing view was expressed by a major public interest group as follows:

> We understand that others have argued that the Leasing Reform Act does not authorize the Forest Service to promulgate its own regulations governing the issuance of leases. This interpretation of the statute ignores the Forest Service's obligations for the lands it administers. By giving the Forest Service veto authority over all oil and gas leases issued for National Forest System lands, the Leasing Reform Act creates clear responsibilities on the part of the Forest Service to determine the availability of its lands for oil and gas development. These decisions by the Forest Service must be based upon the multiple-use, land-use planning directives of NFMA (National Forest Management Act) and must also be exercised in compliance with NEPA (National Environmental Policy Act).

Response: In response to this group of comments, the Department wishes to restate its objectives in promulgating this rule. These are: to satisfy judicial rulings (which occurred prior to the Leasing Reform Act) which directed the Forest Service to promulgate rules governing its role in leasing decisions and operations on National Forest System lands; to satisfy the requirements of the Leasing Reform Act; to coordinate Forest Service procedures with those of the Bureau of Land Management; and, to promote cooperation between the Forest Service, industry, and the public. The Department cannot limit the rulemaking to the requirements of the Leasing Reform Act, since, to do so, would leave a regulatory void that the courts have ordered the agency to fill. In addition, the Department believes that the industry and the public will be better served by a comprehensive rule. Consistency with the Bureau of Land Management has been sought wherever possible, but only after ensuring that the spirit and intent of statutes unique to the National Forest System are being met.

Bias against mineral development. There were perceptions that the rule was biased toward environmental protection and biased against use of National Forest System lands for mineral development; that the proposed rule did not reflect statutes which these reviewers believe mandate that land use for mineral development be given preference over other land uses unless the lands are withdrawn. Statutes cited included the Mineral Leasing Act of 1920, the Multiple-Use Sustained-Yield Act of 1960, the Mining and Minerals Policy Act of 1970, and the Organic Administration Act of 1897. Another respondent said that the rule ignored the National Forest Management Act in that it did not require cost/benefit analyses to support land use decisions; and, that it selectively implemented only those recent court decisions that were considered adverse to oil and gas development.

Response: This Department does not believe that the proposed rule was contrary to any statute. Moreover, none of the statutes cited or any other statute mandates that surface use for mineral development is to be given preference over other uses of National Forest System lands. In actuality, most statutes which govern the management of National Forest System lands, including the mineral leasing laws, specify permissible uses of those lands. This Department then makes choices from among the permissible uses in deciding how National Forest System lands will be managed. One choice may be to emphasize mineral development on a particular area of National Forest System lands.

This is consistent with the Multiple-Use Sustained-Yield Act which declares that National Forest System lands are to be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes, but also expressly provides that the Act shall not be construed to affect the use or administration of mineral resources on those lands. Similarly, the Federal Land Policy and Management Act of 1976 specifies that public lands are to be managed in a manner that recognizes the need for a domestic source of minerals. The Federal Land Policy and Management Act also declares a congressional policy that Federal lands should be managed in a manner recognizing the need to implement the Mining and Minerals Policy Act of 1970.

Except when Congress enacts laws providing special status for national forest lands, such as the Wilderness Act which provides for the designation of Wilderness areas, or laws providing for special status for a resource, such as the Endangered Species Act which makes protection of certain species paramount, most of the board statutes which govern the management of National Forest System lands suggest that all uses of National Forest System lands are to be considered on their merits and decisions should be made as to which mix of land uses would best meet the needs of the public. This Department believes that mineral development is an important and beneficial use of National Forest System lands, and that the effect of the relevant statutes is to require that such use be considered in concert with other resources and values. Experience has shown that, in most cases, land uses, including oil and gas exploration and development can be shared, or that

conflicts with other resource uses can be adequately managed to allow oil and gas operations. When this is not possible, decisions must be made as to which set of resource values and land uses would provide the public the greatest benefit.

With respect to suggestions that the proposed rule selectively implements court decisions, the Department is required to comply with all applicable court rulings and is unaware of having avoided compliance with the principles of any court ruling, including those that bear on the process by which the Forest Service reviews and approves actions related to the oil and gas program.

Conflicts with existing leasing and planning process. Some reviewers felt that the proposed rule contradicted existing leasing and forest planning processes and that this violated the intent of the Leasing Reform Act. There were accusations that the Forest Service was intentionally complicating leasing procedures in order to delay or prevent oil and gas leasing and development on the National Forest System. Concern was also expressed that the Forest Service would not have the funding or personnel to implement the rule and still provide timely service to oil and gas companies.

Response: Contrary to these comments, the proposed rule was not inconsistent with established planning processes. In fact, as stated in the preamble, the intent was to incorporate leasing decisions into the established processes to the extent practicable. In addition, the proposed rule would not have required new funding or additional personnel. The standards and procedures proposed were by and large continuations of existing procedures, particularly with respect to renewing and approving surface use plans of operation. The Forest Service felt that the determination of lands suitable for leasing and the handling of noncompliance proceedings could be absorbed by existing personnel.

Affect on the program and costs to participate. Some reviewers expressed fear that the rule would virtually eliminate oil and gas leasing within the National Forest System because the proposed standard stipulation would remove any guarantee that operations would be approved, thus, making the risk to industry too high. Some respondents also thought that the costs associated with bonding would deter oil and gas leasing on the National Forest System. There were demands for the rule to be reproposed and threats of court action if the bonding provisions were made final as proposed.

Some respondents said that the rule would substantially increase costs for the Government, industry, consumers, and economic regions; that it would adversely affect employment, investment, productivity, competition, innovation, local economies, and the strength of the nation; that the rule would have a "major" effect on the economy (i.e., one that would exceed $100 million); and, that it would effectively preclude all but the largest of companies from participating in the program because of the risk associated with approval of operations and the additional costs of bonding. One reviewer estimated that the additional reporting and inspection requirements in the rule would cost lessees $2,500 per year per well, or a six to ten percent increase over the cost of drilling the shallow wells typical of the area with which the reviewer was familiar.

Response: The Department agrees that because of the uncertainty created by use of the standard stipulation, bonus bids for lease sales on National Forest System lands could be adversely affected if the rule were implemented as proposed. Also, the cost of obtaining bonds that satisfied the proposed rule could have been so prohibitive as to have precluded all but the largest companies from participating in the program.

The final rule has been revised to exclude the standard stipulation that retained the right of the Forest Service to deny all operations. (However, this does not mean that all operations must be approved. See response to comments under Section 103). Also, bonding provisions have been revised in the final rule to be consistent with those used by the Bureau of Land Management. With these changes, it is very unlikely that the rule could have a major economic effect.

Balancing development with environmental protection. Even though they did not support the proposed rule in its entirety, some reviewers were pleased that the rule was comprehensive and believed that it was a good start at addressing certain land use planning and environmental analyses issues that had surfaced in recent court decisions and in the Leasing Reform Act. Within this group of comments was a suggestion that the preamble of the final rule indicate the Forest Service seeks to not only facilitate the orderly and environmentally sound development of oil and gas resources but also to protect sensitive environmental resources from the adverse impacts of oil and gas development. One respondent expressed the view that because oil and gas development is a land use that interferes with nonconsumptive and renewable resource uses, it is important that the public be allowed to monitor and regulate such development. It was also recommended that, for compliance with recent court cases, the Forest Service should commit to preparation of environmental impact statements prior to leasing even though under the proposed rule, a standard stipulation reserving the right to deny operations would be used.

Response: The Department agrees that its mission includes protection of other National Forest resources from the impacts of oil and gas development when such action is determined to be more in keeping with the public interest than allowing development. The mission statement in the preamble to the proposed rule reflected this policy. However, we do not agree that the impacts of oil and gas development are such that environmental impact statements must necessarily be prepared prior to all leasing. Consistent with Council on Environmental Quality regulations governing National Environmental Policy Act compliance (40 CFR Parts 1500–1508), the need for an environmental impact statement should emerge from scoping and environmental analysis conducted on proposed leasing.

The final rule provides a number of opportunities for public input prior to decisions being made. These opportunities provide the public with a means to "monitor" oil and gas development. In addition, ongoing oversight by Congress as well as industry and public interest groups already provides substantial monitoring of mineral activities on National Forest System lands. See comments on section 103 for a response to the use of the standard stipulation.

Policy suggestions received. One reviewer suggested the Forest Service establish a policy of sequential leasing whereby some areas of a Forest would be open to development while other areas would be renewing and restoring those surface resource values that had been impacted by oil and gas development. Another recommended that there be bi-annual review of each Forest's leases and leasing policies to ensure conformance with National policies.

Response: A rest-rotation cycle for oil and gas leasing would be impractical, since the location of oil and gas resources is not known prior to exploratory drilling. As a consequence, a large amount of land has to be leased to allow discoveries to be made. With

respect to the suggestion that there be bi-annual reviews, the Forest Service already has in place an annual attainment, reporting, and management review process, by which Forest Service programs, including leasing, are evaluated on a unit, Regional, and National basis. An additional bi-annual leasing review is not needed.

National Environmental Policy Act. It was noted that decision points requiring National environmental Policy Act (NEPA) compliance appeared in the rule, but that the rule was not clear as to whether "compliance" meant an environmental assessment, an environmental impact statement, or a categorical exclusion review. It was noted there were no provisions requiring consulting with or seeking recommendations from other agencies, or for complying with the Endangered Species Act. Clarification of roles, responsibilities, and coordination procedures with the Bureau of Land Management was also requested.

Response: With respect to NEPA compliance, agencies are allowed to, and usually do, prepare an environmental assessment to determine whether an environmental impact statement is necessary. The need for an environmental impact statement is determined on a case-by-case basis under existing agency procedures in Forest Service Manual chapter 1950 and Forest Service Handbook 1909.15 published in the **Federal Register** on June 24, 1985 (50 FR 26078). A decision to categorically exclude a proposed action from documentation in an environmental assessment or an environmental impact statement applies only to those actions that do not result in surface disturbance of any consequence. A categorical exclusion is thus highly unlikely for decisions involving leasing or drilling. The proposed rule did not include provisions specifically requiring consultation with other agencies since it was felt that such consultation is already required in existing regulations applicable to National Forest System lands; for example, in the planning regulations 36 CFR part 219, and the NEPA implementing regulation at 40 CFR parts 1500–1508.

With respect to coordination with the Bureau of Land Management, the Forest Service has previously entered into a number of formal agreements with other agencies, including the Bureau of Land Management, that set out coordination procedures between the agencies. The Department prefers this approach to committing to coordination through rules if possible, as it allows greater flexibility for the agencies to make revisions to adjust procedures to local situations. The current controlling agreement with the Bureau of Land Management is set forth in Forest Service Manual (FSM) Chapter 1531.12d—Interagency Agreement for Mineral Leasing, and is reflected in formal mining and mineral policy (FSM 2800). The two agencies will revise the agreement subsequent to the final rule being issued.

Specific Comments

The following summarizes the major specific comments and suggestions received on the proposed rule and the Department's response.

Section 228.100 Scope and Applicability

This section established the scope and applicability of the proposed rule and informed the reader of other relevant, related rules that govern oil and gas leasing on National Forest System lands.

Comment: Several respondents expressed oppostion to the rule being made applicable to leases and operations already in effect. They said such action would be an unconstitutional taking of private property without due process.

Response: The Leasing Reform Act provisions apply to prospective leases and, in some cases, to existing leases. This Department does not believe that any aspect of the final rule involves a taking of private property. While the procedures by which rights under existing leases can be exercised are being revised by this rulemaking, the rights granted remain unchanged.

Comment: Another person said that the intent of Congress in passing the Leasing Reform Act was for the Forest Service only to administer the surface operational aspects on National Forest System lands, not to duplicate the role of the Bureau of Land Management and that the rule should incorporate by reference the rules, Onshore Order, and Notices to Lessees issued by the Bureau of Land Management.

Response: Contrary to this reviewer's assertion, the Leasing Reform Act does not limit the Forest Service role to administration of operations. In fact, the Act expanded the Secretary of Agriculture's authority to object or to not object to leases on National Forest System lands. Also, 30 U.S.C. 226(g)-(h) authorizes the Secretary of Agriculture to regulate all surface-disturbing activities. No surface-disturbing activities can take place on a lease without further environmental analysis and approval of the plan of operations by the Secretary. However, the proposed rule made it clear that the Forest Service does not intend to duplicate the Bureau of Land Management's role. The Department acknowledges that the rules, Orders, and Notices issued by the Bureau of Land Management apply to oil and gas leases within the National Forest System to the extent that such instruments do not conflict with these rules which implement the authority granted the Secretary of Agriculture under the Leasing Reform Act or other statutes controlling the administration of the National Forest System. However, there are legal impediments to the incorporation or adoption of another agency's rules, primarily due to the fact that the adopting agency would have no control over changes being made by the lead agency. Nevertheless, the final rule at §228.105 does contain a provision for the issuing or co-signing of Orders with the Bureau of Land Management.

Comment: Other respondents requested clarification as to whether seismic operations conducted by a lessee on a lease would be considered operations under the rule, requiring approval of a surface use plan of operations, or whether they would be considered "outside leasehold" activities. One reviewer said many problems could be solved if the rule covered geophysical exploration.

Response: With respect to geophysical exploration conducted on a leasehold by or on behalf of a lessee, we believe that the intent of Congress in passing the Leasing Reform Act was for the Secretary to have jurisdiction over all oil and gas activities involving surface use in the National Forest System. Procedures for authorizing both on- and off-lease geophysical exploration are already established in Forest Service Manual chapter 2860 and 36 CFR part 251, and these procedures have worked well.

Comment: Another group of respondents felt that all facilities directly associated with exploration, development, and production should be considered a lease right whether located on or off the leasehold, that approval of both a surface use plan and a special use permit would create two opportunities for appeals, and would lead to the preparation of two NEPA documents for what really was a single project. One reviewer felt that if a tank battery or drill site was being located off a leasehold, it was because the Forest Service required it through lease stipulations or to protect surface resources and that the Forest Service should not require separate applications and permits.

Response: The mineral leasing laws govern operations conducted on an oil

and gas lease. However, nothing in those statutes confers any authority upon this Department to exempt lessees from the statutes and regulations governing the conduct of activities on National Forest System lands outside a leasehold. Therefore, this Department cannot agree with the suggestion to treat a lease as conveying a right to locate facilities directly associated with oil and gas operations outside the boundaries of the leasehold. Admittedly, this does create a situation in which there would be two opportunities for administrative appeals of Forest Service decisions if a lessee does not submit a request for associated off-lease activities at the same time the lessee requests approval of operations on the leasehold. For this reason, operators are encouraged to apply for necessary off-lease use authorizations at the time they submit their proposals to conduct operations on leaseholds. This permits the preparation of a single environmental document and concurrent approval of the off-lease activities and on-lease operations and obviates the possibility that there would be two appeal opportunities for possibly related actions. Therefore, the final rule has not been revised in this regard.

Section 228.101 Definitions

This section provided definitions for the terms used in the proposed regulation.

Comments: In general, most reviewers wanted the Forest Service to acknowledge the definitions used by the Bureau of Land Management. One individual suggested that the scope of the definition of "operator" include the entire proposed action whether on or off the leasehold. Another respondent said that if the "surface use plan of operations" definition was changed, the phrase "on a leasehold" should be deleted. One of the respondents stated that the definition of "surface use plan of operations," should read: "A plan that meets the requirements of Onshore Oil and Gas Order No. 1, the requirements of the Notice of Lessees (NTL–2B, or Sundry Notices and Reports on wells for new surface disturbance)."

Response: The Department agrees that terms should be consistent between the agencies as much as possible; therefore, several terms and their respective definitions have been added to the final rule for consistency with Bureau of Land Management regulations. These terms include: Lessee, Notice To Lessees and Operators, and Onshore Oil and Gas Order. Definitions for operator and surface use plan of operations have been revised to parallel the terms as defined in Bureau of Land Management regulations at 43 CFR 3100.0–5.

Comments: Two respondents recommended that the proposed definitions for "assignee" and "assignment" be amended to be consistent with Bureau of Land Management definitions. One reviewer indicated that although the Mineral Leasing Act makes a distinction between an "assignee" and a "sublessee," the Forest Service's proposed definition could encompass both. To avoid any confusion, this reviewer recommended that the Forest Service use the same terminology as is used by the Bureau of Land Management in its regulations: i.e., a "transferee" shall include "assignees" and "sublessees." Similarly, it was recommended that the reference to an assignment should be changed to a "transfer," which encompasses both assignments of record title and assignments of operating rights. In order to avoid the inference that the original lessee might be responsible for performance of obligations even after all the lessee's interest has been assigned, they recommended that the Forest Service adopt the same definition as is used by the Bureau of Land Management in 43 CFR 3100.0–5(A).

Response: After considering the individual comments addressing the term "assignment" and "assignee," the final rule adopts the terms "transfer" and "transferee" as defined in Bureau of Land Management, U.S. Department of the Interior, regulations at 43 CFR 3100.0–5(e). To accommodate the adoption of the Bureau of Land Management's definition of the terms "transfer" and "transferee," the final rule also adopts the Bureau of Land Management's definitions of the terms "operating right" and "operating rights owner."

As to the concerns related to the lessee's liability after assignment of all lease interest, the original lessee does remain liable for any noncompliances that occurred during the period of liability (i.e., the time during which the original lessee's bond was in force) regardless of whether the noncompliance was identified before or after the bond was released.

Comments: Ten respondents expressed their concerns relative to the definition of the terms "Leasehold" and "Off-Leasehold". One reviewer said that the proposed rules should contain a separate definition for both "leasehold" and "off-leasehold," that neither definition makes reference to unitization and communitization agreements. All ten respondents felt that unitization and communitization agreements are essential components of oil and gas activity and should not be omitted from the proposed regulations.

Response: This Department agrees. The definition of leasehold has been amended to include unitized and communitized areas. The definition of off-lease has been deleted since it is obvious that, if an activity is on a leasehold, it is not off a leasehold.

Comments: Five respondents commented on the definition of the term "Operations." Three expressed concern that the use of the term "utilization" within the definition of "operations" is unclear and indicates consumption by the lessee and that use of the term "utilization" also implies that the Forest Service is assuming the authority for approval of an operator's on-lease utilization of production which is within the authority of the Bureau of Land Management. Another respondent noted that the term "utilization" of oil and gas resources is not commonly used in the petroleum industry and that it implied consumption, which is inconsistent with the intent of the definition. This reviewer recommended that the term be deleted from the definition. Three reviewers recommended that the definition which would cover all operations, should be amended as follows: "Surface disturbing * * * including but not limited to, exploration, development, and production of oil and gas resources and reclamation of surface resources."

Response: In response to these concerns, the definition of "operations" has been revised as suggested in the final rule and the term "utilization" has been omitted.

Comments: It was also suggested that the final rule provide a definition for the term "Material Noncompliance."

Response: Material Noncompliance has not been defined in the final rulemaking. Because of diverse land surfaces, animal life, and the uniqueness of many surface disturbances, the determination of whether noncompliance is material must be determined on a case-by-case basis. However, § 228.113 of the final rule has been expanded to provide examples of material noncompliance to assist the authorized Forest officer in deciding whether the operator may be in material noncompliance.

Comments: Some individuals requested that the terms "Stipulations," "Successful Reclamation," and "substantial modification" (used in § 228.104) be defined in the final rule.

Response: The term "stipulations" refers to text or clauses attached to leases which modify or supplement a term or condition of the standard lease

form such that the rights ordinarily granted are affected. The Department does not believe it necessary to define this common term. The term "successful reclamation" has been removed in the final rulemaking since it is so dependent on land conditions, topography, and other factors as to defy generic definition. The term "substantial modification" has been defined.

Section 228.102 Determination of Lands Suitable for Leasing

This section of the rule would have established procedures for determining the suitability of National Forest System lands for leasing. The procedures required identifying lands with potential for leasing, scheduling of lands with leasing potential for suitability review, and conducting reviews under the guidelines provided in the proposed rule. The proposed rule specifically required compliance with the National Environmental Policy Act.

Comments: Most of those commenting on this section said it should be removed, that leasing decisions should be based on Forest land and resource management plans, and that there was no need for separate suitability reviews. There was a sense that this section would create a time consuming, cumbersome process that would substantially delay or even prevent leasing. Some said that the Forest Service lacked authority for such a proposal. Others said the rule violated the Administrative Procedure Act by referring to Manual Chapter 1950 and Forest Service Handbook 1909.15 which had not been subjected to public review.

There were a number of recommendations to simply adopt the approach used by the Bureau of Land Management to satisfy NEPA prior to lease issuance. Others supported this section but said it should be improved to make it more workable and understandable. In particular, this group wanted the rule to be more specific with respect to NEPA compliance and environmental protection and to provide greater opportunity for public participation. Comments made to specific subsections were as follows.

(a) *Compliance with NEPA.* Some respondents wanted the rule to be more specific as to how NEPA compliance would be achieved and what would be included in the NEPA document. There was concern that the standard stipulation proposed in § 228.103 might be used as a substitute for preparing comprehensive pre-lease documents that analyzed the impacts of lease activities and included cumulative impact analyses. One reviewer said that NEPA compliance and the stipulation appeared to be mutually exclusive.

Clarification was requested as to how the Forest Service would factor into pre-lease NEPA analyses its new authority under the Leasing Reform Act to deny operations. There was also a request for a timeframe to be provided for completion of NEPA review. There was an opinion given that NEPA compliance should be addressed at the time operations are proposed rather than prior to leasing. Finally, some said a requirement to comply with NEPA did not belong in the regulations, since it was already a binding obligation under the law.

(b) *Identification of potential leasing areas.* Many respondents on this section expressed concern that unless areas were considered to have potential for leasing they would not be analyzed and could not be leased. Therefore, exploration would not occur in areas of unknown potential for oil and gas resources. They felt that no prioritization was necessary, or that if areas of potential interest were to be identified it should be done by industry or the Bureau of Land Management. Some reviewers wanted to know what standards the Forest Service would use to determine that an "area is known to be favorable for accumulation of oil and gas resources." Others said that identification of potential leasing areas should be done during forest planning. One party questioned the ability of the Forest Service to comply with a suitability review schedule considering funding and personnel constraints.

(c) *Review of lands for leasing suitability.* Comments to this section indicated confusion over how this review for suitability meshed with forest land and resource management plans. There was concern that the suitability review was creating another layer of environmental review and that it would close large areas to oil and gas leasing. Numerous technical changes were recommended to better organize the section and to integrate it with the NEPA process. There were comments to the effect that lands with special resources or values should be added to the list of areas excluded from further review, in particular, lands recognized as critical fish or wildlife habitat, as well as those lands dedicated to other activities under the multiple use concept of the forest land and resource management plans.

(d) *Determination of suitability.* The comments on this section were mostly negative. Some said it was unnecessary, that the Forest Service had no authority for making determinations of suitability, that it was a new planning or regulatory test that would only serve to obstruct oil and gas leasing and that forest plans should be used to determine which lands should be available for leasing. Some objected to leasing having to be consistent with, or not precluded by a plan. They were concerned that many forest plans are deficient and that such a finding may not be possible. One respondent suggested that lands be leased unless leasing was specifically precluded by a plan.

Others supported this section. One of those supporting the section said that lease stipulations should also be identified and based on information contained in NEPA documents, not just based on information in plans or compliance with laws, as was implied by the rule. Another reviewer said that it should be made clear that the suitability decision is an appealable decision under 36 CFR part 217.

Response: After considering these comments, this section of the rule has been revised. Under the final rule, discrete suitability determinations will no longer be made. The rule now focuses on the process and decision criteria to be used by the Forest Service in deciding whether to authorize the Bureau of Land Management to offer oil and gas leases for National Forest System lands subject to the operation of the mineral leasing laws.

There are two basic stages in the process set forth in the rule for deciding whether to authorize the Bureau of Land Management to offer oil and gas leases for National Forest System lands. The first stage is referred to as a "leasing analysis." The focus of that analysis is to identify those National Forest System lands subject to the operation of the mineral leasing laws which the Forest Service will agree to make administratively available for leasing. The analysis performed during this stage is premised upon the recognition that oil and gas operations are a permissible use of National Forest System lands subject to the operation of the mineral leasing laws but that the Forest Service may choose to manage particular tracts of such lands for uses other than oil and gas operations. A determination that lands are administratively available for oil and gas leasing does not commit the Forest Service to authorizing the Bureau of Land Management to offer leases for such lands. The decision as to whether to authorize the Bureau of Land Management to offer National Forest System lands for leasing is made at the conclusion of the second stage of the process set forth in the rule. The second

stage is referred to as the "leasing decision for specified lands."

The rule provides direction for the Forest Service as to the identification of National Forest System lands that are to be included in an individual leasing analysis. Each individual leasing analysis will be confined to lands within one National Forest or a portion thereof. If leasing analysis is not done forest-wide, more than one "area-wide" leasing analysis may be ongoing on a National Forest at one time.

The rule also provides direction as to lands that are to be excluded from leasing analysis. Since most National Forests contain lands that cannot be leased because they are not subject to the operation of the mineral laws, the rule provides that such legally unavailable lands will be excluded from leasing analysis. The rule also provides for the exclusion of an additional category of lands from leasing analysis. The lands in that category are those for which the Forest Service has already conducted an analysis considering the appropriateness of oil and gas leasing. One component of the previous analysis necessarily was the appropriateness of managing those lands for oil and gas operations. Therefore, a determination as to whether the lands will be made administratively available for leasing or whether the lands will be managed for other of the permissible uses of the National Forest System lands has already been made. The Department believes that repeating this analysis is unnecessary and would involve an unwarranted use of federal funds.

After the lands to be studied in each particular leasing analysis have been defined, the rule requires the Forest Service to develop a schedule for the leasing analysis or analyses on each National Forest. This schedule will be developed in cooperation with the Bureau of Land Management after consultation with the industry and interested members of the public. The Forest Service will review the schedule at least annually, and make any appropriate revisions in the schedule. The purpose of scheduling areas for leasing analysis is only for work planning and budget preparation. Other areas can be identified at any time and added to the schedule.

A number of the comments on the proposed rule questioned the interface between Forest Service oil and gas leasing decisions and Forest Service land management planning decisions. Many of those comments urged that oil and gas leasing decisions be made in the record of decision adopting a forest land and resource management plan. The final rule provides that the determination as to those lands that Forest Service will make administratively available for leasing may be included in the record of decision for a forest plan and its accompanying environmental impact statement. However, it may not be practicable or desirable to make the leasing analysis (administrative availability) decision as part of the decision adopting a forest plan. In addition, most forest plans have already been completed and many of those plans do not include the leasing analysis required by the final rule. Therefore, the final rule also provides that the determination as to those lands that the Forest Service will make administratively available for leasing may be a separate proposed action that is analyzed and documented in environmental document(s) that do not accompany a forest land and resource management plan. This option regarding including the leasing analysis decision in the decision to adopt a forest plan applies to either a forest-wide or an area-wide leasing analysis.

The rule also sets forth items that always must be considered and documented as part of a leasing analysis. One requirement is that the documentation include maps which show lands that the Forest Service will make administratively available for leasing subject to the terms and conditions of the standard oil and gas lease form, lands that the Forest Service will make administratively available subject to lease stipulations that will prohibit the use of contiguous areas on the leasehold larger than 40 acres, lands that are legally unavailable for leasing, and lands that the Forest Service will make administratively unavailable for leasing. Another requirement is that the environmental document(s) will identify alternatives to the Forest Service's proposal as to the lands to be made administratively available, including the alternative of making all of the lands administratively unavailable. The rule also requires that the environmental document(s) prepared in support of the leasing analysis will make a projection as to the type and number of operations that are reasonably foreseeable on the lands that would be made administratively available under the Forest Service proposal and each alternative to the proposal. Finally, the rule requires that the Forest Service analyze the reasonably foreseeable environmental impacts of the projected operations on the lands that would be made administratively available under the Forest Service proposal and each alternative to the proposal. Each of the items which the rule requires the Forest Service to consider and document in a leasing analysis is similar to the items considered and documented by the Bureau of Land Management in the preparation of land management plans for lands that the Bureau administers.

The environmental document(s) supporting the leasing analysis would also identify any lease stipulations necessary to mitigate possible adverse impacts of the operations on National Forest System surface resources. In addition, the environmental document(s) will discuss the use of Forest Service authorities, including those under the Leasing Reform Act, to approve a particular proposed plan of operations, or to disapprove a particular proposed plan of operations if, for example, the authorized Forest officer finds the proposed operations would lead to unacceptable impacts on surface resources. In deciding what lands to make administratively available for leasing, the Forest Service will consider whether the reasonably foreseeable environmental consequences of projected oil and gas operations on those lands would be acceptable.

At the conclusion of the leasing analysis, the Forest Service will decide whether to make some or all of the lands studied in the leasing analysis administratively available for oil and gas leasing. The rule provides that the leasing analysis decision will identify those lands that the Forest Service has concluded it will make administratively available for leasing. The rule also requires the Forest Service to promptly transmit a copy of the leasing analysis decision to the Bureau of Land Management. The leasing analysis decision will be appealable to the Forest Service in accordance with 36 CFR part 217.

From time to time after the Forest Service has notified the Bureau of Land Management of National Forest System lands that are administratively available for leasing, specific tracts of land that the Bureau of Land Management proposes to lease will be identified. When those tracts are identified, the Forest Service will decide whether to authorize the Bureau of Land Management to offer the lease(s). The rule provides that the decision to authorize the Bureau of Land Management to offer the lease(s) is dependent upon the results of three determinations that the Forest Service must make.

The first determination calls for two independent findings. One finding involves compliance with the National Environmental Policy Act (NEPA). The other finding involves compliance with

the National Forest Management Act (NFMA).

The NEPA related finding is that oil and gas leasing of the specified lands has been adequately addressed in an environmental document. If existing environmental document(s) satisfy NEPA and adequately disclose the environmental consequences of issuing lease(s) for the specific lands, additional environmental documents need not be prepared. If existing environmental document(s) are not adequate to satisfy NEPA, additional environmental document(s) will be prepared. Until the Forest Service completes such additional environmental document(s) and finds such document(s) adequate to satisfy NEPA, the Forest Service could not authorize the Bureau of Land Management to offer lease(s) for specific lands.

The NFMA related finding is that oil and gas leasing of the specified lands would be consistent with the applicable approved forest land and resource management plan. Consistency with the applicable forest plan is required by the National Forest Management Act. The finding as to the consistency of leasing the specified lands with the applicable forest plan is made by comparing the proposed leasing with both the Forest-wide management standards and guidelines and the management area direction for the lands in question that are established by the approved forest land and resource management plan. If the issuance of leases for the specified lands is not consistent with both the general and the specific management direction in the approved forest plan in effect at that time, the Forest Service may not authorize the Bureau of Land Management to offer the lands for leasing unless the forest plan is amended. If the Forest Service should find that leasing of the specified lands would be inconsistent with the existing approved forest plan but that this leasing nevertheless would be in the public interest, the Forest Service retains the discretion to appropriately amend the forest plan to change the management direction.

Assuming that leasing is inconsistent with the forest plan, the Forest Service could not authorize the Bureau of Land Management to offer lease(s) for the specified lands until an appropriate plan amendment has been approved.

A plan does not have to specifically consider oil and gas leasing in order for a consistency determination to be made. For example, unless the management prescription for an area will preclude operations necessary to exercise the rights conveyed by an oil and gas lease, issuing an oil and gas lease in that area will be consistent with the forest plan if the lease is made subject to the stipulations necessary to implement the management direction for that area.

A finding that leasing specified lands is consistent with the approved forest plan is more narrow than the decision as to whether or not the Forest Service will authorize the Bureau of Land Management to offer the specified lands for leasing. The forest plan sets the management requirements which must govern the conduct of operations on any lease that may be issued should leasing of the specified lands be authorized by the Forest Service. However, it is possible that compliance with statutes such as the National Environmental Policy Act or the Endangered Species Act for the decision on leasing specified lands will indicate that environmental protection measures in addition to those required by the management direction established by the forest plan are warranted or that leasing of the lands is not appropriate despite the fact that such leasing would be consistent with the forest plan. If compliance with statutes such as the National Environmental Policy Act or the Endangered Species Act for the decision on leasing specified lands results in a conclusion that additional environmental protection measures are warranted in addition to those required by the management direction in the forest plan, a decision authorizing the Bureau of Land Management to offer the lands for leasing would require the Bureau to include stipulations in the lease that specify the additional environmental protection measures as well as the applicable management direction specified by the approved forest plan.

The second determination is that all applicable surface occupancy conditions identified during the leasing analysis would be implemented through the inclusion of appropriate stipulations in any lease(s) that may be issued. Appropriate stipulations would be those necessary to implement the management direction in the forest plan as well as those identified in the environmental document(s) as mitigation measures for possible adverse impacts of oil and gas operations on National Forest System surface resources.

The third determination that the rule requires the Forest Service to make is that oil and gas operations for the benefit of the lease could be allowed somewhere on the lease unless stipulations prohibiting all surface occupancy are to be used. Much of the criticism of the proposed rule by the oil and gas industry was that lessees were being called upon to invest substantial sums for leases on which operations might never be authorized. This Department has determined that leases that are issued for National Forest System lands should vest the lessee with the right to conduct oil and gas operations somewhere on the lease. Accordingly, when a decision is made on authorizing the Bureau of Land Management to offer National Forest System lands for leasing, it is necessary to ensure that each lease would have development potential. (However, while at the time a lease is issued it might appear that operations could be approved on the lease, by the time such operations are proposed, they might be precluded by the operation of a nondiscretionary statute such as the Endangered Species Act.)

Once a conclusion is made with respect to each of the three required determinations, the Forest Service will make a decision as to whether to authorize the Bureau of Land Management to offer lease(s) for the specified National Forest System lands. The only lease(s) that the Bureau of Land Management shall be authorized to offer are those for which the Forest Service has determined that (1) leasing is consistent with the applicable forest plan and is adequately addressed in an appropriate NEPA document, (2) the conditions of surface occupancy identified during the forest-wide or area-wide leasing analysis will be implemented by the inclusion of appropriate stipulations in any lease(s) that may be issued, and (3) oil and gas operations could be allowed somewhere on each proposed lease, except where stipulations will prohibit all surface occupancy. The rule provides that the leasing decision for specified lands will identify those leases that the Forest Service has concluded it will authorize the Bureau of Land Management to offer. The rule also requires the Forest Service to promptly transmit a copy of the leasing decision for specified lands to the Bureau of Land Management. The leasing decision for specified lands will be appealable to the Forest Service in accordance with 36 CFR part 217 if additional environmental documents were prepared in connection with making the decision.

Overall, the process adopted in the rule is similar to that now used by the Bureau of Land Management.

Some who commented on the proposed rule questioned how the Forest Service would factor its new authority to approve oil and gas operations into its decision on authorizing the Bureau of Land Management to offer National Forest System lands for leasing. This

Department has determined that the statutory authority of the Leasing Reform Act to approve operations essentially has no affect on the lease issuance decision (the leasing decision for specified lands) or the decision as to lands that are administratively available for leasing (the leasing analysis decision). This is because the Government has always had the authority to disapprove a particular proposal to conduct operations made by a lessee if the proposed operations would have unacceptable impacts on the surface resources of National Forest System lands.

With respect to the suggestion that the rule specify what environmental documents would be prepared by the Forest Service in deciding whether to authorize the Bureau of Land Management to offer leases for National Forest System lands, this Department does not believe that this would be appropriate. Consistent with Council on Environmental Quality regulations governing National Environmental Policy Act (NEPA) compliance (40 CFR parts 1500–1508), the determination as to what environmental documents must be prepared should emerge from scoping and environmental analysis conducted on proposed leasing. However, as suggested by other comments on the proposed rule, the final rule does provide more direction as to what information should be included in whatever environmental document is prepared for the Forest Service leasing analysis decision. This direction should help ensure that the Forest Service conducts appropriate environmental analysis and prepares comprehensive environmental documents in deciding whether to authorize leasing of National Forest System lands. This Department believes that comprehensive compliance with environmental statutes will serve both to bring stability to this very important program by allowing leases to be issued with greater certainty with respect to the rights being granted and to provide certainty that appropriate environmental safeguards are enforced.

The Department cannot agree with the suggestion that compliance with NEPA should occur only when operations are proposed. The law is clear that the Forest Service must comply with NEPA in deciding both whether to authorize leasing of National Forest System lands and whether to permit operations on those leases.

The Department also believes that it would be inappropriate to specify a time period in the rule during which compliance with NEPA must be completed. Varying circumstances make it impossible to predict how long it will take to complete environmental documents for the lease authorization decision. If the rule included a time period, there would be circumstances in which the NEPA process could not be completed within the time provided.

The final rule does require compliance with the Forest Service Manual and Handbook listed in the proposed rule. The specified Manual and Handbook are the primary sources of internal NEPA direction to Forest Service personnel. Including this requirement in the final rule is not a violation of the Administrative Procedure Act. The particular Manual and Handbook have been subject to public notice and comment. Pursuant to 5 U.S.C. 552 and 36 CFR part 200.4–.5, these materials are readily available to the public.

Section 228.103 Notice and Transmittal of Suitability Decision

The proposed rule indicated that public notice would be given of suitability decisions, and that the Bureau of Land Management would be promptly notified in writing once suitability decisions were made. The proposal also specified that a standard stipulation would be included in oil and gas leases issued for the National Forest System.

Comments: Those disagreeing with the concept of making suitability determinations (section 102) also disagreed that there should be any notice or transmittal of suitability decisions. Others wanted the section expanded to include additional standard stipulations and to provide specific guidance on what situations would lead to their use. It was believed this was necessary to ensure that surface resources would not be adversely affected by oil and gas operations. One respondent recommended that the section require a policy consistency review following the suitability decision but prior to giving notice to the Bureau of Land Management. Another party felt that the rule should require outside individuals or groups to pay a $1000 filing fee at the time they submit appeals of suitability decisions, with the fee being refundable if the appeal were successful. The remaining comments on this section were more specific as follows:

(a) *Public notice.* Approximately half of those commenting on this provision recommended that it be deleted. They also stated that there was no need for an additional notice since the public was already receiving notices through the Forest planning process and through the mandatory 45-day posting by the Bureau of Land Management prior to offering lands for lease. Others thought that this notice requirement should be retained but that, in addition to appearing in local newspapers, it should have wider circulation, e.g. direct mailing to individuals/organizations expressing interest, posting at Regional Forester, Forest Supervisor, and District Ranger Offices, publication in a major daily newspaper, and notice in the **Federal Register.** Other reviewers noted that the citation for the appeal regulations was incorrect.

(b) *Notice to the Bureau of Land Management.* The majority of comments on this provision recommended its deletion since it was felt the planning process provided adequate notice to the Bureau of Land Management. One party requested clarification as to whether this notification was to occur before or after resolution of appeals and/or litigation.

(c) *Standard stipulation.* Most of those commenting on this section of the rule believe that the proposed standard stipulation would seriously affect exploration and development of oil and gas on National Forests by creating uncertainty as to whether leases would be conveying any rights to drill wells. They believed the stipulation would devalue leases to the point that industry would not bid for leases involving National Forest System lands at future competitive lease sales. Many reviewers disagreed with the claim in the preamble to the proposed rule which claimed the stipulation was necessary to comply with recent court decisions. They felt that the rule misinterpreted the Leasing Reform Act, that Congress intended only to codify existing administrative practice with respect to post-lease operations, not create a system that could deprive lessees of the right to drill and produce without receiving compensation. Some of those commenting supported their objection to the stipulation by comparing the intent of Congress in the Leasing Reform Act to its intent in the Outer Continental Shelf Lands Act in which Congress did provide for compensation in the event operations were denied. A few suggested alternative wording that would ensure lessees would receive compensation if lease rights could not be exercised.

Some parties objected to the retroactive effect of the stipulation, claiming this was an unconstitutional taking of property. Others held strong views concerning the negative effect the stipulation would likely have on revenues (both Federal and State). One reviewer claimed the stipulation was contrary to the primary intent of

Congress in passing the Leasing Reform Act, that is, to obtain fair value for the public when leasing its resources.

Another group of respondents objected to the stipulation, not for its perceived effect on lessees, but because they felt it would create uncertainty regarding post-lease environmental protection. They preferred that specific stipulations addressing specific concerns on specific lands be used. This group (as well as others who supported use of the stipulation) was concerned that the stipulation might be used as a substitute for integrated, comprehensive planning for oil and gas development and that decisions on land use and development would not be made prior to leasing. They felt that deferring such decisions would frustrate any meaningful public involvement prior to leasing. One party recommended that the stipulation only be used in sensitive areas that would otherwise not be leased, but where industry has continued interest, and where it is willing to accept leases with the risk of not being able to explore, develop, or produce.

A few of those commenting supported use of the stipulation. One reviewer wrote that the stipulation,

> will ensure that in the event unforeseen circumstances warrant, the Secretary can prevent oil and gas activities from impairing non-oil and gas resources or the public's health and safety. This stipulation is necessary, for example, in instances where, despite the preparation of an EIS prior to leasing, the existence of an eagle nesting site, or rare plant species are discovered only after a lease has been issued and a permit to begin drilling is sought. Moreover, many circumstances can change over the term of an oil and gas lease. Critical habitat needs can shift. Changed patterns of land use beyond the Forest boundary can affect resources, especially wildlife, within the Forest.

Among those supporting use of the stipulation it was felt that the stipulation should be applicable to all lease activities, not just those requiring approval of a surface use plan; that the final rule should clarify that the authority to deny operations would be exercised whenever necessary, not just in "exceptional circumstances" as stated in the preamble to the proposed rule; and, that the rule should contain provisions for compensating lessees in the event that drilling could not be approved.

Response: As stated previously in the response to comments on § 228.102, the requirement for making suitability determinations has not been retained in the final rule. Instead, the rule now specifies that decisions to authorize leasing of National Forest System lands will be made in a two stage process, the first being the identification of lands that are administratively available for leasing and the second being whether to authorize the Bureau of Land Management to offer leases for lands identified as administratively available.

Many of the respondents assumed that the decision to authorize leasing of National Forest System lands would be made in the applicable forest land and resource management plan. However, as explained in more detail in the response to comments on § 228.102, while the decision as to lands that are administratively available for leasing may be made as part of the decision adopting a forest plan, the decision to authorize issuance of leases already will not be made as part of the decision adopting a forest plan. This is because specific consideration of the leases to be offered will be required to decide whether it will be possible to conduct operations for the benefit of the lease somewhere on each proposed lease.

Since the NEPA compliance process for the decisions as to the administrative availability of lands and as to authorizing the issuance of leases already requires public participation, the Department agrees with respondents who observed that the public notice requirement in the proposed rule was repetitive and unnecessary. Therefore, the final rule does not require that the public be given separate notification of either the leasing analysis decision or the leasing decision for specified lands.

The requirement to notify the Bureau of Land Management of a Forest Service decision authorizing the issuance of leases for National Forest System lands has been retained in the final rule. As explained above, the leasing decision for specified lands will not be made in the forest plan. So the forest planning process simply cannot constitute adequate notification to the Bureau of Land Management of National Forest System lands that the Bureau may offer for leasing. However, due to organizational changes made in the final rule, this notice requirement is set forth in § 228.102(e) rather than § 228.103 of the final rule.

The final rule also includes a requirement to notify the Bureau of Land Management of the Forest Service leasing analysis decision identifying the National Forest System lands that will be made administratively available for leasing. As explained above, the leasing analysis decision may or may not be made in the forest plan. If it is not, the forest planning process cannot constitute adequate notification to the Bureau of Land Management of National Forest System lands that are administratively available for leasing. Also, this Department believes that giving the Bureau of Land Management notice of the leasing analysis decision will prevent confusion as to whether or not the Forest Service construes the applicable forest plan as containing the leasing analysis decision. However, the notification requirement appears in § 228.102(d) rather than in § 228.103 of the final rule.

In addition, the final rule requires notice to the Bureau of Land Management if any administrative appeals are subsequently filed challenging either the leasing analysis decision or the leasing decision for specified lands. Notice of administrative appeals of a leasing analysis decision is necessary in order for the Bureau of Land Management to evaluate the desirability of requesting that the Forest Service authorize specified lands for leasing. Notice of administrative appeals of a leasing decision for specified lands is necessary in order for the Bureau of Land Management to know with certainty that it can offer lease(s) for the lands.

It would not be appropriate to include a provision in the final rule requiring an individual who files an administrative appeal of a leasing decision to pay a filing fee which would be refunded if the appeal was successful. A requirement of this nature should be located in the Forest Service administrative appeal regulations, not in regulations governing oil and gas leasing and operations. In connection with the recent revision of the Forest Service regulations governing administrative appeals, the idea of imposing filing fees on appellants was considered and rejected. Therefore, the final rule has not been revised as suggested.

Most of the comments on this section of the proposed rule focused on the standard stipulation. As explained in the proposed rule, the role of the standard stipulation relates to the Government's compliance with NEPA in connection with offering National Forest System lands for leasing.

A number of recent court cases focus on the requirements for complying with NEPA in issuing oil and gas leases for National Forest System lands. These cases are: *Sierra Club* v. *Peterson*, 717 F.2d 1409 (D.C. Cir. 1983); *Park County Resource Council* v. *USDA*, 817 F.2d 609 (10th Cir. 1987), *Conner* v. *Burford*, 848 F.2d 1441 (9th Cir. 1988), *cert. denied sub nom. Sun Exploration & Production Co.* v. *Lujan*, ___ U.S. ___, 109 S.Ct. 1121 (1989); and *Bob Marshall Alliance* v. *Hodel*, 852 F.2d 1223 (9th Cir. 1988), *cert. denied sub nom. Kohlman* v. *Bob*

Marshall Alliance, ___ U.S. ___, 109 S.Ct. 1340 (1989). Generally, these decisions recognize that the standard lease form conveys the right to conduct operations on the lease except as otherwise provided by stipulations attached to the lease or subject to non-discretionary statutes such as the Endangered Species Act. In many of these cited cases, the courts have characterized the issuance of a lease which conveys development rights as an irretrievable commitment of resources.

The decisions holding that the issuance of a lease involves an irretrievable commitment of resources have recognized two alternate approaches that the Government can use in complying with NEPA when making a decision to offer leases. The first approach permits the Government to defer environmental analysis of lease operations when a decision is being made on issuing a lease provided that the Government retains both (1) the authority to preclude all surface disturbing activities pending the submission of site-specific operating proposals and (2) the authority to prevent all proposed operations if their environmental consequences are unacceptable. The first approach is often referred to as staged NEPA compliance. The second approach requires the Government to consider and disclose the reasonably foreseeable environmental impacts of operations that may be conducted on a lease when a decision is being made on lease issuance. Although additional NEPA compliance is required when operations on the lease are proposed, this second approach is often referred to as up-front NEPA compliance.

As explained in the preamble to the proposed rule, the standard stipulation would have allowed the Forest Service to engage in "staged" NEPA compliance. However, the Department recognized that the standard stipulation might be of concern to the industry, environmental organizations, and other members of the public. For this reason, the preamble to the proposed rule specifically requested comments on the effect of the retention of authority to deny all operations on a lease, including its effect on perceived lease value. That request was made with the understanding that the stipulation could be read by some as seriously clouding lease rights and, therefore, affecting lease values.

There were a number of comments supporting the use of the standard stipulation. However, the majority of those who offered comments on this aspect of the rule were extremely concerned as to the impact that the standard stipulation would have on the oil and gas leasing program or other resources located on National Forest System lands.

One group of those who were concerned about this aspect of the rule said that use of the proposed stipulation would substantially devalue leases. They predicted that many leases containing the stipulation would not received bids and that bid prices would be substantially lower for those lease receiving bids. They noted that the net effect of the stipulation would be to substantially reduce the revenues that the Government would otherwise receive for oil and gas leases on National Forest System lands. Some respondents noted that local economies, employment, investment, and national security also would be adversely affected.

The other group of those who were concerned about this aspect of the proposed rule opposed the stipulation because they felt it would create uncertainty as to environmental protection on leases that were issued. This group advocated that comprehensive environmental analysis be performed to ensure that leases were not issued for lands that further analysis would reveal were inappropriate for leasing and oil and gas operations.

It is important that the public receive a fair value for the leasing of its oil and gas resources. The Department believes that it is appropriate that the price received for these resources be primarily based on the nature of the resources themselves and market conditions, influenced as little as possible by Government actions and procedures. The Department also believes that comprehensive compliance with environmental statutes will serve to ensure that the environment is protected as well as bring greater certainty to oil and gas operations on National Forest System lands. Significantly, the final rule will not allow specific lands to be leased until after an appropriate environmental review indicates that development is possible somewhere on the lease (unless a no-surface-occupancy stipulation is used). Therefore, the final rule does not include the requirement that all leases for National Forest System lands include a standard stipulation reserving the authority to deny all operations on the lease.

Some of those who commented on this section requested that the final rule define other standard stipulations that will be included in all leases. They asserted that the development of such stipulations was necessary to ensure that surface resources would not be adversely affected by oil and gas operations. The Department does not agree. Experience has shown that the terms and conditions of the standard lease form, together with attached, resource-specific, lease stipulations developed in connection with the applicable forest plan and with the NEPA compliance for the leasing decision, ensure necessary environmental protection and balanced multiple use of lands. The standard lease form reserves the right to modify the location, design, and timing of proposed operations, as well as the right to control the rate of development and even to suspend operations if need be. Site-specific resources and values warranting protection are readily identified prior to leasing so that appropriate stipulations can be developed. Non-discretionary statutes such as the Endangered Species Act, which apply regardless of the standard lease form or the stipulations attached to the lease, further help ensure that oil and gas operations occur in an environmentally compatible manner. Another factor that allows the Government to see that oil and gas operations are environmentally sound is that the Government can exercise the right it has always had to deny a particular operation. Therefore, the suggestion was not adopted.

Section 228.104 Consideration of Requests to Modify Lease Terms

The proposed rule would have allowed operators to request modification of lease stipulations. It also established approval criteria and procedures for reviewing such requests.

Comments: Some respondents felt strongly that stipulations should not be waived or modified, unless a stipulation was not serving its resource protection purpose, and that waiver or modification should be the exception not the norm. It was requested that specific guidelines be established in the rule to prevent the indiscriminate use of waivers and modifications. Many said that the public and the States should be given opportunity to participate in reviews of waivers and modifications. Respondents objected to the fact that only those waivers or modifications considered to constitute "substantial modification" of a lease term would be subject to notice and appeal. They felt that the public should be given notice and the right to appeal all changes in stipulations. It was also requested that the Forest Service adopt the Bureau of Land Management approach of including a clause in stipulations that

would indicate whether public notice was required prior to approving a modification or waiver.

One reviewer questioned how waiver or modification could meet the approval criterion of being consistent with a land and resource management plan, since most stipulations are generally used to achieve consistency with plans. The same concern was expressed with respect to NEPA compliance. Some said waivers or modifications should not be done without amending the relevant land use plan. One reviewer said that if stipulations were used at the request of another agency, then that agency should have to concur before stipulations could be changed.

Others objected to the section's notice and appeal provisions, saying that providing notice in newspapers of general circulation exceeded the requirements of the Leasing Reform Act, and that there was no need to provide for appeals to decisions on stipulation modifications or waivers since they would be part of the decisions that would be made on surface use plans which are already exposed to appeal. Some said that if the lease had been issued under a prior Forest plan, and the current plan was more restrictive, only the original plan should be used for reviewing waiver or modification requests. Others requested that the rule require a 30-day response to requests for waiver or modification, with written notice given if a response could not be made during that period. It was also requested that the Forest officer make known the rationale for approving or denying a request.

Response: This section of the rule has been revised in a number of ways to be responsive to these comments. The term "substantial modification" (taken from the Leasing Reform Act) has been added to the list of definitions. Since the definition indicates that such modifications require preparation of environmental documents, the public is ensured an opportunity to participate in the review of substantial modifications.

The final rule defines the terms "modification" and "waiver," and adds the term "exception" to better characterize and distinguish between the different actions that can be taken with respect to stipulations. The terms are defined consistent with both Forest Service and Bureau of Land Management field office usage. The terms indicate that exceptions are fairly minor and would rarely constitute a substantial modification. An example of an exception to a stipulation would be allowing drilling activities during a mild winter in an area that had been stipulated to be closed for elk winter range purposes during more severe winters.

With respect to questions concerning consistency with plans, it is likely that most stipulation modifications and waivers will not be consistent with forest plans. Thus, the authorized Forest officer will have to decide whether to amend the plan to permit the modification or waiver. However, exceptions will sometimes be consistent with plans, and may be processed without preparation of new NEPA documentation since the environmental protection standards involved would not actually be changing.

With respect to notice and appeal opportunities, the final rule establishes that requests for waivers, modifications, or exceptions to stipulations can only be made at the time operations are proposed. Therefore, notice of "substantial modifications" will be given to the public concurrently with, and in the same manner as, the notice that operations have been proposed. Similarly, appeals of stipulation changes will have to accompany appeals concerning proposed operations.

Finally, the rule does not establish a definite period for review of requests for waiver, modification, or exceptions of lease stipulations since such a request must be made a part of a surface use plan of operations or supplemental plan for which processing time is specified.

Section 228.105 Operator's Submission of a Surface Use Plan of Operations

The proposed rule provided that an operator must submit a surface use plan of operations through the appropriate Bureau of Land Management office, and encouraged cooperation between the operator and the Forest Service. This section also identified requirements for the content of a surface use plan of operations.

Comments: Respondents on this section generally felt that the Forest Service was "reinventing the wheel." Nearly all of the comments strongly urged the Forest Service to delete this section and adopt the Bureau of Land Management's Onshore Oil and Gas Order No. 1 and operating procedures. They felt that the Order contained a framework with which operators and agency personnel alike were already familiar. Respondents said that the Bureau of Land Management's operating procedures had worked well in the past in managing the oil and gas program. General observations were provided to substantiate that the proposal was either inadequate or unnecessary. Some felt that the Forest Service had ignored Order No. 1 and had contradicted the statement made in the preamble that the proposed regulation was consistent with the Bureau of Land Management's procedures and would not require new procedures.

Response: The Department agrees with those recommending use of Onshore Oil and Gas Order No. 1; however, there may be situations requiring separate Orders to be issued for the National Forest System. Therefore, the final rule would allow the Chief of the Forest Service to issue or co-sign Onshore Oil and Gas orders. Until such time as the Forest Service issues a replacement order, the rule adopts that portion of the Bureau of Land Management's Onshore Oil and Gas Order No. 1 of October 21, 1983, published at 48 FR 48916–30 pertinent to the authorities that the Leasing Reform Act gave this Department. When the Forest Service proposes Onshore Orders, they will be available for public comment through **Federal Register** publication.

Comments: Comments from the oil and gas industry identified numerous deficiencies in the proposed requirements for submission of a surface use plan. For example, the term "access facilities" proved to be confusing. The interpretation by industry and other groups who commented was that the term "facilities" actually meant roads, not facilities. One respondent stated, "These items are not ancillary by definition and thus, should not be included in the final regulation." A complaint of some respondents was the omission of the requirement for an operator to have the lessee's approval for conducting operations. They felt this requirement had been, and would continue to be, a critical element for agency review of any surface use plan. Another concern was that nothing had been included in the proposal for construction materials, or for the location of water supply, which the reviewer said has been an important factor in obtaining project approvals on National Forest System lands for the oil and gas industry. An oil and gas industry representative felt that the proposed content of the surface use plan did not require surface ownership information. This respondent said that given the amount of private in-holdings within Forest Service areas, surface ownership would be a critical piece of information needed to complete the issuance of a special-use permit for a right-of-way.

Response: As explained in connection with the responses to comments on § 228.105 of the proposed rule, this Department has decided to adopt the portion of Onshore Oil and Gas Order

No. 1 governing the content requirement for a surface use plan of operations. Onshore Oil and Gas Order No. 1 contains specific requirements which resolve all or the concerns noted in the comments. While the Forest Service may issue of cosign future orders altering the requirements of Onshore Oil and Gas Order No. 1, those orders will be subject to public comment prior to their adoption.

Comments: Comments on this section also included an observation that if the supplemental plans are subject to the same requirements as an initial surface use plan of operations, it follows that the decision(s) will be appealable and subject to stay. This respondent advised the Forest Service against creating opportunities to stay technically critical operations without ensuring the opportunity for independent technical review. It was also suggested that the supplemental plan be required to discuss only the proposed changes to the original surface use plan rather than to restate the entire original plan as is implied.

Response: This section applies to surface-disturbing operations that require approval. The technically critical operations referred to by the reviewer are for down-hole operations and do not involve the Forest Service. As for appeals and stays, the Department feels that a revision to an approved plan that is not within the scope of the original proposal must be subject to the appeal and stay provisions. This section has been revised to clarify that supplemental plans must be authorized in the same manner as the original plan. The only authorization for which a supplemental plan must be submitted is for those not authorized by the original plan. The original plan would remain in effect and need not be resubmitted which should eliminate any redundancy or repetition.

Section 228.106 Review of a Surface use Plan of Operations

The proposal established the process by which the Forest Service would review a surface use plan of operations, including specification of time periods, factors to be considered, and content of decision notice.

Comments: Numerous comments centered around NEPA compliance such as cumulative impacts, adequate analysis, and environmental impacts. Many recommended that reference to Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15 be deleted because this material should not be codified as part of the regulation since the procedures were not subject to the Administrative Procedure Act.

Response: The final rule requires that the Forest Service comply with NEPA before approving proposed surface disturbing operations. After reviewing a proposal to conduct operations, the Forest Service will prepare a site-specific environmental document that considers the reasonably foreseeable environmental consequences of the proposal. This document will include a discussion of the responsibility of the Forest Service to regulate surface disturbing activities and its authority to approve or disapprove the particular proposed plan of operations in view of the possible impacts on surface resources. The environmental document will also identify any conditions the Forest Service will include, if approving the proposal, to provide for mitigation of possible adverse environmental impacts on surface resources, and for required reclamation.

Forest Service Manual 1950 and Forest Service Handbook 1909.15 provide the internal direction to Forest Service employees on NEPA compliance, environmental analysis, and documentation. In accordance with Council on Environmental Quality regulations, this manual and handbook were adopted after notice and comment through **Federal Register** publication. This satisfies the Administrative Procedure Act. Therefore, reference to these materials is retained in the final rule.

Comments: Another area of concern was the issue of public input. One individual recommended that an opportunity for public and agency input be provided early in the process to ensure identification of controversial issues prior to making a determination on the adequacy of the surface use plan. Many were concerned that "as written, the only substantive opportunity for public input (under this section) would be through the appeal process." It was felt that early coordination was critical in instances where an agency's regulatory program applied to lease activities. Another respondent felt that it was unclear whether State or Federal agencies would have the opportunity to review the plan of operations and to suggest modifications.

Response: The Leasing Reform Act requires a minimum 30-day public posting at Forest Service offices prior to approval of a drilling permit. This requirement is reflected in Section 228.115 of this regulation. It should be kept in mind that the public will have already participated and voiced its concerns prior to leases being issued at the time operations are proposed, the rule requires consistency with Forest plans and with lease stipulations, all of which has already received public input. Therefore, the final rule has not been revised.

Comment: Most respondents commenting on this section felt that the surface use plan of operations should be reviewed for consistency with the Forest land and resource management plan in effect at the time of leasing, not the current plan. Others said they were pleased that the approval of a surface use plan would be based on the current resource management plan.

Response: In response to these comments, this section has been revised to make it clear that the current forest plan will be used in the review of a proposed surface use plans of operation. The National Forest Management Act requires that the current plan govern all uses of National Forest System lands, subject to valid existing rights. Unless doing so would be contrary to the valid existing rights conveyed by an oil and gas lease, the authorized Forest officer shall require that any proposed operations be conducted in a manner consistent with the direction in the forest land and resource management plan in effect at the time that a surface use plan of operations is approved. This may require the authorized Forest officer to condition approval of a surface use plan on factors such as the modification of the sitting, design, or timing of proposed operations. If there is a conflict between the rights conveyed by an oil and gas lease and a subsequently adopted forest land and resource management plan, the authorized Forest officer may choose to enforce that forest plan, recognizing that this may subject the Government to appropriate legal action by the lessee, or the officer may choose to enforce the forest plan that was in effect when the lease was issued.

Comments: Many respondents commented on the time periods referred to in the proposed rule. A majority of those commenting on this section felt that there should be a maximum time limit for Forest Service response, others suggested different time periods. Some felt the time limitations would not be consistent with the NEPA process, while others wanted the phrase "as soon as practicable defined." Others asked for notification to the operator of any delay in approval.

Response: After analyzing these comments, the proposed rule has been revised to be responsive to the comment requesting notification to the operator. The final rule reflects a 3-day notice requirement after the 30-day period provided by 30 U.S.C. 226(f). This is consistent with requirements of the

Bureau of Land Management, thus providing for interagency consistency and flexibility for land managers when circumstances warrant it. To adopt a maximum time limit would place the authorized Forest officer in a position of probably not meeting regulation requirements everytime NEPA documentation was necessary and, therefore, it was rejected. Because of varying circumstances, it is impossible to define the phrase "as soon as practicable" and it is retained in the final rule to allow the authorized Forest officer some management flexibility.

Comments: Others were concerned with the signing of the plan after approval stating that the plan was signed by the operator when submitted and requiring resigning could create additional delays.

Response: The Department partially agrees with these comments and has revised this section to require signature only when the Forest Service requires conditions of approval. Signature by the operator is necessary to ensure that the operator agrees with such conditions.

Comments: Many respondents referred to the statement "posting of the required bond" as a "condition of approval" and recommended that the phrase be deleted or clarified since it was illogical that operators would be given 30 days to sign bonds that they had already signed before submitting.

Response: This provision was included in the proposed rule to ensure that a bond to protect the Government is in effect before the operations began. However, given other changes that have been made in the final rule, this provision is not necessary to protect the Government.

As explained in connection with the responses to comments on § 228.108 of the proposed rule, the Forest Service has generally decided to rely on the Bureau of Land Management to hold and administer bonds to protect surface resources of National Forest System lands. The Bureau of Land Management requires that evidence of an acceptable bond coverage must be submitted as part of an application for a permit to drill. Persons seeking to conduct operations generally have satisfied this requirement by submitting a copy of a signed bond as part of their application for a permit to drill. Thus, unless the Forest Service determines that the bond submitted as part of the application for a permit to drill is inadequate to satisfy the Leasing Reform Act requirements, the required bond will already have been signed and posted when the Forest Service acts on the surface use plan of operations. If the Forest Service does require additional bond coverage beyond that submitted as part of the application for a permit to drill, the approval of the plan of operations will be subject to posting of an adequate bond. Therefore, the provision regarding the signature and posting of the bond included in the proposed rule has been removed.

Comments: Several respondents expressed strong opinion concerning the public notice provisions of this section. Comments included both support for giving notice, as well as opposition. Some thought the planning process provided ample opportunity for the public to participate, while others thought the notice should be expanded to a newspaper of general circulation and publication in the Federal Register. Also noted was that the citation for appeal in this section should be changed to reflect the new Forest Service appeal procedures.

Response: The notice provisions have not been revised. Notice will be given in accordance with procedures used by various Forest Service offices. In some cases, this may involve local newspapers, in others it may be limited to posting in the front office and mailings to interested parties. With respect to appeals, since publication of the proposed regulation, the Secretary has adopted revised Forest Service appeal regulations, 36 CFR parts 217 and 251, subpart C, which provide procedures for notifying the public of appealable decisions. Therefore, notice requirements are not necessary in this rulemaking. This section has been revised to reflect the new Forest Service appeal regulations.

Section 228.107 Surface Use Requirement

This section of the proposed rule specified certain basic operating parameters to guide the conduct of oil and gas operations on the National Forest System. The parameters essentially reflected what has become commonplace requirements for all commercial interests using the Forest System and, in the case of oil and gas, are already authorized under the terms and conditions of the standard lease form.

Comments: The majority of comments said that this section was not necessary and that if the requirements were not already addressed in the standard lease form, Operating Order 1, or Forest plans, etc., they should be attached to leases as stipulations or else attached to permits to drill as conditions of approval.

Some said the section used vague terms such as "unnecessary and unreasonable," "riparian areas and wetlands," and "steep slopes," and would establish criteria that would make implementation of the standards impossible. It was also said that including the requirements in the rule was inappropriate, that is would eliminate flexibility of local managers to adjust requirements to site-specific conditions, including the modification on waiver of lease stipulations when warranted, and would prevent the exercise of sound judgment.

One reviewer said that the Forest Service had avoided its responsibility to set nationwide standards by claiming that site-specific conditions were too diverse to specify these standards in the rule. Another concern was that the rule would allow impacts to resources if such impacts were deemed "necessary" regardless of whether such impacts were environmentally acceptable. It was recommended that the term "unnecessary" be removed as a qualifier and that a definition for "unreasonable" be added that would be similar to that used in section 403(c) of the Clean Water Act which defines "unreasonable" degradation as a significant adverse change in ecosystem diversity, productivity, and stability of the biological community within the area of discharge. With such a change, this reviewer felt that the basis for approval of operations would properly be their environmental impact and not whether or not they were "necessary."

Other reviewers supported this section. However, some said that the rule should make it clear the Forest Service retains authority to require additional operating and reclamation measures after approval of operations if necessary to address unforeseen site-specific contingencies. One party said the rule should contain requirements for cultural resource clearances and that the guidelines should be the same as those appearing in the Bureau of Land Management's Onshore Order No. 1.

Finally, there were numerous comments recommending various word changes and/or expressing preferences for additional requirements that should be included in this section.

Response: The Department is aware that establishing requirements in the oil and gas rules may not be totally necessary, since some of the requirements may be redundant of those stated elsewhere in chapter II of title 36 of the Code of Federal Regulations, in Operating Orders, or in rules issued by the Bureau of Land Management. However, the purpose of including these requirements in the rule is to consolidate in one place the minimum requirements so that the public is fully

informed of the manner by which the Forest Service will interpret and administer its responsibilities for regulating surface-disturbing oil and gas activities under the Leasing Reform Act. The proposed rule accurately conveyed that interpretation and, therefore, only minor changes have been made in the final rule. Comments and suggestions have either been incorporated or rejected based on consistency with that interpretation.

Section 228.108 Bonds

The proposed rule established that bonding would be required before surface disturbing activities could be authorized and required the authorized Forest officer to assure the bond amount being held by the Bureau of Land Management would be adequate to ensure timely and complete reclamation.

Comments: Considerable opinion was expressed with respect to requiring bond coverage equal to that of full reclamation costs on each lease. It was claimed that there was no basis for requiring such coverage since many years of actual experience had shown that the bond amounts required by the Bureau of Land Management were adequate to ensure reclamation. One reviewer said, "The proposal reflects a misunderstanding of the nature of the bonds as a surety instrument. Bonds are performance guarantees, not replacement cost insurance policies."

It was pointed out that the Leasing Reform Act itself provides adequate assurance that reclamation would occur in that it prohibits lessees from conducting operations on other Federal leases if they fail to reclaim lands properly. Many said that full coverage bonds would virtually eliminate independents and less capitalized operators from drilling within the National Forest System since they would be unable to afford them. It was said that requiring bonds for each surface use plan would be wasteful of industry capital, costly for the Government to administer, and unnecessary in terms of protecting the environment.

Although one reviewer felt that the Bureau of Land Management's approach to bonding was inadequate and should not be used as a model, the majority recommended that the Forest Service rely on existing Bureau of Land Management bond coverage and amounts. It was felt that if larger bond amounts were deemed necessary on a case-by-case basis, this too could be accomplished through the Bureau of Land Management bond procedures. One reviewer suggested the following bond language be adopted:

As part of the review of a proposed surface plan of operations, the authorized Forest officer shall determine, based on a review of an operator's reclamation history, if additional bonding is required over amounts currently on file with the Bureau of Land Management for any plan of operations that the authorized Forest officer proposes to approve. If additional bonding is necessary, bonds, sureties, or other financial arrangements required by the Forest Service shall be filed and posted with the Bureau of Land Management. The Forest Service shall not require additional bonding unless the operator has a history of failure to comply with reclamation requirements.

It was noted that the rule provided only for bonds, that it did not allow for financial arrangement such as certificates of deposit, letters of credit, and third-party guarantees to satisfy this requirement. There were questions as to whether Statewide or Nationwide bonds were acceptable, whether the bond was to cover rents, royalties, and other payments, and whether separate bonds still had to be filed with the Bureau of Land Management and, if so, which bond covered what. Clarification was requested as to who could file the bond.

It was suggested that schedules for the staged release of bonds as reclamation proceeded should be developed. It was also recommended that, in addition to notifying the Bureau of Land Management when bond amounts were being reduced that the operator also be promptly notified. Other comments advocated that bonds not be reduced without first consulting with the Minerals Management Service and the Bureau of Land Management to verify that there are no outstanding obligations under the bond.

It was suggested the word "re-evaluate" be used in place of "recalculate" to describe the action that is taken when a supplemental plan of operations is submitted, since recalculation implies that a change in the bond amount is automatically necessary. One respondent said recalculation should be done only when unanticipated circumstances develop and the operator is at risk. Another said that there should be periodic recalculation to adjust for inflation.

A proposed addition to the rule was made suggesting that it contain criteria to guide the setting of bonds that the criteria should be such that public funds would not have to be used even in the event of a "worst case" situation, and that establishing criteria would foster consistency between Forests. One respondent recommended language as follows:

An adequate amount is one that is equal to the independently contracted cost of prompt and timely restoration of any lands and waters adversely affected by surface-disturbing operations, including administrative costs.

Finally, it was recommended that there be a sharing of reclamation security arrangements with State or local bodies, and that this should be done in the bond itself and not left to a Memorandum of Understanding.

Response: The Bureau of Land Management has traditionally obtained and administered bonds for oil and gas operations on Federal leaseholds within the National Forest System. Those bonds have covered both surface and subsurface contingencies. Under the authority of the Leasing Reform Act, the Forest Service could promulgate a rule requiring that a bond be posted with the Forest Service for surface contingencies. However, if the Forest Service did so, the Bureau of Land Management would nonetheless have to obtain its own bond to cover subsurface contingencies. This duplication of effort in the administration of bonding for an operation is undesireable from the standpoint of the Government as a whole, particularly since the beneficiary of both bonds would be the same—the United States. Having two agencies administer bonds for a single operation also does not serve the interests of the public or the oil and gas industry. In view of this, the Forest Service has decided that the most orderly and efficient course is to promulgate a regulation which permits the Bureau of Land Management to continue to administer bonds for National Forest System lands that cover both surface and subsurface contingencies.

However, the Leasing Reform Act assigned a new responsibility to the Secretary, and that is to ensure there is an adequate bond, surety, or other financial arrangement established prior to the commencement of surface-disturbing activities on any lease, to ensure complete and timely reclamation of the lease tract and the restoration of any lands or surface water adversely affected by lease operations after the abandonment or cessation of oil and gas operations on the lease. In addition, the Lease Reform Act requires the Secretary of Agriculture to determine that an entity is not entitled to future leases or lease assignments if such entity is in material noncompliance with reclamation standards.

The Bureau of Land Management's bonding regulations appearing at 43 CFR part 3104 require minimum bonds of $10,000 for individual lease coverage, $25,000 for Statewide coverage, and $150,000 for nationwide coverage; however, these amounts can be

increased at any time (on an operator-by-operator basis) if such action appears warranted. The fact that larger amounts have rarely been required and that reclamation has still been accomplished is testament to the adequacy of the procedures used by the Bureau of Land Management.

Following the close of the comment period on the proposed rule, the Forest Service conducted a survey of its field offices to ascertain whether during the past 5 years there had been any need to attach bonds in order to obtain reclamation or restoration and, if so, whether the bond amounts involved proved adequate for the work to be done. In fact, during this period, the Forest Service has never found reason to attach a bond. The survey responses confirmed that no bonds or any funds appropriated to the Forest Service had been used to obtain reclamation. The survey included approximately 500 well sites. Also, the Department is not aware of any reports or studies showing that bond amounts traditionally required for oil and gas operations on National Forest System lands have not been adequate. Based on this experience, the Department does not believe it necessary or cost effective for the Forest Service to obtain and administer bonds for surface-disturbing operations on the National Forest System or that required bond amounts necessarily increase in order to ensure timely and complete reclamation and restoration, particularly since historic bond amounts have always been adequate to ensure such performance. In addition, the Leasing Reform Act imposes a new and severe penalty on operators who are found in material noncompliance with reclamation standards, that being a prohibition on obtaining new leases or getting lease assignments.

Therefore, after careful consideration of all comments received, it has been decided to continue to rely upon the bonds filed with the Bureau of Land Management. However, the final rule has been revised to require that the authorized Forest officer inform the Bureau of Land Management if at anytime a larger bond amount is deemed necessary. In response to those comments addressing the need for bonding standards, the final rule has been amended to indicate factors which the authorized Forest officer will consider when estimating the cost of reclamation. In addition, the final rule indicates that the authorized Forest officer will notify the Bureau of Land Management when reclamation liability is reduced and requirements for increased bond amounts can be reduced. Finally, it should be noted that the Forest Service and the Bureau of Land Management have recently entered into a Memorandum of Understanding that provides the framework for utilizing the Bureau of Land Management's bonding provisions.

Section 228.109 Indemnification

This section of the proposed regulation would provide a means of protecting the United States from liability as a result of claims, demands, losses or judgments caused by an operator's use or occupancy.

Comments: Those commenting on this section thought that the section should either be eliminated in its entirety or revised. Those who thought it should be deleted provided the following rationale: One said that existing law established the liability of the lessee to the United States for any damage done in the course of a lessee's operation. Two stated generally that the provision is against the public interest and would drastically reduce exploration and development on National Forest System lands, because it would deter joint operations.

Several respondents recommended changes. Two respondents suggested that the rule state that only lessees of record are liable for lease obligations, and only to the extent of their respective, undivided interests in a lease. One thought the correct approach would be to limit the liability to the operator alone. One additional respondent simply asked questions relating to an operator's liability for fires, erosion, etc., caused by natural occurrences.

Responses: After analysis of these comments, the Department has decided not to revise the proposed rule. Granted, existing law may provide for the liability of a lessee to the Federal Government for any damage done in the course of the lessees operations, but we see no reason why indemnification should not be restated in this rulemaking to ensure all of those concerned understand and are aware of the Federal Government's position. The comment that this provision is against public interest and will adversely reduce exploration is hard to understand. Indemnification is a normal business practice and any lessee entering into a joint agreement may indemnify themselves if they so choose. Concerning the question as to who is liable, it is up to the lessee to structure agreements with transferees and operators that provide for the lessee's protection as to limits of liability. In response to the question on an operator's liability for damage due to natural occurrences, the operator has no liability for acts of nature.

Section 228.110 Temporary Cessation of Operations

This section of the rule required operators to notify the authorized Forest officer in the event that operations were to be temporarily interrupted for a period of 45 days or more. The purpose of requiring notice was to allow the Forest officer an opportunity to specify interim reclamation or erosion control measures to stabilize the site.

Comments: Comments on this section were either supportive or requested minor change. Two respondents recommended changing the time period from 45 days to 60 days to conform with the 60-day cessation of production period provided for in Bureau of Land Management rules at 43 CFR 3107.2. Another recommended a statement be included indicating that these requirements were in addition to those contained in rules issued by the Bureau of Land Management requiring monthly reports on wells, and filing of requests for suspension of operations or production. One reviewer said that a paragraph should be added exempting operators from having to file statements if cessation resulted from forces or events outside their control, such as a pipeline curtailment or a labor work stoppage. Finally, it was requested that the rule indicate that only "necessary" reclamation or erosion control measures would be required by the Forest officer.

Response: While consistency with the Bureau of Land Management is desirable, in this case, the needs of the Forest Service are different from those of the Bureau of Land Management. The Bureau of Land Management requirements involve reports that are filed after a period of time has elapsed, or that contemplate something more than a temporary cessation of operations, and they are oriented toward downhole concerns. The proposed rule was intended to allow expedited action to be taken to protect surface resources during a period when activities would cease.

The final rule has been clarified to indicate that operators are to provide notice to the Forest officer as soon as it becomes apparent there will be a cessation of operations lasting 45 days or longer. The suggestion that a force majeure provision be included was not adopted, since the Department disagrees that the particular events cited should delay protection of surface resources. The word "necessary" was not added to the rule because adopting this change would imply that the authorized Forest

officer might otherwise require unnecessary measures.

Section 228.111 Compliance and Inspection

This section of the proposed rule would advise the public of the requirements with which an operator must comply in conducting oil and gas operations. It would provide for Forest Service inspection of the operations for the purpose of determining whether those operations were being properly conducted and whether reclamation of the operations had been satisfactorily completed. This section also would direct the Forest Service, upon determining that operations were not in compliance with reclamation requirements or other standards, to seek the operator's voluntary correction of the noncompliance. Finally, the section would specify that noncompliance could subject an operator to specified corrective procedures.

Comments: Most of the comments with respect to this section focused on the provision directing the Forest Service to seek an operator's voluntary correction of noncompliance.

Many of those who commented wanted the voluntary correction of noncompliance procedure to be more formal. Those respondents recommended that the rule specify the number of days an operator would have to bring the operations into compliance, to require that Forest Service give written notice of the deadline for voluntary compliance, and to provide for extension of the deadline for voluntary correction of noncompliance.

Many others who commented were concerned that the voluntary correction of noncompliance procedure coupled with the compliance related procedures in §§ 228.112 and 228.113 of the proposed rule would not ensure that expedient action would be taken to remedy instances of noncompliance. This group said the proposed rule provided an operator too many opportunities to delay bringing operations into compliance and that there was no incentive to comply before all of these opportunities had been exhausted. One respondent suggested these problems could be remedied by imposing fines on the operator for any period that the operations are in noncompliance. Several other respondents advocated the deletion of the voluntary correction of noncompliance procedure. These respondents recommended that the final rule require that a notice of noncompliance be issued as soon as the Forest Service determines that the operations are not in compliance with an applicable requirement. It was noted that in the early 1980s the Bureau of Land Management had used a similar compliance program involving an informal method of remedying noncompliance but that this system had to be abandoned when "it did not satisfy anyone involved." This comment also noted that dropping the voluntary correction of noncompliance procedure would foster consistency in the manner in which the Forest Service and the Bureau of Land Management would handle instances of noncompliance on the lands that each agency administers.

A number of the comments on this provision also recommended that the term "come into compliance" be clarified so that an operator is not penalized excessively if he takes steps to correct the problem but reclamation will not be completed until the end of the growing season.

Response: Based upon these comments the Department has concluded that the voluntary correction of noncompliance procedure should not be retained in the final rule. Formalizing the procedure by giving written notice of deadlines for voluntary correction of noncompliance and an opportunity for extension of those deadlines would result in duplication of the notice of noncompliance procedure included in § 228.112 of the proposed rule. Needless damage to surface resources could result if an operator refused to take corrective action while two formal noncompliance procedures were exhausted. However, the Department recognizes that operators are entitled to features such as written notice of noncompliance and an opportunity to obtain extensions of deadlines for coming into compliance because noncompliance can have consequences such as imprisonment, criminal fines, ineligibility for future leases or assignments, and suspension of operations. The appropriate balance between these concerns is to provide one formalized noncompliance procedure. This will ensure both prompt corrective action to prevent unnecessary resource damage and fairness to the operator. Having only a formal notice of violation procedure also results in more consistency between the Forest Service noncompliance process and the Bureau of Land Management noncompliance process.

While this rule removes the voluntary compliance provision, the Department wants to emphasize that the Forest Service is committed to working cooperatively with operators and lessees in administering surface use plans of operations to avoid the likelihood of noncompliance and the necessity of initiating noncompliance proceedings.

The comments that the term "come into compliance" be clarified are addressed under responses to comments on § 228.113 of the proposed rule.

Comments: A number of people were concerned over the possible overlap of responsibilities between the Forest Service and the Bureau of Land Management in determining whether operations on Federal oil and gas leases were in compliance with applicable requirements and thought the role for each agency should be defined. These individuals requested that the rule require that the Forest Service enter into a Memorandum of Understanding with the Bureau of Land Management to provide for appropriate coordination of surface and subsurface compliance responsibilities. It also was strongly recommended that the Forest Service utilize the Bureau of Land Management's Notices to Lessees and Onshore Operating Orders to the fullest extent possible. Respondents said that operators are well acquainted with these, and noted that in the past those notices and orders have been used in conjunction with oil and gas activity on both Bureau of Land Management and Forest Service administered lands.

Response: The Department shares the respondents' concern that the Forest Service and the Bureau of Land Management work cooperatively in administering oil and gas operation on National Forest System lands. The rule is written to avoid overlap and better define the roles of each agency. The Forest Service and the Bureau of Land Management have always worked cooperatively in administering federal oil and gas operations on National Forest System lands. The Forest Service also has entered into a Memorandum of Understanding with the Bureau of Land Management concerning federal oil and gas resources on National Forest System lands to further the objective of closely coordinating oil and gas administration in the future. The final rule allows the use of Onshore Orders and Notices suggested by the respondents.

Comments: Several comments related to the provision for determining whether reclamation of operations had been satisfactorily completed. One respondent suggested that the emphasis of this section should be consistent with Bureau of Land Management requirements, i.e., that the operator gives the Bureau of Land Management and the Forest Service prompt written notice whenever reclamation is complete by filing a final abandonment notice. Another respondent requested that

procedures should be adopted for partial release of a bond when reclamation of a portion of an area affected by the surface operations has been satisfactorily completed.

Response: The final regulation as written does not prevent the use of an abandonment notice. The Forest Service will consider use of abandonment notices and, if considered useful, will allow for such notices in an operating order.

A provision in § 228.108 of the proposed rule provided for the partial release of a bond when reclamation on a portion of the area of operation was satisfactorily completed. A similar provision is included in the final rule.

Comments: Several respondents stated that the Mineral Leasing Act should be used at the authority for establishing penalties for noncompliance since the noncompliance involved stemmed from authorizations granted under the Mineral Leasing Act.

Response: While the mineral leasing laws are being relied on for the promulgation of this regulation, the general authorities applicable to the administration of National Forest System lands are also being relied on. Pursuant to those general authorities, this Department has adopted regulations set forth at 36 CFR part 261 which establish penalties for prohibited conduct on National Forest System lands. The proposed rule provided that these penalties would apply to operations conducted on National Forest System lands in connection with oil and gas leases.

This Department sees no impediment to the use of the regulations at 36 CFR part 261 to govern mineral related operations on National Forest System lands. Presently, the provisions set forth at 36 CFR part 261 are used by this Department in connection with the regulation of surface disturbance caused by locatable mineral operations on National Forest System lands. The courts have consistently upheld the use of the penalties set forth at 36 CFR part 261 in that setting. Nothing in the Leasing Reform Act or the mineral leasing laws generally prohibits the Department from using the provisions of 36 CFR part 261 in connection with the regulation of oil and gas operations on National Forest System lands.

Since this Department wishes to establish a uniform system for regulating surface disturbance caused by mineral operations, whether those operations be to develop locatable minerals or oil and gas resources, the suggestion was not adopted.

General: There were numerous other technical suggestions, some of which were incorporated into the final rulemaking.

Section 228.112 Notice of Noncompliance

The proposed rule would establish formal procedures to be followed by the Forest Service in the administration and issuance of a Notice of Noncompliance. The proposed rule also would establish remedial actions that the Forest Service could take if an operator failed to comply with a notice of noncompliance. Those remedies would include referring the matter to a compliance officer, suspending a surface use plan of operations or taking action to abate an emergency.

Comments: A number of respondents were concerned that the notice of noncompliance procedure in this section coupled with the compliance related procedures in §§ 228.111 and 228.113 of the proposed rule were too cumbersome to ensure that expedient action would be taken to remedy instances of noncompliance. This group said the proposed rule provided an operator too many opportunities to delay bringing operations into compliance and that there was no incentive to comply before all of these opportunities had been exhausted. Several of these respondents recommended that the final rule require that a notice of violation be issued as soon as the Forest Service determined that the operations were not in compliance with an applicable requirement.

Response: As explained in the response to comments on § 228.111 of the proposed rule, the Department has decided that the voluntary correction of noncompliance procedure included in the proposed rule should not be retained in the final rule. Consequently, notices of noncompliance will be issued when operations are determined to be in noncompliance with applicable requirements.

With the omission of the voluntary correction of noncompliance procedure, the Department believes that the final rule will ensure that an operator will be required to take timely actions to remedy instances of noncompliance. The procedures included in this section of the proposed rule must be retained to guarantee that operators have a fair opportunity to come into compliance since noncompliance can have very serious consequences including imprisonment, criminal fines, ineligibility for further leases or assignments, and suspension of operations. Therefore, the only changes that have been made in this section in response to these comments are minor adjustments necessary to reflect the omission of the voluntary correction of noncompliance procedure contained in the proposed rule.

Comments: Many of the comments focused on the fact that the proposed rule did not include a definition of the term "material noncompliance." One of those respondents suggested that the rule either include criteria to be used to decide whether noncompliance is material, or make it clear that this decision is totally within the discretion of the compliance officer. Another respondent suggested that since material noncompliance was not defined, problems regarding the consistency of material noncompliance determinations would arise.

Response: The Department does not agree that a definition of the term "material noncompliance" is required to guarantee consistent decisions. The high level of review required for noncompliance proceedings coupled with the restriction on the number of people who can serve as compliance officers ensures consistency.

It is virtually impossible to define "material noncompliance" to cover all the possible situations that could occur. The proposed rulemaking presented examples of noncompliance to which the authorized Forest officer can refer. The diversity of the environment from one area to another necessitates that the authorized Forest officer make decisions that a noncompliance for a particular operation may be material while the same noncompliance of another operation may not be. These examples provide guidance as to whether or not noncompliance may be material and therefore should be referred to the compliance officer.

Comments: A number of comments focused on the provision in the proposed rule which require the Forest Service to suspend approval of a surface use plan of operations if noncompliance was resulting in an imminent danger to public health or safety or in irreparable resource damage. Several respondents asked for clarification as to whether the intent was to suspend the operations rather than the approval of the plan of operations. It was stated that suspension of the approval of the plan of operations would not be appropriate since an operator arguably might be relieved of the obligations imposed by the plan of operations for the duration of the suspension. Other respondents thought that the criteria for a suspension were overly restrictive. For example, several respondents asked that the rule provide for a suspension whenever the noncompliance may result in danger to public health and safety or irreparable

resource damage. Other respondents stated that suspension is appropriate whenever resource damage is occurring regardless of whether that damage is irreparable. Finally, two respondents suggested that the rule provide for appeals of decisions relating to suspensions.

Response: The intent of the suspension provision included in the proposed rule was to obtain a cessation of the particular operations that were endangering public health or safety or causing irreparable resource damage. It was thought that an appropriate means of obtaining the cessation would be to suspend the approval of the plan of operations since the conduct of operations following a suspension would trigger a material noncompliance proceeding.

However, based upon the comments, the Department has determined that the better approach would be for the final rule to permit the authorized Forest officer to issue an order directing the operator to suspend operations meeting the specified criteria. This approach is a more direct means of obtaining a cessation of operations and avoids ambiguity as to whether the operator is responsible for meeting other obligations specified by the approved plan of operations. Therefore, the final rule provides for a suspension of operations rather than a suspension of the approval of a surface use plan of operations.

The Department also agrees in part with the respondents who stated that the suspension criteria set out in the proposed rule were too narrow. A suspension of operations should be possible whenever it is likely that noncompliance is a danger to public health or safety rather than only when noncompliance is resulting in imminent danger to public health or safety. Similarly, a suspension of operations should be possible whenever it is likely that noncompliance is likely to result in irreparable resource damage rather than only when noncompliance is resulting in irreparable resource damage. However, the Department does not agree that a suspension of operations is appropriate whenever any resource damage is likely to occur. Unless resource damage is likely to be irreparable, other provisions of the regulation including the bonding requirements are adequate to ensure that any resource damage which may result from noncompliance is remedied. Another reason that it would be inappropriate to permit suspensions when reparable resource damge might result is that a suspension which affects downhole production can reduce the ability to recover oil and gas resources from the reservoir.

With regard to the comments on the appealability of suspension decisions, it is not the purpose of this rule to establish the appealability of decisions. The Forest Service regulations defining the categories of appealable decisions and the procedures for those appeals are set forth at 36 CFR part 217 and 36 CFR part 251, subpart C. Those regulations would allow an operator to appeal a suspension decision. In connection with the promulgation of those regulations, the Department determined that it would not be in the public interest to permit parties who are not in privity with the government based on a legal instrument such as an oil and gas lease to appeal decisions pertaining to the day to day administration of that instrument. Accordingly, no change in the final regulation relating to appeals of a suspension decision has been made.

Section 228.113 Material Noncompliance Proceedings

The proposed rule established the procedures for determining whether noncompliance is material and, if so, for the withdrawal of the material noncompliance determination once the operations are brought into compliance.

Comments: As stated in § 228.112, Compliance and Inspection, and Section 228.101, Definitions, the focal point of concern was the lack of definition for "material" noncompliance. More than half of the comments that addressed this section expressed a strong desire that this term be defined and clarified in the final regulation. One respondent indicated that it would appear that reclamation standards and requirements would have to be established by regulation in order to define the term "material" noncompliance. One felt that "other standards" should be defined as well, and explicitly so there is no doubt in anyone's mind what "other standards" are, since "they are clearly not reclamation requirements."

One respondent also stressed that material noncompliance proceedings should be as expeditious as possible, and during the proceedings, the operations of the violators should be suspended.

At least one respondent felt that it was not clear whether the issue of "materialness" would be brought up in the noncompliance proceedings. It appeared to most that the compliance officer would independently make this determination on the basis of the information furnished by the authorized Forest officer. Many felt this needed clarification.

Response: The response on defining "material" was previously addressed in § 228.111. The final regulation does not define "other standards," because other standards would necessarily vary from National Forest to National Forest depending on resources and values present.

With respect to the process being time consuming, we believe that the severity of the penalties warrant a careful approach. As for suspending operations, operations would be shut down in cases where an operator was operating without an approved surface use plan of operations or if the operations were causing an imminent danger to public health, safety, or irreparable resource damage. In other cases, there may be no need to suspend operations and to do so may not be in the public interest.

Comments: Public notice of these proceedings and provisions for public participation was another area of concern. Several respondents felt that Indian tribes and the affected public should have the opportunity to participate in the process including the chance to challenge compliance determinations. One respondent explained that public participation in the noncompliance proceedings, either directly or through appeal procedures, is necessary because an operator's noncompliance can have significant impacts on public lands.

Response: The Department estimates that there will be very few cases of material noncompliance that will actually continue to the point of having a proceeding. The process alone could take a year or more to arrive at a decision. To allow the public to appeal could increase the time involved by an additional year. Given that the public would have had the opportunity to appeal and be involved at both the leasing and operations approval stages, and that noncompliance is primarily a contractual dispute between the Government and the operator, it does not seem that a public appeal opportunity is necessary or would serve a useful purpose.

Comments: A large amount of public concern was evidenced about the manner in which the notice of proceedings would be distributed. Some respondents feared that by giving notice to all lessees, there would be an implication that a non-operating lessee who had transferred his rights to operate on the lease may be held liable for the noncompliance of the operator. Most felt that the lessee should not be ultimately held liable for the noncompliance of the operator, unless the lessee had retained some working

interest. Others expressed the opinion that the penalty for noncompliance, namely the loss of the right to obtain new leases or assignments, is unduly harsh. One respondent recommended that the section be amended to allow appeal outside the Forest Service, to the courts.

Response: The Forest Service, in processing a material noncompliance, will only notify the operator and lessees of record. It seems logical that lessees would like to know when an operator is being processed for material noncompliance regardless of whether the lessee had transferred or assigned all rights to other parties or not. The intent was not to implicate the lessee but to merely notify a lessee of proceedings that may or may not have an impact on the lessee's ability to obtain future leases. As for resolution through the courts, that option is always available to the public. However, the courts traditionally require that appellants exhaust administrative remedies and, because of the Leasing Reform Act requirement, the Department is compelled to establish an administrative process to determine material noncompliance.

Comments: Several comments were received relating to the phrase "come into compliance" used in this section.

Most of those who commented contended that the phrase is too vague and punitive as it implies that complete compliance must be accomplished. They stated that is was not appropriate to tie the dismissal of a material noncompliance proceeding or the withdrawal of a finding that operations were in material noncompliance to a determination that the operations had "come into compliance." These respondents suggested that a material noncompliance proceeding be dismissed as soon as an operator begins measures to come into compliance rather than once the operations have come into compliance. Similarly, these respondents suggested that a finding that operations were in material noncompliance be withdrawn as soon as an operator commenced measures to bring the operations into compliance rather than once compliance had been achieved.

Another respondent suggested that the rule be revised to give the compliance officer the discretion to continue a material noncompliance proceeding even though an operator had come into compliance after the proceeding was instituted. This respondent stated that this would give the operator an incentive to bring his operations into compliance before the initiation of a material noncompliance proceeding.

Response: The final rule can not be revised to provide that a material noncompliance proceeding will be dismissed once an operator has begun taking measures designed to correct the noncompliance. The Leasing Reform Act directs this Department to determine if operations are being conducted which do not in any material respect comply with certain standards or requirements. To implement this provision of the statute, a procedure is needed for determining whether noncompliance is material. If this suggestion was adopted, an entity could forestall a determination as to whether its operations were in material noncompliance by beginning to take any measures that arguably would remedy the noncompliance, irrespective of the effectiveness of those measures or the diligence with which they were pursued. This would not be consistent with the congressional intent to give entities an incentive to carry on their operations in material compliance with reclamation requirements and other standards established for the conduct of those operations.

Nor can the final rule be revised to provide that a material noncompliance finding will be withdrawn as soon as the operator has commenced measures to bring the operations into compliance. The Leasing Reform Act provides that once this Department has determined that the operations are not in material noncompliance, specified entities may not receive further leases or assignments until one of the entities "has complied with" the pertinent standards or requirements. It is not possible for the rule to define the term "come into compliance." The compliance officer will have to consider a number of factors, which will vary from instance to instance, in determining whether operations have come into compliance. Among these are growing seasons and other conditions affecting the operator's ability to comply with requirements established for the conduct of the operations. In addition, the authorized officer would consider the diligence with which the corrective measures are pursued and the likely effectiveness of these measures.

The suggestion to make dismissal of a material noncompliance proceeding optional even though the operator has come into compliance following the initiation of the proceeding also cannot be adopted. This would not be consistent with the Leasing Reform Act which ties an entity's ineligibility to obtain future leases and assignments to a finding that the entity is in material noncompliance with a reclamation requirement or other standard. If the operations are brought into compliance following the initiation of a material noncompliance proceeding, there is no authority to nonetheless determine that an entity is ineligible to receive future leases or assignments.

Section 228.114 Additional Notice of Decisions

The proposed rule provided Forest Service guidance for posting notices for the Bureau of Land Management as required by the Leasing Reform Act.

Comments: About half of the comments on this section were in agreement with the list of activities for which a notice has to be posted, with the offices where the notice is to be posted, and with the keeping of posting dates. One respondent wanted the time period specified for how long a notice had to be posted. Another respondent recommended deletion of the references to posting for a decision to modify or waive a lease stipulation, the public notification of a decision on a surface use plan of operations, and appeal rights. One respondent expressed a desire to be notified when any notice is posted.

Response: The final rule was not revised to reflect these comments. As stated, the intent of this section is to let the public know the Forest Service will post notices required of the Bureau of Land Management by the Leasing Reform Act. The provision does not prevent the posting of any other appropriate notices and other notice provisions apply to the Forest Service under the appeal rules (36 CFR parts 217 and 251, subpart C).

Section 211.18 Appeal of Decisions of Forest Officers

This section revises 36 CFR 211.18 to identify those decisions not appealable.

Comments: The majority of those commenting on this section correctly observed that the rule was revising a section of the regulations that was recently superseded. Among the other comments, it was recommended that legal precedents established by the Interior Board of Land Appeals be honored and that an appeal board common to the Forest Service and the Bureau of Land Management be established.

It was said the only appeals the Forest Service should receive are those involving Forest Service decisions pertaining to land and resource management plans, suitability determinations, objections to leasing a particular tract, denial of surface use, or

those alleging noncompliance with a surface use plan. Some comments requested that the Bureau of Land Management retain as much responsibility for appeals as possible.

Some believed that the public should be allowed to appeal decisions involving suitability determinations and compliance with surface use plans. Others were concerned the public was being allowed too many opportunities for appeal, that the public should focus on the land use planning stage, and that the public should not delay the Forest Service from implementing decisions that have already been scrutinized. Opinion was expressed that individuals who do not avail themselves of public participation opportunities should not be allowed to appeal decisions.

Response: The Department has since published new final rules for appeals at 36 CFR parts 217 and 251, subpart C. These rules adequately provide for appeals of mineral-related decisions and serve the same purpose as suggested in the proposed rule. The suggestions for limiting the scope of Forest Service appeals, limiting appeals to participants, or establishing a separate leasing appeal board were all considered in adoption of the final appeal rules and are considered beyond the scope of this final rule. Therefore, the final rule merely contains a cross reference to the agency's appeal rules.

Part 261—Prohibitions

This section of the proposed rule amended 36 CFR part 261, subpart A, General Prohibitions, by changing "operating plan" to include a surface use plan of operations as provided for in 36 CFR part 228, subpart E.

Comments: No comments were received on this part of the proposed rule.

Response: No changes have been made to this section of the final rule.

Regulatory Impact

These rules have been reviewed under the Department of Agriculture procedures and Executive Order 12291, and it has been determined that these regulations are not major rules. This regulation will not have an effect on the economy of $100 million or more and, in and of itself, will not increase major costs to consumers, geographic regions, industry, or Federal, State, and local agencies. These regulations are essentially procedural and represent little change in current requirements on lessees, assignees, or operators and, therefore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete in foreign markets.

It has also been determined that these rules do not have a significant economic impact on a substantial number of small entities because of its limited scope and application. Therefore, the rules are not subject to review under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Controlling Paperwork Burdens on the Public

It should be noted, that while the requirements of the surface use plan of operations in this rule are new requirements by the Department of Agriculture, the requirements are identical to that now required by the Bureau of Land Management, U.S. Department of the Interior, as part of an Application for Permit to Drill or Sundry Notice and, therefore, will not increase the amount or type of information a lessee will have to submit for operations on National Forest System lands.

The total burden hours on an operator are estimated to be 125 hours annually. These hours are the same as estimated by the Bureau of Land Management in its request for Office of Management and Budget clearance of Forms 3160–3 and 3160–5. These forms were cleared on December 31, 1988, and are assigned clearance numbers 1004–0136 and 1004–0135 respectively. The Bureau of Land Management has requested an extension on the use of these forms. An operator proposing to conduct surface disturbing activities on the National Forest System is required to utilize these existing Bureau of Land Management forms and to submit information required in this rule to the appropriate Bureau of Land Management office.

However, because these requirements will now be levied by the Department of Agriculture, a request for approval of these new reporting requirements has been submitted to, and approved by, the Office of Management and Budget pursuant to 5 CFR part 1320. The assigned clearance number is 0596–0101 which expires on February 29, 1992. In addition, subsequent to publication of the proposed rule, the Forest Service submitted an addendum to this approval to the Office of Management and Budget. The addendum addresses: Consideration of requests to modify, waive, or grant exceptions to lease stipulations; Operators submission of surface use plan of operations; Request for reduction in bond amount after reclamation; Notice of temporary cessation of operations; Extension of deadline in notice of noncompliance, and Petition for withdrawal of find of material noncompliance, which requires additional annual burden hours. The assigned clearance number for all information requirements in this rule is 0596–0101 which expires on February 29, 1992.

Environmental Impact

Based on both experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement (40 CFR 1508.4).

List of Subjects

36 CFR Part 228

Administrative practice and procedure, Environmental protection, Mines, National forests, Oil and gas exploration, Public lands—mineral resources, Public lands—Rights-of-way, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

36 CFR Part 261

Law enforcement, National forests.

Therefore, for the reasons set forth in the preamble, parts 228 and 261 of chapter II of title 36 of the Code of Federal Regulations are amended as set out below:

Dated: January 9, 1990.

Clayton Yeutter,

Secretary of Agriculture.

PART 228—MINERALS

1. Revise the authority citation for part 228 to read as follows:

Authority: 30 Stat. 35 and 36, as amended (16 U.S.C. 478, 551); 41 Stat. 437, as amended, sec. 5102(d), 101 Stat. 1330–256 (30 U.S.C. 226); 61 Stat. 914, as amended (30 U.S.C. 352).

2. Add a new subpart E to part 228 to read as follows:

Subpart E—Oil and Gas Resources

Sec.

228.100 Scope and applicability.
228.101 Definitions.

Leasing

228.102 Leasing analyses and decisions.
228.103 Notice of appeals of decisions.
228.104 Consideration of requests to modify, waive, or grant exceptions to lease stipulations.

Authorization of Occupancy Within a Leasehold

228.105 Issuance of onshore orders and notices to lessees.
228.106 Operator's submission of surface use plan of operations.
228.107 Review of surface use plan of operations.

Sec.
228.108 Surface use requirements.
228.109 Bonds.
228.110 Indemnification.

Administration of Operations

228.111 Temporary cessation of operations.
228.112 Compliance and inspection.
228.113 Notice of noncompliance.
228.114 Material noncompliance proceedings.
228.115 Additional notice of decisions.
228.116 Information collection requirements.

Appendix A to Subpart E— Guidelines for Preparing Surface Use Plans of Operation for Drilling

Subpart E—Oil and Gas Resources

§ 228.100 Scope and applicability.

(a) *Scope.* This subpart sets forth the rules and procedures by which the Forest Service of the United States Department of Agriculture will carry out its statutory responsibilities in the issuance of Federal oil and gas leases and management of subsequent oil and gas operations on National Forest System lands, for approval and modification of attendant surface use plans of operations, for monitoring of surface disturbing operations on such leases, and for enforcement of surface use requirements and reclamation standards.

(b) *Applicability.* The rules of this subpart apply to leases on National Forest System lands and to operations that are conducted on Federal oil and gas leases on National Forest System lands as of April 20, 1990.

(c) *Applicability of other rules.* Surface uses associated with oil and gas prospecting, development, production, and reclamation activities, that are conducted on National Forest System lands outside a leasehold must receive prior authorization from the Forest Service. Such activities are subject to the regulations set forth elsewhere in 36 CFR chapter II, including but not limited to the regulations set forth in 36 CFR parts 251, subpart B, and 261.

§ 228.101 Definitions.

For the purposes of this subpart, the terms listed in this section have the following meaning:

Authorized Forest officer. The Forest Service employee delegated the authority to perform a duty described in these rules. Generally, a Regional Forester, Forest Supervisor, District Ranger, or Minerals Staff Officer, depending on the scope and level of the duty to be performed.

Compliance Officer. The Deputy Chief, or the Associate Deputy Chiefs, National Forest System or the line officer designated to act in the absence of the Deputy Chief.

Leasehold. The area described in a Federal oil and gas lease, communitized, or unitized area.

Lessee. A person or entity holding record title in a lease issued by the United States.

National Forest System. All National Forest lands reserved or withdrawn from the public domain of the United States, all National Forest lands acquired through purchase, exchange, donation, or other means, the National Grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 *et seq.*), and other lands, waters, or interests therein which are administered by the Forest Service or are designated for administration through the Forest Service as a part of the system (16 U.S.C. 1609).

Notices To Lessees, Transferees, and Operators. A written notice issued by the authorized Forest officer. Notices To Lessees, Transferees, and Operators implement the regulations in this subpart and serve as instructions on specific item(s) of importance within a Forest Service Region, National Forest, or Ranger District.

Onshore Oil and Gas Order. A formal numbered order issued by or signed by the Chief of the Forest Service that implements and supplements the regulations in this subpart.

Operating right. The interest created out of a lease that authorizes the holder of that interest to enter upon the leased lands to conduct drilling and related operations, including production of oil and gas from such lands in accordance with the terms of the lease.

Operating rights owner. A person holding operating rights in a lease issued by the United States. A leasee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been conveyed to another person.

Operations. Surface disturbing activities that are conducted on a leasehold on National Forest System lands pursuant to a current approved surface use plan of operations, including but not limited to, exploration, development, and production of oil and gas resources and reclamation of surface resources.

Operator. Any person or entity, including, but not limited to, the lessee or operating rights owner, who has stated in writing to the authorized Forest officer that they are responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

Person. An individual, partnership, corporation, association or other legal entity.

Substantial modification. A change in lease terms or a modification, waiver, or exception of a lease stipulation that would require an environmental assessment or environmental impact statement be prepared pursuant to the National Environmental Policy Act of 1969.

Surface use plan of operations. A plan for surface use, disturbance, and reclamation.

Transfer. Any conveyance of an interest in a lease by assignment, sublease or otherwise. This definition includes the terms: "Assignment" which means a conveyance of all or a portion of the lessee's record title interest in a lease; and "sublease" which means a conveyance of a non-record interest in a lease, i.e., a conveyance of operating rights is normally a sublease and a sublease also is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

Transferee. A person to whom an interest in a lease issued by the United States has been transferred.

Leasing

§ 228.102 Leasing analyses and decisions.

(a) *Compliance with the National Environmental Policy Act of 1969.* In analyzing lands for leasing, the authorized Forest officer shall comply with the National Environmental Policy Act of 1969, implementing regulations at 43 CFR parts 1500–1508, and Forest Service implementing policies and procedures set forth in Forest Service Manual chapter 1950 and Forest Service Handbook 1909.15.

(b) *Scheduling analysis of available lands.* Within 6 months of April 20, 1990, Forest Supervisors shall develop, in cooperation with the Bureau of Land Management and with public input, a schedule for analyzing lands under their jurisdiction that have not been already analyzed for leasing. The Forest Supervisors shall revise or make additions to the schedule at least annually. In scheduling lands for analysis, the authorized Forest officer shall identify and exclude from further review the following lands which are legally unavailable for leasing:

(1) Lands withdrawn from mineral leasing by an act of Congress or by an order of the Secretary of the Interior;

(2) Lands recommended for wilderness allocation by the Secretary of Agriculture;

(3) Lands designated by statute as wilderness study areas, unless oil and gas leasing is specifically allowed by the statute designating the study area;

(4) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document No. 96–119), unless such lands subsequently have been allocated to uses other than wilderness by an approved Forest land and resource management plan or have been released to uses other than wilderness by an act of Congress; and,

(5) Roadless areas currently undergoing evaluation pursuant to 36 CFR 219.17.

(c) *Leasing analyses.* The leasing analysis shall be conducted by the authorized Forest officer in accordance with the requirements of 36 CFR part 219 (Forest land and resource management planning) and/or, as appropriate, through preparation of NEPA documents. As part of the analysis, the authorized Forest oficer shall:

(1) Identify on maps those areas that will be:

(i) Open to development subject to the terms and conditions of the standard oil and gas lease form (including an explanation of the typical standards and objectives to be enforced under the standard lease terms);

(ii) Open to development but subject to constraints that will require the use of lease stipulations such as those prohibiting surface use on areas larger than 40 acres or such other standards as may be developed in the plan for stipulation use (with discussion as to why the constraints are necessary and justifiable); and

(iii) Closed to leasing, distinguishing between those areas that are being closed through exercise of management direction, and those closed by law, regulation, etc.

(2) Identify alternatives to the areas listed in paragraph (c)(1) of this section, including that of not allowing leasing.

(3) Project the type/amount of post-leasing activity that is reasonably foreseeable as a consequence of conducting a leasing program consistent with that described in the proposal and for each alternative.

(4) Analyze the reasonable foreseeable impacts of post-leasing activity projected under paragraph (c)(3) of this section.

(d) *Area or Forest-wide leasing decisions (lands administratively available for leasing).* Upon completion of the leasing analysis, the Regional Forest shall promptly notify the Bureau of Land Management as to the area or Forest-wide leasing decisions that have been made, that is, identify lands which have been found administratively available for leasing.

(e) *Leasing decisions for specific lands.* At such time as specific lands are being considered for leasing, the Regional Forester shall review the area or Forest-wide leasing decision and shall authorize the Bureau of Land Management to offer specific lands for lease subject to:

(1) Verifying that oil and gas leasing of the specific lands has been adequately addressed in a NEPA document, and is consistent with the Forest land and resource management plan. If NEPA has not been adequately addressed, or if there is significant new information or circumstances as defined by 40 CFR 1502.9 requiring further environmental analysis, additional environment analysis shall be done before a leasing decision for specific lands will be made. If there is inconsistency with the Forest land and resource management plan, no authorization for leasing shall be given unless the plan is amended or revised.

(2) Ensuring that conditions of surface occupancy identified in § 228.102(c)(1) are properly included as stipulations in resulting leases.

(3) Determining that operations and development could be allowed somewhere on each proposed lease, except where stipulations will prohibit all surface occupancy.

§ 228.103 Notice of appeals of decisions.

The authorized Forest officer shall promptly notify the Bureau of Land Management if appeals of either an area or Forest-wide leasing decision or a leasing decision for specific lands are filed during the periods provided for under 36 CFR part 217.

§ 228.104 Consideration of requests to modify, waive, or grant exceptions to lease stipulations.

(a) *General.* An operator submitting a surface use plan of operations may request the authorized Forest officer to authorize the Bureau of Land Management to modify (permanently change), waive (permanently remove), or grant an exception (case-by-case exemption) to a stipulation included in a lease at the direction of the Forest Service. The person making the request is encouraged to submit any information which might assist the authorized Forest officer in making a decision.

(b) *Review.* The authorized Forest officer shall review any information submitted in support of the request and any other pertinent information.

(1) As part of the review, consistent with 30 U.S.C. 226 (f)–(g), the authorized Forest officer shall ensure compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 *et seq.*) and any other applicable laws, and shall ensure preparation of any appropriate environmental documents.

(2) The authorized Forest officer may authorize the Bureau of Land Management to modify, waive, or grant an exception to a stipulation if:

(i) The action would be consistent with applicable Federal laws;

(ii) The action would be consistent with the current forest land and resource management plan;

(iii) The management objectives which led the Forest Service to require the inclusion of the stipulation in the lease can be met without restricting operations in the manner provided for by the stipulation given the change in the present condition of the surface resources involved, or given the nature, location, timing, or design of the proposed operations; and

(iv) The action is acceptable to the authorized Forest officer based upon a review of the environmental consequences.

(c) *Other agency stipulations.* If a stipulation was included in a lease by the Forest Service at the request of another agency, the authorized Forest officer shall consult with that agency prior to authorizing modification, waiver, or exception.

(d) *Notice of decision.* (1) When the review of a stipulation modification, waiver, or exception request has been completed and the authorized Forest officer has reached a decision, the authorized Forest officer shall promptly notify the operator and the appropriate Bureau of Land Management office, in writing, of the decision to grant, or grant with additional conditions, or deny the request.

(2) Any decision to modify, waive, or grant an exception to a lease stipulation shall be subject to administrative appeal only in conjunction with an appeal of a decision on a surface use plan of operation or supplemental surface use plan of operation.

Authorization of Occupancy Within a Leasehold

§ 228.105 Issuance of onshore orders and notices to lessees.

(a) *Onshore oil and gas orders.* The Chief of the Forest Service may issue, or cosign with the Director, Bureau of Land Management, Onshore Oil and Gas Orders necessary to implement and supplement the regulations of this subpart.

(1) *Adoption of Onshore Oil and Gas Order No. 1.* Until such time as another order is adopted and codified in the CFR, operators shall submit surface use plans of operations in accordance with Section III.G.4(b), Guidelines for preparing surface use program, of the Department of the Interior, Bureau of Land Management, Onshore Oil and Gas Order No. 1, 48 FR 48915–30 (Oct. 21, 1983), published as Appendix A to this subpart.

(2) *Adoption of additional onshore oil and gas orders.* Additional onshore oil and gas orders shall be published in the **Federal Register** for public comment and codified in the CFR.

(3) *Applicability of onshore oil and gas orders.* Onshore Oil and Gas Orders issued pursuant to this section are binding on all operations conducted on National Forest System lands, unless otherwise provided therein.

(b) *Notices to lessees, transferees, and operators.* The authorized Forest officer may issue, or cosign with the authorized officer of the Bureau of Land Management, Notices to Lessees, Transferees, and Operators necessary to implement the regulations of this subpart. Notices to Lessees, Transferees, and Operators are binding on all operations conducted on the administrative unit of the National Forest System (36 CFR 200.2) supervised by the authorized Forest officer who issued or cosigned such notice.

§ 228.106 Operator's submission of surface use plan of operations.

(a) *General.* No permit to drill on a Federal oil and gas lease for National Forest System lands may be granted without the analysis and approval of a surface use plan of operations covering proposed surface disturbing activities. An operator must obtain an approved surface use plan of operations before conducting operations that will cause surface disturbance. The operator shall submit a proposed surface use plan of operations as part of an Application for a Permit to Drill to the appropriate Bureau of Land Management office for forwarding to the Forest Service, unless otherwise directed by the Onshore Oil and Gas Order in effect when the proposed plan of operations is submitted.

(b) *Preparation of plan.* In preparing a surface use plan of operations, the operator is encouraged to contact the local Forest Service office to make use of such information as is available from the Forest Service concerning surface resources and uses, environmental considerations, and local reclamation procedures.

(c) *Content of plan.* The type, size, and intensity of the proposed operations and the sensitivity of the surface resources that will be affected by the proposed operations determine the level of detail and the amount of information which the operator includes in a proposed plan of operations. However, any surface use plan of operations submitted by an operator shall contain the information specified by the Onshore Oil and Gas Order in effect when the surface use plan of operations is submitted.

(d) *Supplemental plan.* An operator must obtain an approved supplemental surface use plan of operations before conducting any surface disturbing operations that are not authorized by a current approved surface use plan of operations. The operator shall submit a proposed supplemental surface use plan of operations to the appropriate Bureau of Land Management office for forwarding to the Forest Service, unless otherwise directed by the Onshore Oil and Gas Order in effect when the proposed supplemental plan of operations is submitted. The supplemental plan of operations need only address those operations that differ from the operations authorized by the current approved surface use plan of operations. A supplemental plan is otherwise subject to the same requirements under this subpart as an initial surface use plan of operations.

§ 228.107 Review of surface use plan of operations.

(a) *Review.* The authorized Forest officer shall review a surface use plan of operations as promptly as practicable given the nature and scope of the proposed plan. As part of the review, the authorized Forest officer shall comply with the National Environmental Policy Act of 1969, implementing regulations at 40 CFR Parts 1500–1508, and the Forest Service implementing policies and procedures set forth in Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15 and shall ensure that:

(1) The surface use plan of operations is consistent with the lease, including the lease stipulations, and applicable Federal laws;

(2) To the extent consistent with the rights conveyed by the lease, the surface use plan of operations is consistent with, or is modified to be consistent with, the applicable current approved forest land and resource management plan;

(3) The surface use plan of operations meets or exceeds the surface use requirements of § 228.108 of this subpart; and

(4) The surface use plan of operations is acceptable, or is modified to be acceptable, to the authorized Forest officer based upon a review of the environmental consequences of the operations.

(b) *Decision.* The authorized Forest officer shall make a decision on the approval of a surface use plan of operations as follows:

(1) If the authorized Forest officer will not be able to make a decision on the proposed plan within 3 working days after the conclusion of the 30-day notice period provided for by 30 U.S.C. 226(f), the authorized Forest officer shall advise the appropriate Bureau of Land Managemnt office and the operator as soon as such delay becomes apparent, either in writing or orally with subsequent written confirmation, that additional time will be needed to process the plan. The authorized Forest officer shall explain the reason why additional time is needed and project the date by which a decision on the plan will likely be made.

(2) When the review of a surface use plan of operations has been completed, the authorized Forest officer shall promptly notify the operator and the appropriate Bureau of Land Management office, in writting, that:

(i) The plan is approved as submitted:

(ii) The plan is approved subject to specified conditions; or,

(iii) The plan is disapproved for the reasons stated.

(c) *Notice of decision.* The authorized Forest officer shall give public notice of the decision on a pan and include in the notice that the decision is subject to appeal under the administrative appeal procedures at 36 CFR parts 217 and 251, subpart C.

(d) *Transmittal of decision.* The authorized Forest officer shall immediately forward a decision on a surface use plan of operations to the appropriate Bureau of Land Management office and the operator. This transmittal shall include the estimated cost of reclamation and restoration (§ 228.109(a)) if the authorized Forest officer believes that additional bonding is required.

(e) *Supplemental plans.* A supplemental surface use plan of operations (§ 228.106(d)) shall be reviewed in the same manner as an initial surface use plan of operations.

§ 228.108 Surface use requirements.

(a) *General.* The operator shall conduct operations on a leasehold on National Forest System lands in a manner that minimizes effects on surface resources, prevents unnecessary

or unreasonable surface resource disturbance, and that is in compliance with the other requirements of this section.

(b) *Notice of operations.* The operator must notify the authorized Forest officer 48 hours prior to commencing operations or resuming operations following their temporary cessation (§ 228.111).

(c) *Access facilities.* The operator shall construct and maintain access facilities to assure adequate drainage and to minimize or prevent damage to surface resources.

(d) *Cultural and historical resources.* The operator shall report findings of cultural and historical resources to the authorized Forest officer immediately and, except as otherwise authorized in an approved surface use plan of operations, protect such resources.

(e) *Fire prevention and control.* To the extent practicable, the operator shall take measures to prevent uncontrolled fires on the area of operation and to suppress uncontrolled fires resulting from the operations.

(f) *Fisheries, wildlife and plant habitat.* The operator shall comply with the requirements of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR chapter IV), and, except as otherwise provided in an approved surface use plan of operations, conduct operations in such a manner as to maintain and protect fisheries, wildlife, and plant habitat.

(g) *Reclamation.* (1) Unless otherwise provided in an approved surface use plan of operations, the operator shall conduct reclamation concurrently with other operations.

(2) Within 1 year of completion of operations on a portion of the area of operation, the operator must reclaim that portion, unless a different period of time is approved in writing by the authorized Forest officer.

(3) The operator must:

(i) Control soil erosion and landslides;

(ii) Control water runoff;

(iii) Remove, or control, solid wastes, toxic substances, and hazardous substances;

(iv) Reshape and revegetate disturbed areas;

(v) Remove structures, improvements, facilities and equipment, unless otherwise authorized; and

(vi) Take such other reclamation measures as specified in the approved surface use plan of operations.

(h) *Safety measures.* (1) The operator must maintain structures, facilities, improvements, and equipment located on the area of operation in a safe and neat manner and in accordance with an approved surface use plan of operations.

(2) The operator must take appropriate measures in accordance with applicable Federal and State laws and regulations to protect the public from hazardous sites or conditions resulting from the operations. Such measures may include, but are not limited to, posting signs, building fences, or otherwise identifyng the hazardous site or condition.

(i) *Wastes.* The operator must either remove garbage, refuse, and sewage from National Forest System lands or treat and dispose of that material in such a manner as to minimize or prevent adverse impacts on surface resources. The operator shall treat or dispose of produced water, drilling fluid, and other waste generated by the operations in such a manner as to minimize or prevent adverse impacts on surface resources.

(j) *Watershed protection.* (1) Except as otherwise provided in the approved surface use plan of operations, the operator shall not conduct operations in areas subject to mass soil movement, riparian areas and wetlands.

(2) The operator shall take measures to minimize or prevent erosion and sediment production. Such measures include, but are not limited to, siting structures, facilities, and other improvements to avoid steep slopes and excessive clearing of land.

§ 228.109 Bonds.

(a) *General.* As part of the review of a proposed surface use plan of operations, the authorized Forest officer shall consider the estimated cost to the Forest Service to reclaim those areas that would be disturbed by operations and to restore any lands or surface waters adversely affected by the lease operations after the abandonment or cessation of operations on the lease. If at any time prior to or during the conduct of operations, the authorized Forest officer determines the financial instrument held by the Bureau of Land Management is not adequate to ensure complete and timely reclamation and restoration, the authorized Forest officer shall give the operator the option of either increasing the financial instrument held by the Bureau of Land Management or filing a separate instrument with the Forest Service in the amount deemed adequate by the authorizd Forest officer to ensure reclamation and restoration.

(b) *Standards for estimating reclamation costs.* The authorized Forest officer shall consider the costs of the operator's proposed reclamation program and the need for additional measures to be taken when estimating the cost to the Forest Service to reclaim the disturbed area.

(c) *Release of reclamation liability.* An operator may request the authorized Forest officer to notify the Bureau of Land Management of reduced reclamation liability at any time after reclamation has commenced. The authorized Forest officer shall, if appropriate, notify the Bureau of Land Management as to the amount to which the liability has been reduced.

§ 228.110 Indemnification.

The operator and, if the operator does not hold all of the interest in the applicable lease, all lessees and transferees are jointly and severally liable in accordance with Federal and State laws for indemnifying the United States for:

(a) Injury, loss or damage, including fire suppression costs, which the United States incurs as a result of the operations; and

(b) Payments made by the United States in satisfaction of claims, demands or judgments for an injury, loss or damage, including fire suppression costs, which result from the operations.

Administration of Operations

§ 228.111 Temporary cessation of operations.

(a) *General.* As soon as it becomes apparent that there will be a temporary cessation of operations for a period of 45 days or more, the operator must verbally notify and subsequently file a statement with the authorized Forest officer verifying the operator's intent to maintain structures, facilities, improvements, and equipment that will remain on the area of operation during the cessation of operations, and specifying the expected date by which operations will be resumed.

(b) *Seasonal shutdowns.* The operator need not file the statement required by paragraph (a) of this section if the cessation of operations results from seasonally adverse weather conditions and the operator will resume operations promptly upon the conclusion of those adverse weather conditions.

(c) *Interim measures.* The authorized Forest officer may require the operator to take reasonable interim reclamation or erosion control measures to protect surface resources during temporary cessations of operations, including during cessations of operations resulting from seasonally adverse weather conditions.

§ 228.112 Compliance and inspection.

(a) *General.* Operations must be conducted in accordance with the lease, including stipulations made part of the lease at the direction of the Forest

Service, an approved surface use plan of operations, the applicable Onshore Oil and Gas Order (§ 228.105(a)), an applicable Notice to lessees, transferees, and operators (§ 228.105(b)), and regulations of this subpart.

(b) *Completion of reclamation.* The authorized Forest officer shall give prompt written notice to an operator whenever reclamation of a portion of the area affected by surface operations has been satisfactorily completed in accordance with the approved surface use plan of operations and § 228.108 of this subpart. The notice shall describe the portion of the area on which the reclamation has been satisfactorily completed.

(c) *Compliance with other statutes and regulations.* Nothing in this subpart shall be construed to relieve an operator from complying with applicable Federal and State laws or regulations, including, but not limited to:

(1) Federal and State air quality standards, including the requirements of the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*);

(2) Federal and State water quality standards, including the requirements of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 *et seq.*);

(3) Federal and State standards for the use or generation of solid wastes, toxic substances and hazardous substances, including the requirements of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 *et seq.*, and its implementing regulations, 40 CFR chapter I, subchapter J, and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, and its implementing regulations, 40 CFR chapter I, subchaper I;

(4) The Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, and its implementing regulations, 50 CFR chapter IV;

(5) The Archeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa *et seq.*) and its implementing regulations 36 CFR part 296;

(6) The Mineral Leasing Act of 1920, 30 U.S.C. 1981 et seq., the Mineral Leasing Act of Acquired Lands of 1947, 30 U.S.C. 351 *et seq.*, the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.*, and their implementing regulations, 43 CFR chapter II, group 3100; and

(7) Applicable Onshore Oil and Gas Orders and Notices to Lessees and Operators (NTL's) issued by the United States Department of the Interior, Bureau of Land Management pursuant to 43 CFR chapter II, part 3160, subpart 3164.

(d) *Penalties.* If surface disturbing operations are being conducted that are not authorized by an approved surface use plan of operations or that violate a term or operating condition of an approved surface use plan of operations, the person conducting those operations is subject to the prohibitions and attendant penalties of 36 CFR part 261.

(e) *Inspection.* Forest Service officers shall periodically inspect the area of operations to determine and document whether operations are being conducted in compliance with the regulations in this subpart, the stipulations included in the lease at the direction of the Forest Service, the approved surface use plan of operations, the applicable Onshore Oil and Gas Order, and applicable Notices to Lessees, Transferees, and Operators.

§ 228.113 Notice of noncompliance.

(a) *Issuance.* When an authorized Forest officer finds that the operator is not in compliance with a reclamation or other standard, a stipulation included in a lease at the direction of the Forest Service, an approved surface use plan of operation, the regulations in this subpart, the applicable onshore oil and gas order, or an applicable notice to lessees, transferees, and operators, the authorized Forest officer shall issue a notice of noncompliance.

(1) *Content.* The notice of noncompliance shall include the following:

(i) Identification of the reclamation requirements or other standard(s) with which the operator is not in compliance;

(ii) Description of the measures which are required to correct the noncompliance;

(iii) Specification of a reasonable period of time within which the noncompliance must be corrected;

(iv) If the noncompliance appears to be material, identification of the possible consequences of continued noncompliance of the requirement(s) or standard(s) as described in 30 U.S.C. 226(g);

(v) If the noncompliance appears to be in violation of the prohibitions set forth in 36 CFR part 261, identification of the possible consequences of continued noncompliance of the requirement(s) or standard(s) as described in 36 CFR 261.1b; and

(vi) Notification that the authorized Forest officer remains willing and desirous of working cooperatively with the operator to resolve or remedy the noncompliance.

(2) *Extension of deadlines.* The operator may request an extension of a deadline specified in a notice of noncompliance if the operator is unable to come into compliance with the applicable requirement(s) or standard(s) identified in the notice of noncompliance by the deadline because of conditions beyond the operator's control. The authorized Forest officer shall not extend a deadline specified in a notice of noncompliance unless the operator requested an extension and the authorized Forest officer finds that there was a condition beyond the operator's control, that such condition prevented the operator from complying with the notice of noncompliance by the specified deadline, and that the extension will not adversely affect the interests of the United States. Conditions which may be beyond the operator's control include, but are not limited to, closure of an area in accordance with 36 CFR part 261, subparts B or C, or inaccessibility of an area of operations due to such conditions as fire, flooding, or snowpack.

(3) *Manner of service.* The authorized Forest officer shall serve a notice of noncompliance or a decision on a request for extension of a deadline specified in a notice upon the operator in person, by certified mail or by telephone. However, if notice is initially provided in person or by telephone, the authorized Forest officer shall send the operator written confirmation of the notice or decision by certified mail.

(b) *Failure to come into compliance.* If the operator fails to come into compliance with the applicable requirement(s) or standard(s) identified in a notice of noncompliance by the deadline specified in the notice, or an approved extension, the authorized Forest officer shall decide whether: The noncompliance appears to be material given the reclamation requirements and other standards applicable to the lease established by 30 U.S.C. 226(g), the regulations in this subpart, the stipulations included in a lease at the direction of the Forest Service, an approved surface use plan of operations, the applicable Onshore Oil and Gas Order, or an applicable Notice to lessees, transferees, and operators; the noncompliance is likely to result in danger to public health or safety or irreparable resource damage; and the noncompliance is resulting in an emergency.

(1) *Referral to compliance officer.* When the operations appear to be in material noncompliance, the authorized Forest officer shall promptly refer the matter to the compliance officer. The referral shall be accompanied by a complete statement of the facts supported by appropriate exhibits.

Apparent material noncompliance includes, but is not limited to, operating without an approved surface use plan of operations, conducting operations that have been suspended, failure to timely complete reclamation in accordance with an approved surface use plan of operations, failure to maintain an additional bond in the amount required by the authorized Forest officer during the period of operation, failure to timely reimburse the Forest Service for the cost of abating an emergency, and failing to comply with any term included in a lease, stipulation, or approved surface use plan of operations, the applicable onshore oil and gas order, or an applicable Notice to lessees, transferees, and operators, relating to the protection of a threatened or endangered species.

(2) *Suspension of operations.* When the noncompliance is likely to result in danger to public health or safety or in irreparable resource damage, the authorized Forest officer shall suspend the operations, in whole or in part.

(i) A suspension of operations shall remain in effect until the authorized Forest officer determines that the operations are in compliance with the applicable requirement(s) or standard(s) identified in the notice of noncompliance.

(ii) The authorized Forest officer shall serve decisions suspending operations upon the operator in person, by certified mail, or by telephone. If notice is initially provided in person or by telephone, the authorized Forest officer shall send the operator written confirmation of the decision by certified mail.

(iii) The authorized Forest officer shall immediately notify the appropriate Bureau of Land Management office when an operator has been given notice to suspend operations.

(3) *Abatement of emergencies.* When the noncompliance is resulting in an emergency, the authorized Forest officer may take action as necessary to abate the emergency. The total cost to the Forest Service of taking actions to abate an emergency becomes an obligation of the operator.

(i) Emergency situations include, but are not limited to, imminent dangers to public health or safety or irreparable resource damage.

(ii) The authorized Forest officer shall promptly serve a bill for such costs upon the operator by certified mail.

§ 228.114 Material noncompliance proceedings.

(a) *Evaluation of referral.* The compliance officer shall promptly evaluate a referral made by the authorized Forest officer pursuant to § 228.113(b)(1) of this subpart.

(b) *Dismissal of referral.* The compliance officer shall dismiss the referral if the compliance officer determines that there is not adequate evidence to support a reasonable belief that:

(1) The operator was not in compliance with the applicable requirement(s) or standard(s) identified in a notice of noncompliance by the deadline specified in the notice, or an extension approved by the authorized Forest officer; or

(2) The noncompliance with the applicable requirement(s) or standard(s) identified in the notice of noncompliance may be material.

(c) *Initiation of proceedings.* The compliance officer shall initiate a material noncompliance proceeding if the compliance officer agrees that there is adequate evidence to support a reasonable belief that an operator has failed to come into compliance with the applicable requirement(s) or standard(s) identified in a notice of noncompliance by the deadline specified in the notice, or extension approved by the authorized Forest officer, and that the noncompliance may be material.

(1) *Notice of proceedings.* The compliance officer shall inform the lessee and operator of the material noncompliance proceedings by certified mail, return receipt requested.

(2) *Content of notice.* The notice of the material noncompliance proceeding shall include the following:

(i) The specific reclamation requirement(s) or other standard(s) of which the operator may be in material noncompliance;

(ii) A description of the measures that are required to correct the violation;

(iii) A statement that if the compliance officer finds that the operator is in material noncompliance with a reclamation requirement or other standard applicable to the lease, the Secretary of the Interior will not be able to issue new leases or approve new transfers of leases to the operator, any subsidiary or affiliate of the operator, or any person controlled by or under common control with the operator until the compliance officer finds that the operator has come into compliance with such requirement or standard; and

(iv) A recitation of the specific procedures governing the material noncompliance proceeding set forth in paragraphs (d) through (g) of this section.

(d) *Answer.* Within 30 calendar days after receiving the notice of the proceeding, the operator may submit, in person, in writing, or through a representative, an answer containing information and argument in opposition to the proposed material noncompliance finding, including information that raises a genuine dispute over the material facts. In that submission, the operator also may:

(1) Request an informal hearing with the compliance officer; and

(2) Identify pending administrative or judicial appeal(s) which are relevant to the proposed material noncompliance finding and provide information which shows the relevance of such appeal(s).

(e) *Informal hearing.* If the operator requests an informal hearing, it shall be held within 20 calendar days from the date that the compliance officer receives the operator's request.

(1) The compliance officer may postpone the date of the informal hearing if the operator requests a postponement in writing.

(2) At the hearing, the operator, appearing personally or through an attorney or another authorized representative, may informally present and explain evidence and argument in opposition to the proposed material noncompliance finding.

(3) A transcript of the informal hearing shall not be required.

(f) *Additional procedures as to disputed facts.* If the compliance officer finds that the answer raises a genuine dispute over facts essential to the proposed material noncompliance finding, the compliance officer shall so inform the operator by certified mail, return receipt requested. Within 10 days of receiving this notice, the operator may request a fact-finding conference on those disputed facts.

(1) The fact-finding conference shall be scheduled within 20 calendar days from the date the compliance officer receives the operator's request, unless the operator and compliance officer agree otherwise.

(2) At the fact-finding conference, the operator shall have the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront the person(s) the Forest Service presents.

(3) A transcribed record of the fact-finding conference shall be made, unless the operator and the compliance officer by mutual agreement waive the requirement for a transcript. The transcript will be made available to the operator at cost upon request.

(4) The compliance officer may preside over the fact-finding conference or designate another authorized Forest officer to preside over the fact-finding conference.

(5) Following the fact-finding conference, the authorized Forest officer who presided over the conference shall promptly prepare written findings of fact based upon the preponderance of the evidence. The compliance officer may reject findings of fact prepared by another authorized Forest officer, in whole or in part, if the compliance officer specifically determines that such findings are arbitrary and capricious or clearly erroneous.

(g) *Dismissal of proceedings.* The compliance officer shall dismiss the material noncompliance proceeding if, before the compliance officer renders a decision pursuant to paragraph (h) of this section, the authorized Forest officer who made the referral finds that the operator has come into compliance with the applicable requirements or standards identified in the notice of proceeding.

(h) *Compliance officer's decision.* The compliance officer shall base the decision on the entire record, which shall consist of the authorized Forest officer's referral and its accompanying statement of facts and exhibits, information and argument that the operator provided in an answer, any information and argument that the operator provided in an informal hearing if one was held, and the findings of fact if a fact-finding conference was held.

(1) *Content.* The compliance officer's decision shall state whether the operator has violated the requirement(s) or standard(s) identified in the notice of proceeding and, if so, whether that noncompliance is material given the requirements of 30 U.S.C. 226(g), the stipulations included in the lease at the direction of the Forest Service, the regulations in this subpart or an approved surface use plan of operations, the applicable onshore oil and gas order, or an applicable notice to lessees, transferees, and operators. If the compliance officer finds that the operator is in material noncompliance, the decision also shall:

(i) Describe the measures that are required to correct the violation;

(ii) Apprise the operator that the Secretary of the Interior is being notified that the operator has been found to be in material noncompliance with a reclamation requirement or other standard applicable to the lease; and

(iii) State that the decision is the final administrative determination of the Department of Agriculture.

(2) *Service.* The compliance officer shall serve the decision upon the operator by certified mail, return receipt requested. If the operator is found to be in material noncompliance, the compliance officer also shall immediately send a copy of the decision to the appropriate Bureau of Land Management office and to the Secretary of the Interior.

(i) *Petition for withdrawal of finding.* If an operator who has been found to be in material noncompliance under the provisions of this section believes that the operations have subsequently come into compliance with the applicable requirement(s) or standard(s) identified in the compliance officer's decision, the operator may submit a written petition requesting that the material noncompliance finding be withdrawn. The petition shall be submitted to the authorized Forest officer who issued the operator the notice of noncompliance under § 228.113(a) of this subpart and shall include information or exhibits which shows that the operator has come into compliance with the requirement(s) or standard(s) identified in the compliance officer's decision.

(1) *Response to petition.* Within 30 calendar days after receiving the operator's petition for withdrawal, the authorized Forest officer shall submit a written statement to the compliance officer as to whether the authorized Forest officer agrees that the operator has come into compliance with the requirement(s) or standard(s) identified in the compliance officer's decision. If the authorized Forest officer disagrees with the operator, the written statement shall be accompanied by a complete statement of the facts supported by appropriate exhibits.

(2) *Additional procedures as to disputed material facts.* If the compliance officer finds that the authorized Forest officer's response raises a genuine dispute over facts material to the decision as to whether the operator has come into compliance with the requirement(s) or standard(s) identified in the compliance officer's decision, the compliance officer shall so notify the operator and authorized Forest officer by certified mail, return receipt requested. The notice shall also advise the operator that the fact finding procedures specified in paragraph (f) of this section apply to the compliance officer's decision on the petition for withdrawal.

(3) *Compliance officer's decision.* The compliance officer shall base the decision on the petition on the entire record, which shall consist of the operator's petition for withdrawal and its accompanying exhibits, the authorized Forest officer's response to the petition and, if applicable, its accompanying statement of facts and exhibits, and if a fact-finding conference was held, the findings of fact. The compliance officer shall serve the decision on the operator by certified mail.

(i) If the compliance officer finds that the operator remains in violation of requirement(s) or standard(s) identified in the decision finding that the operator was in material noncompliance, the decision on the petition for withdrawal shall identify such requirement(s) or standard(s) and describe the measures that are required to correct the violation(s).

(ii) If the compliance officer finds that the operator has subsequently come into compliance with the requirement(s) or standard(s) identified in the compliance officer's decision finding that the operator was in material noncompliance, the compliance officer also shall immediately send a copy of the decision on the petition for withdrawal to the appropriate Bureau of Land Management office and notify the Secretary of the Interior that the operator has come into compliance.

(j) *List of operators found to be in material noncompliance.* The Deputy Chief, National Forest System, shall compile and maintain a list of operators who have been found to be in material noncompliance with reclamation requirements and other standards as provided in 30 U.S.C. 226(g), the regulations in this subpart, a stipulation included in a lease at the direction of the Forest Service, or an approved surface use plan of operations, the applicable onshore oil and gas order, or an applicable notice to lessees, transferees, and operators, for a lease on National Forest System lands to which such standards apply. This list shall be made available to Regional Foresters, Forest Supervisors, and upon request, members of the public.

§ 228.115 Additional notice of decisions.

(a) The authorized Forest officer shall promptly post notices provided by the Bureau of Land Management of:

(1) Competitive lease sales which the Bureau plans to conduct that include National Forest System lands;

(2) Substantial modifications in the terms of a lease which the Bureau proposes to make for leases on National Forest System lands; and

(3) Applications for permits to drill which the Bureau has received for leaseholds located on National Forest System lands.

(b) The notice shall be posted at the offices of the affected Forest Supervisor and District Ranger in a prominent location readily accessible to the public.

(c) The authorized Forest officer shall keep a record of the date(s) the notice

was posted in the offices of the affected Forest Supervisor and District Ranger.

(d) The posting of notices required by this section are in addition to the requirements for public notice of decisions provided in § 228.104(d) (Notice of decision) and § 228.107(c) (Notice of decision) of this subpart.

§ 228.116 Information collection requirements.

(a) *Sections containing information requirements.* The following sections of this subpart contain information requirements as defined in 5 CFR part 1320 and have been approved for use by the Office of Management and Budget:

(1) Section 228.104(a) Requests to Modify, Waive, or Grant Exceptions to Leasing Stipulations;

(2) Section 228.106 (a), (c), and (d) Submission of Surface Use Plan of Operations;

(3) Section 228.109(c) Request for Reduction in Reclamation Liability after Reclamation;

(4) Section 228.111(a) Notice of Temporary Cessation of Operations;

(5) Section 228.113(a)(2) Extension of Deadline in Notice of Noncompliance; and

(6) Section 228.114 (c) through (i) Material Noncompliance Proceedings.

(b) *OMB control number.* The information requirements listed in paragraph (a) of this section have been assigned OMB Control No. 0596–0101.

(c) *Average estimated burden hours.* (1) The average burden hours per response are estimated to be:

(i) 5 minutes for the information requirements in § 228.104(a) of this subpart;

(ii) No additional burden hours required to meet the information requirements in § 228.106 (a), (c), and (d) of this subpart;

(iii) 10 minutes for the information requirements in § 228.109(c) of this subpart;

(iv) 10 minutes for the information requirements in § 228.111(a) of this subpart;

(v) 5 minutes for the information requirements in § 228.113(a)(2) of this subpart; and

(vi) 2 hours for the information requirements in § 228.114 (c) through (i) of this subpart.

(2) Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief (2800), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Appendix A to Subpart E—Guidelines for Preparing Surface Use Plans of Operation for Drilling

I. Components of a Complete Application for Permit to Drill

(a) Guidelines for Preparing Surface Use Program. In preparing this program, the lessee or operator shall submit maps, plats, and narrative descriptions which adhere closely to the following (maps and plats should be of a scale no smaller than 1:24,000 unless otherwise stated below):

(1) *Existing Roads.* A legible map (USGS topographic, county road, Alaska Borough, or other such map), labeled and showing the access route to the location, shall be used for locating the proposed well site in relation to a town (village) or other locatable point, such as a highway or county road, which handles the majority of the through traffic to the general area. The proposed route to the location, including appropriate distances from the point where the access route exits established roads, shall be shown. All access roads shall be appropriately labeled. Any plans for improvement and/or a statement that existing roads will be maintained in the same or better condition shall be provided. Existing roads and newly constructed roads on surface under the jurisdiction of a Surface Management Agency shall be maintained in accordance with the standards of the Surface Management Agency.

Information required by items (2), (3), (4), (5), (6), and (8) of this subsection also may be shown on this map if appropriately labeled or on a separate plat or map.

(2) *Access Roads to Be Constructed and Reconstructed.* All permanent and temporary access roads that are to be constructed, or reconstructed, in connection with the drilling of the proposed well shall be appropriately identified and submitted on a map or plat. Width, maximum grade, major cuts and fills, turnouts, drainage design, location and size of culverts and/or bridges, fence cuts and/or cattleguards, and type of surfacing material, if any, shall be stated for all construction. In addition, where permafrost exists, the methods for protection from thawing must be indicated. Modification of proposed road design may be required during the onsite inspection.

Information also should be furnished to indicate where existing facilities may be altered or modified. Such facilities include gates, cattleguards, culverts, and bridges which, if installed or replaced, shall be designed to adequately carry anticipated loads.

(3) *Location of Existing Wells.* It is recommended that this information be submitted on a map or plat and include all wells (water, injection or disposal, producing, and drilling) within a 1-mile radius of the proposed location.

(4) *Location of Existing and/or Proposed Facilities if Well is Productive.*

(i) On well pad—A map or plat shall be included showing, to the extent known or anticipated, the location of all production facilities and lines to be installed if the well is successfully completed for production.

(ii) Off well pad—A map or plat shall be included showing to the extent known or anticipated, the existing or new production facilities to be utilized and the lines to be installed if the well is successfully completed for production. If new construction, the dimensions of the facility layout are to be shown.

If the information required under (a) or (b) above is not known and cannot be accurately presented and the well subsequently is completed for production, the operator shall then comply with section IV of this Order.

(5) *Location and Type of Water Supply (Rivers, Creeks, Springs, Lakes, Ponds, and Wells).* This information may be shown by quarter-quarter section on a map or plat, or may be a written description. The source and transportation method for all water to be used in drilling the proposed well shall be noted if the source is located on Federal or Indian lands or if water is to be used from a Federal or Indian project. If the water is obtained from other than Federal or Indian lands, only the location need be identified. Any access roads crossing Federal or Indian lands that are needed to haul the water shall be described in items G.4.b. (1) and (2), as appropriate. If a water supply well is to be drilled on the lease, it shall be so stated under this item, and the authorized officer of the BLM may require the filing of a separate APD.

(6) *Construction Materials.* The lessee or operator shall state the character and intended use of all construction materials such as sand, gravel, stone and soil material. If the materials to be used are Federally-owned, the proposed source shall be shown by either quarter-quarter section on a map or plat, or a written description. The use of materials under BLM jurisdiction is governed by 43 CFR 3610.2–3. The authorized officer shall inform the lessee or operator if the materials may be used free of charge or if an application for sale is required. If the materials to be used are Indian owned or under the jurisdiction of any Surface Management Agency other than BLM, the specific tribe and or Area Superintendent of BIA, or the appropriate Surface Management Agency office shall be contacted to determine the appropriate procedure for use of the materials.

(7) *Methods for Handling Waste Disposal.* A written description shall be given of the methods and locations proposed for safe containment and disposal of each type of waste material (e.g., cuttings, garbage, salts, chemicals, sewage, etc.) that results from the drilling of the proposed well. Likewise, the narrative shall include plans for the eventual disposal of drilling fluids and any produced oil or water recovered during testing operations.

(8) *Ancillary Facilities.* The plans, or subsequent amendments to such plans, shall identify all ancillary facilities such as camps and airstrips as to their location, land area required, and the methods and standards to be employed in their construction. Such facilities shall be shown on a map or plat. The approximate center of proposed camps and the center line of airstrips shall be staked on the ground.

(9) *Well Site Layout.* A plat of suitable scale (not less than 1 inch = 50 feet) showing

the proposed drill pad and its location with respect to topographic features is required. Cross section diagrams of the drill pad showing any cuts and fills and the relation to topography are also required. The plat shall also include the approximate proposed location of the reserve and burn pits, access roads onto the pad, turnaround areas, parking area, living facilities, soil material stockpiles, and the orientation of the rig with respect to the pad and other facilities. Plans, if any to line the reserve pit should be detailed.

(10) *Plans for Reclamation of the Surface.* The program for surface reclamation upon completion of the operation, such as configuration of the reshaped topography, drainage system, segregation of spoil materials, surface manipulations, waste disposal, revegetation methods, and soil treatments, plus other practices necessary to reclaim all disturbed areas, including any access roads or portions of well pads when no longer needed, shall be stated. An estimate of the time for commencement and completion of reclamation operations, dependent on weather conditions and other local uses of the area, shall be provided.

(11) *Surface Ownership.* The surface ownership (Federal, Indian, State or private) at the well location, and for all lands crossed by roads which are to be constructed or upgraded, shall be indicated. Where the surface of the well site is privately owned, the operator shall provide the name, address, and telephone number of the surface owner, unless previously provided.

(12) *Other Information.* The lessee or operator is encouraged to submit any additional information that may be helpful in processing the application.

(13) *Lessee's or Operator's Representative and Certification.* The name, address, and telephone number of the lessee's or operator's field representative shall be included. The lessee or operator submitting the APD shall certify as follows:

I hereby certify that I, or persons under my direct supervision, have inspected the proposed drill site and access route; that I am familiar with the conditions which currently exist; that the statements made in this plan are, to the best of my knowledge, true and correct; and that the work associated with operations proposed herein will be performed by _____ and its contractors and subcontractors in conformity with this plan and the terms and conditions under which it is approved. This statement is subject to the provisions of 18 U.S.C. 1001 for the filing of a false statement.

Date _____

Name and Title _____

PART 261—PROHIBITIONS

3. The authority citation for part 261 continues to read as follows:

Authority: 16 U.S.C. 551; 16 U.S.C. 472; 7 U.S.C. 1011(f); 16 U.S.C. 1246(i); 16 U.S.C. 1133(c)-(d)(1).

Subpart A—General Prohibitions

4. Amend § 261.2 by adding a new definition in alphabetical sequence to read as follows:

§ 261.2 Definitions.

* * * * *

"*Operating plan*" means a plan of operations as provided for in 36 CFR part 228, subpart A, and a surface use plan of operations as provided for in 36 CFR part 228, subpart E.

* * * * *

[FR Doc. 90-6244 Filed 3-20-90; 8:45 am]

BILLING CODE 3410-11-M

POSTAL SERVICE

39 CFR Parts 775 and 776

Amendments to Environmental Procedures and Procedures for Floodplain Management and Protection of Wetlands

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The rule amends part 775 to clarify, update, and in some respects extend the situations in which the Postal Service does not prepare environmental assessments under its facilities program. The revised exclusions draw on experiences over the past five years with numerous facility projects and accommodate new acquisition techniques such as advance site acquisitions.

Certain changes are also made in the Postal Service's facility planning procedures for floodplains and wetlands (part 776), but these changes do not change the scope or level of review required.

EFFECTIVE DATE: April 20, 1990.

FOR FURTHER INFORMATION CONTACT: Edward Wandelt, (202) 268-3135.

SUPPLEMENTARY INFORMATION: On August 22, 1989, the Postal Service published for comment a proposed rule amending its facility planning procedures concerning the circumstances in which environmental assessments are done and updating terminology and other minor details of wetlands regulations. The changes are explained in detail in the preamble published with the proposed rule. The proposed amendments are now adopted with minor corrections and adjustments.

Comments on the proposed rule were received from the Federal Emergency Management Agency (FEMA) and the Council on Environmental Quality (CEQ). FEMA posed two questions about the regulations. FEMA pointed out that floodplain review requirements will still apply to facility projects receiving categorical exclusion from the preparation of an Environmental Assessment under the revised procedures, and asked how those projects will be picked up for review. Under Postal Service procedures, all facility construction projects no matter how large or small, including those excluded from having an Environmental Assessment prepared, require a floodplain evaluation pursuant to 39 CFR 776.3.

FEMA also pointed out that action to identify and minimize harmful impacts is required when building in a floodplain is found necessary, and asked about the meaning of § 776.5(h) when it says that the Facilities Service Center Director "may provide instructions for mandatory measures to be accomplished during design and construction to minimize harm to the floodplain or wetland." The permissive part of this language relates only to the content of instructions issued by the particular official indicated, the Director. Sections 776.5(b)(5) and 776.5(j) specifically require that minimization measures be included as part of the project design in the case of facilities in or affecting floodplains or wetlands.

The Postal Service received a response from the Council on Environmental Quality (CEQ), commenting on several aspects of the proposed rule. These comments are addressed in the following paragraphs.

Square footage. Several of CEQ's comments are related to categorical exclusions that apply to actions involving buildings of a size smaller than a stated number of net interior square feet. First, CEQ requested that the Postal Service address the relationship between square footage of structures and potential for environmental impacts, in order to provide further substantiation for the revised list of categorical exclusions.

Although the proposed rule extends a threshold based upon square footage to additional categorical exclusions, the concept of categorical exclusions limited by interior net square feet is not new to the regulations. Current categorical exclusions for new construction (§ 775.4(b)(1)), expansion and improvement projects (§ 775.4(b)(2)), and purchase or lease of existing buildings (§ 775.4(b)(3)) contain limitations based upon net interior size.

The concept underlying these exclusions, that projects involving relatively small structures are unlikely to have environmental impacts, is based primarily on the fact that projects involving small buildings do not represent major federal actions, and usually involve construction and other activities that are quite similar to those undertaken at many nearby properties.

Despite the small scale of activities that are to be categorically excluded on the basis of interior floor space, the existence of unusual circumstances may warrant the preparation of an environmental assessment, pursuant to § 775.6. That section is being revised to indicate that, for certain categorical exclusions, a checklist procedure will be used to inform the determination being made about the existence of extraordinary circumstances. All of the categorical exclusions involving square-foot limitations will be covered by the checklist procedure. In addition, Postal Service procedures involving floodplains, wetlands, hazardous and toxic materials, as well as intergovernmental review procedures, may serve to identify unusual circumstances, despite the applicability of a categorical exclusion to a given project.

For two of the five categorical exclusions involved, those for new construction and the acquisition of existing buildings, the level of the square-footage limitations (30,000 and 50,000 net interior square feet) are not being changed, although a change for temporary occupancy of existing buildings is discussed below. For the other three, a square-footage limitation is being introduced or increased. The limit of 30,000 net interior square feet is being extended to expansion and improvement projects (§ 775.4(b)(4)), disposals of improved property (§ 775.4(b)(9)), and to joint development/joint use projects (§ 775.4(b)(12)). As was noted in the proposed rule notice, the Postal Service's experience has shown that renovation projects adding up to 30,000 net interior square feet do not involve significant environmental impacts.

The exclusion for joint development/joint use projects applies the new-construction limit to the entirety of construction in such projects, so that the entire project is treated as if it were Postal Service construction for purposes of triggering the requirement for environmental assessment under NEPA. If the portion of a joint development/joint use project used by the Postal Service were used as the point of reference, fewer projects would be subject to environmental assessment, as the space to be used by the Postal Service is always less than the entirety of the building in such projects.

The categorical exclusion for disposal of improved real estate under 30,000 net interior square feet also carries forward the interior space limit that applies in the case of new construction. Two considerations support this extension. First, because a longstanding exclusion applies to new construction, a categorical exclusion for disposal of the property should be no narrower. Second, because disposal of property generally creates an opportunity for further development, the presence of some level of improvement on property tends to decrease, rather than increase, the likelihood of environmental impact upon disposal, when compared with the disposal of unimproved real estate.

In the case of disposal of improved property, CEQ questioned the relationship between the size of improvements and the size of the site. In the absence of improvements, disposal of real estate is currently categorically exempt, and will remain exempt. Given the reasons supporting a limited exemption for disposal of improved property, discussed above, it is the size of the improvements, rather than the size of the site, that should determine the limitation on the categorical exclusion.

Occupancy of existing buildings. CEQ requested further substantiation in support of two proposed categorical exclusions for acquisitions of existing buildings by purchase, lease or exchange, §§ 775.4(b)(2) and 775.4(b)(3). The first point relates to the relationship between length of occupancy and square footage of buildings occupied, and the potential for environmental effects. The second point questions the definition of "significantly" in terms of planned postal uses.

The two proposed categorical exclusions represent revisions of the first portion of current § 775.4(b)(3), with a new distinction drawn between temporary occupancy (90 days or less) and longer-term occupancy. Where occupancy of more than 90 days is anticipated, the limitation of 50,000 net interior square feet remains, and the further qualification, "where a new or substantially enlarged occupancy is not involved," is changed to "where planned postal uses do not differ significantly from past uses of the site."

The change in the qualification is designed primarily to clarify the provision, although it may slightly narrow the scope of the categorical exclusion. In the case of new occupancy, the result is usually the same, as newly built space will generally produce a significant difference in the use of the site. In the case of previously occupied buildings, any "substantially enlarged occupancy" would be considered a significant difference in use, taking the action outside the categorical exclusion. Where there are other significant differences, such as a marked increase in truck traffic to and from the facility, an environmental assessment would be required under the revised exclusion, even though there might be no enlargement of occupancy.

The phrase "differ significantly" in revised § 775.4(b)(2), like "substantially enlarged" in current § 775.4(b)(2), requires the exercise of judgment as individual cases arise. Because the Postal Service determines prior uses of an existing building only after it is identified for possible occupancy, Postal Service facilities personnel will need to compare past and anticipated uses on a case-by-case basis.

For short-term leases of existing buildings, defined as 90 days or less, the categorical exclusion of § 775.4(b)(3) would apply without regard to the size of the building. Whatever the size of an existing building, the Postal Service could consider short-term occupancy only where the building is ready for the planned use without significant alteration or outfitting. Thus, the postal use of the building can be expected to track prior uses. However, as in the case of all categorical exclusions, § 775.6 requires that the possibility of extraordinary circumstances be considered.

Disposal of unimproved "landbanked" property. CEQ asked why the Postal Service would prepare an environmental assessment for disposal of unimproved land obtained under "landbanking" procedures, despite the fact that disposal of property with improvements of less than 30,000 net interior square feet would be covered by a categorical exclusion. The provision of § 775.4(b)(5) that "[t]his categorical exclusion applies only to the acquisition" is not meant to imply that environmental assessments will be prepared for all subsequent actions taken with respect to the acquired property. Any subsequent action involving the property will be considered independently under Part 775. Thus, if the Postal Service were to dispose of the property while it was still in an unimproved state, the action would be categorically excluded, so that the contrast posed by CEQ would not arise. In other cases, as where the site were improved with a large building, a subsequent disposal would require an environmental assessment.

Categorically excluded acquisitions and disposals of property involving unresolved conflicts. CEQ also asked how the Postal Service would comply with section 102(2)(E) of NEPA, 42 U.S.C. 4332(2)(E), for acquisitions and disposals of property. The cited provision requires that for "any proposal which involves unresolved conflicts

concerning alternative uses of available resources," agencies "study, develop, and describe appropriate alternatives to recommended courses of action." Even where a categorical exclusion applied, by its terms, to an acquisition or disposal, the Postal Service would not rely on the exclusion, but would prepare an environmental assessment pursuant to 39 CFR 775.6, where the action is affected by "extraordinary circumstances." Where the public reaction to an acquisition or disposal action revealed substantive environmental concerns, that fact would lead to preparation of an environmental assessment, and environmental assessments must present and analyze alternatives.

Review of categorically excluded actions. CEQ recommended that the Postal Service elaborate on its review practices for categorically excluded actions. This practice is grounded in § 775.6, which requires a determination of whether a categorically excluded action is affected by extraordinary circumstances. This determination is to be written, and interested persons can obtain copies of such determinations by requesting them from the postal officials responsible for the action in question. For facilities projects, this would be the real estate specialist. As indicated in the revision to § 775.6, the determination may be supported by completion of a checklist; the Postal Service plans to use the checklist procedure for all facilities actions subject to categorical exclusions under paragraphs (b)(1) through (b)(5), (b)(9), and (b)(12) through (b)(15) in § 775.4.

Analysis of alternatives in environmental impact statements, where information is incomplete or unavailable. CEQ's final comment addressed the proposed revision of § 775.8(b)(6), which was intended to be consistent with 40 CFR 1520.22(b). CEQ noted that the evaluation of alternatives on the basis of reasonably foreseeable future conditions is required generally, whereas 40 CFR 1520.22 makes provision for situations in which information is incomplete or unavailable. As adopted in this final rule, § 775.8(b)(6) has been revised to make it clear that its scope is limited to situations in which relevant information is lacking, and to incorporate the requirements in § 1520.22(b) for the treatment of such issues in an environmental impact statement.

List of Subjects in 39 CFR Parts 775 and 776

Environmental assessments, Environmental impact statements, Floodplain management and Protection of wetlands procedures.

Parts 775 and 776 of 39 CFR are amended as follows:

PART 775—ENVIRONMENTAL PROCEDURES

1. The authority citation for part 775 continues to read as follows:

Authority: 39 U.S.C. 401; 42 U.S.C. 4331 *et seq.*; 40 CFR 1500.4(p).

2. Section 775.4(b) is revised to read as follows:

§ 775.4 Typical classes of action.

* * * * *

(b) Categorical exclusions. The classes of action in paragraphs (b)(1) through (b)(15) of this section normally do not require either an environmental assessment or an environmental impact statement. However, the responsible official must be alert to unusual conditions that would require an environmental assessment or an environmental impact statement notwithstanding the applicability of a categorical exclusion to particular action.

(1) New construction, Postal Service owned, including site acquisition by any method, or Postal Service leased, of less than 30,000 net interior square feet.

(2) Acquisition by purchase, lease, or exchange, of existing buildings containing less than 50,000 net interior square feet with occupancy of greater than 90 days where planned postal uses do not differ significantly from past uses of the site.

(3) Lease of existing buildings of any size for occupancy of 90 days or less.

(4) Expansion or improvement of an existing facility where the expansion does not exceed 30,000 net interior square feet.

(5) Acquisition of unimproved real property not connected to specific facility plans or when necessary to protect the interests of the Postal Service in advance of final project approval. This categorical exclusion applies only to the acquisition. Any subsequent use of the property for a facility project must be considered under this part without regard to ownership of the real property.

(6) Routine actions normally conducted to protect and maintain properties and which do not alter the configuration of the building.

(7) Repair to, or replacement-in-kind of, building equipment or components (e.g., electrical distribution, HVAC systems, doors, windows, roofs, etc.).

(8) Obtaining, granting, disposing, or changing of easements, licenses and permits, rights-of-way and similar interests.

(9) Disposal through sale or outlease of unimproved real property of any size or improved real estate under 30,000 net interior square feet.

(10) Purchase of Postal Service occupied leased property where planned postal uses do not differ significantly from past uses of the site.

(11) Extension, renewal, renegotiation, or termination of existing lease agreements.

(12) Joint development and/or joint-use projects involving construction under 30,000 net interior square feet.

(13) Procurement or disposal of motor vehicles not involving a substantial increase in the concentration of vehicles in a geographic impact area. Procurement or disposal of mail handling equipment.

(14) Postal rate or mail classification actions.

(15) Postal facility function changes not involving construction, the relocation of a substantial number of employees, or a substantial increase in the number of motor vehicles at a facility.

3. In § 775.6, in the introductory text of paragraph (b)(3), add after the word "sites," the following: "(including advance acquisition, if necessary, and where authorized by postal procedures),"; revise paragraphs (a)(1)(ii) and (b)(3)(ii) to read as follows:

§ 775.6 Environmental evaluation processs.

(a) * * *

(1) * * *

(ii) The action is not affected by extraordinary circumstances which may cause it to have a significant environmental effect. This part of the determination may be supported by completion of an environmental checklist (referred to as a level I environmental review in the Handbook RE–6) for certain types of categorical exclusions.

* * * * *

(b) * * *

(3) * * *

(ii) The continued control of specified competing sites (including advance acquisition, if necessary, and where authorized by postal procedures), chosen to preserve environmental or other options, and

* * * * *

4. In § 775.8 revise paragraph (b)(6) to read as follows:

§ 775.8 Environmental impact statements.

* * * * *

(b) * * *

(6) If information relevant to reasonably foreseeable adverse impacts cannot be obtained because the overall cost of obtaining it is exorbitant or the means to obtain it are not known, the fact that such information is incomplete or unavailable must be stated clearly. In addition, the relevance of the incomplete or unavailable information to the evaluation of the impacts must be stated, and a summary of existing credible scientific evidence relevant to evaluation of the impacts must be included, as well as an evaluation of such impacts on the basis of theoretical approaches or generally accepted research methods. For purposes of this subsection, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

* * * * *

PART 776—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS PROCEDURES

5. The authority citation for part 776 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 776.4 [Amended]

6. In § 776.4, remove paragraphs (c) and (d).

7. In § 776.5, remove the phrase "locating the site" from the introductory text of paragraph (i) and insert in its place the word "constructing"; and revise paragraphs (a) and (d), the heading and introductory text of paragraph (e), paragraph (e)(1), the introductory text of paragraph (f), paragraph (f)(1), paragraph (f)(4), paragraph (f)(5), and paragraph (h) to read as follows:

§ 776.5 New construction.

(a) *Consideration in floodplain/wetland.* During the evaluation of contending sites for a proposed project, information concerning impacts on wetlands and floodplains will be collected and considered. If use of a site would require construction in a floodplain or wetland, the site may be considered only when there is no practicable alternative site.

* * * * *

(d) *Site planning.* During site evaluation, a determination must be made whether any of the identified site alternatives would require construction in, or appear to have an impact on, a floodplain or wetland. This information will be included as part of any required Environmental Assessment.

(e) *Analysis of alternatives.* If any of the site alternatives identified under paragraph (d) of this section would involve construction within a floodplain or wetland, an analysis of alternatives must be prepared, and must include:

(1) Alternate sites as identified in the site planning process;

* * * * *

(f) *Reevaluation.* If, after consideration of information and analyses produced under paragraphs (b), (d), and (e) of this section, and (if required) review through an Environmental Assessment or Environmental Impact Statement, the determination is that there appears to be no practicable alternative to constructing in a floodplain or wetland, a final reevaluation of alternatives must be conducted. The Facilities Service Center Director is responsible for this reevaluation. To facilitate this reevaluation, the following data must be submitted to the Facilities Service Center Director:

(1) A summary of reasons why the rejected alternatives and alternative sites, if any, were considered impracticable.

* * * * *

(4) Documentation from the site evaluation and planning process.

(5) The Environmental Assessment or Environmental Impact Statement, if either was required.

* * * * *

(h) *No alternative.* If the Facilities Service Center Director determines that there is not a practicable alternative to constructing in a floodplain or wetland, the appropriate Postal Service organization is so advised. The Director may provide instructions for mandatory measures to be accomplished during design and construction to minimize harm to the floodplain or wetland.

* * * * *

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 90-6191 Filed 3-20-90; 8:45 am]

BILLING CODE 7710-12-M

POSTAL RATE COMMISSION

39 CFR Part 3001

Domestic Mail Classification, First-Class Mail; Correction

AGENCY: Postal Rate Commission.

ACTION: Correction.

SUMMARY: This document corrects a typographical error in the description of First-Class mail postal or post cards in the Domestic Mail Classification Schedule.

EFFECTIVE DATE: March 21, 1990.

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268-0001 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: Appendix A to subpart C of part 3001, containing the Domestic Mail Classification Schedule was first published in the **Federal Register** on July 10, 1985 (50 FR 28144). That publication and subsequent editions of the Code of Federal Regulations contained a typographical error in the description of First-Class mail postal or post cards. This document corrects the error. (Other errors occurring in the 1988 and 1989 editions of the Code of Federal Regulations were corrected in the **Federal Register** of March 7, 1990 at 55 FR 8142).

PART 3001—RULES OF PRACTICE AND PROCEDURE

Appendix A to Subpart C—Postal Service Rates and Charges

In Appendix A to subpart C of part 3001, under "Classification Schedule 100—First Class Mail," under item 100.021 Postal and post cards, the introductory text of paragraph c. is corrected to read as follows:

"c. To be eligible to be mailed as a first-class post card, a card may not exceed any of the following dimensions:".

By the Commission.

Charles L. Clapp,

Secretary.

[FR Doc. 90-6377 Filed 3-20-90; 8:45 am]

BILLING CODE 7710-FW-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL-3747-5]

NESHAP Radionuclide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of stay.

SUMMARY: Today's action announces a 120-day stay pending judicial review of subpart I of 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants for Radionuclide Emissions

from Facilities Licensed by the Nuclear Regulatory Commission and Non-DOE Federal Facilities (54 FR 51654 December 15, 1989). EPA is issuing this stay pursuant to section 705 of the Administrative Procedure Act, 5 U.S.C. 705, which grants the Administrator discretion to postpone the effective date of Agency rules pending judicial review, which for 40 CFR part 61, subpart I, is ongoing in the United States Court of Appeals for the D.C. Circuit. Also relevant to this decision is that EPA is currently reconsidering 40 CFR part 61, subpart I.

EFFECTIVE DATE: Effective March 15, 1990, subpart I of 40 CFR part 61 is stayed until July 13, 1990.

FOR FURTHER INFORMATION: James Hardin, Environmental Standards Branch, Criteria and Standards Division (ANR–460, Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460, (202) 475–9610.

SUPPLEMENTARY INFORMATION:

A. Background

On October 31, 1989, EPA promulgated under section 112 of the Clean Air Act (the "Act"), 42 U.S.C. 7412, National Emission Standards for Hazardous Air Pollutants ("NESHAPs") controlling radionuclide emissions to the ambient (outdoor) air from several source categories, including emissions from Licensees of the Nuclear Regulatory Commission and Non-DOE Federal Facilities. This rule was published in the Federal Register on December 15, 1989 (54 FR 51654; to be codified at 40 CFR part 61, subpart I). At the same time, EPA granted reconsideration of 40 CFR part 61, subpart I. 54 FR 51667–51668. In so doing, EPA established a 60-day period to receive further information and comments on these issues, and also granted a 3-month stay of 40 CFR part 61, subpart I, as provided by Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B). That stay expires on March 16, 1990.

At least 11 petitions for review, made pursuant to Clean Air Act section 307, 42 U.S.C. 7607, challenging EPA's radionuclide NESHAPs (54 FR 51654 December 15, 1989) have been filed with the United States Court of Appeals for the D.C. Circuit. Some of these petitions take issue with the rulemaking generally, while others are narrowly addressed to particular source categories such as 40 CFR part 61, subpart I. For instance, the Nuclear Management and Resources Council, Inc. ("NUMARC") has petitioned only insofar as the rules apply to nuclear power plants and fuel fabrication facilities (D.C. Circuit Case No. 90–1073), and thus its petition challenges only 40 CFR part 61, subpart I. In any event, all petitions have been consolidated by the court, *sua sponte*, under the heading *American Mining Congress* v. *EPA*, No. 90–1058 (D.C. Cir.)

B. Issuance of Stay

EPA today further stays, for 120 days pending judicial review, the NESHAP for NRC-Licensees and Non-DOE Federal Facilities, 40 CFR part 61, subpart I. This stay is issued pursuant to the authority granted by section 705 of the Administrative Procedure Act ("APA"), 5 U.S.C. 705, and is intended to have the effect of continuing the stay initially issued by EPA pursuant to Clean Air Act section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), on December 15, 1989. 54 FR 51668. APA section 705 states that "[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review." Therefore, because petitions challenging this rule have been filed with the D.C. Circuit (e.g., including NUMARC's petition), EPA is authorized to issue this stay.

EPA also notes that it has an ongoing proceeding for reconsideration of 40 CFR part 61, subpart I, announced on December 15, 1989. 54 FR 61667–51668. Because reconsideration has not concluded and no final decision has been made by the Agency as to whether to propose modification to the existing 40 CFR part 61, subpart I, and given the ongoing judicial review proceedings in the D.C. Circuit, justice requires that the stay of the effective date of 40 CFR part 61, subpart I, be continued for 120 days. EPA believes that most facilities subject to this rule are in compliance and that, during the short period provided by this stay, their emissions are unlikely to increase. Thus, granting the stay would have little or no potential to have any adverse effects on public health, and granting the stay would therefore be consistent with the public interest.

Dated: March 15, 1990.

William K. Reilly,

Administrator.

[FR Doc. 90–6445 Filed 3–20–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP8F3647/R1064; FRL–3713–6]

Pesticide Tolerances for Metsulfuron Methyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the herbicide metsulfuron methyl (methyl 2–[[[[(4–methoxy–6–methyl–1,3,5–triazin–2–yl)amino]carbonyl]–amino]sulfonyl]benzoate) and its metabolite methyl 2–[[[[(4–methoxy–6–methyl–1,3,5–triazin–2–yl)amino]carbonyl]amino]sulfonyl]–4–hydroxybenzoate in or on the crop grouping grass forage, fodder, and hay group at 15 parts per million (ppm) and residues of metsulfuron methyl in or on the raw agricultural commodities (RACs) kidney of cattle, goats, hogs, horses, and sheep at 0.5 ppm. The regulation establishes maximum permissible levels for the herbicide and was requested in a petition by E.I. duPont Nemours & Co.

EFFECTIVE DATES: This regulation becomes effective March 21, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP8F3647/R1064], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 243, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 12, 1988 (53 FR 39783), EPA issued a notice which announced that E.I. du Pont de Nemours & Co. had submitted pesticide petition 8F3647 to EPA proposing to amend 40 CFR 180.428 by establishing a regulation to permit residues of metsulfuron methyl (methyl 2–[[[[(4–methoxy–6–methyl–1,3,5–triazin–2–yl)amino]carbonyl]amino]sulfonyl]benzoate) and its metabolite methyl 2–[[[[(4–methoxy–6–methyl–1,3,5–triazin–2–yl)amino]carbonyl]amino]sulfonyl]–4–hydroxybenzoate in or on grass forage and fodder at 15 ppm, grass hay at 30 ppm, milk at 0.2 ppm, and kidney of cattle, goats, hogs, horses, and sheep at 0.5 ppm.

There were no comments or requests for referral to an advisory committee received in response to this notice of filing.

The petitioner subsequently amended the petition by submitting a revised Section F deleting the proposed increased tolerance on milk and

proposing to establish tolerances for the combined residues of the herbicide metsulfuron methyl (methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]benzoate) and its metabolite methyl 2-[[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino]sulfonyl]-4-hydroxybenzoate in or on the RACs grass forage, fodder, and hay at 15 ppm and for residues of metsulfuron methyl in or on the RACs kidney of cattle, goats, hogs, horses, and sheep at 0.5 ppm. The established tolerance of 0.05 ppm metsulfuron methyl in milk is appropriate for these proposed tolerances.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of these tolerances.

1. Several acute studies placing technical-grade metsulfuron methyl in Toxicity Categories III and IV.

2. A 21-day dermal study with rabbits at 125, 500, and 2,000 milligrams/kilograms/day (mg/kg) with a systemic no-observable-effect level (NOEL) of 500 mg/kg for systemic effects based on occurrence of diarrhea at 2,000 mg/kg.

3. A 1-year feeding study in dogs fed dosages of 1, 1.25, 12.5, 125 mg/kg/day with a NOEL of 1.25 mg/kg based on decreased serum lactic dehydrogenate (LDH) at 12.5 mg/kg.

4. A 2-year chronic feeding/carcinogenicity study in rats fed dosages of 0, 0.25, 1.25, 25, 125, and 250 mg/kg/day with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 250 mg/kg/day (highest dose tested [HDT]) and a systemic NOEL of 25 mg/kg/day based on decreased body weight at 250 mg/kg/day.

5. An 18-month feeding/carcinogenicity study in mice fed dosages of 0, 0.75, 3.75, 75, 375, and 750 mg/kg/day with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 750 mg/kg/day (HDT) and a systemic NOEL of 750 mg/kg/day (HDT).

6. A developmental toxicity study in rats fed dosage levels of 0, 40, 250, and 1,000 mg/kg/day with a developmental NOEL of 1,000 mg/kg/day (HDT), a maternal NOEL of 40 mg/kg/day based on hyperactivity and ungroomed coat at 250 mg/kg/day, and a fetotoxic NOEL of 1,000 mg/kg/day (HDT).

7. A developmental toxicity study in rabbits fed dosage levels of 0, 25, 100, 300, and 700 mg/kg/day with a developmental NOEL of 700 mg/kg/day (HDT), a maternal NOEL of 25 mg/kg/day based on decreased body weight at 100 mg/kg/day, and a fetotoxic NOEL greater than 700 mg/kg/day (HDT).

8. A two-generation reproduction study in rats fed 0, 1.25, 25, and 250 mg/kg/day with no reproductive effects at 250 mg/kg/day (HDT), a maternal NOEL of 25 mg/kg/day based on decreased body weight gain at 250 mg/kg/day, and a fetotoxic NOEL of 250 mg/kg/day (HDT).

9. Mutagenic studies included an Ames Test, a chromosome aberration/CHO study, a rat bone marrow/aberrations, and a mouse micronucleus test (all negative).

The acceptable daily intake (ADI), based on a 2-year feeding study with rats (NOEL of 25.0 mg/kg body weight/day) and using a hundredfold safety factor is calculated to be 0.25 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances is 0.000824 mg/kg/day. The current action will contribute less than 0.000001 mg/kg/day to the TMRC and will not increase the utilization of the ADI. Published tolerances utilize 0.3 percent of the ADI. There are no other proposed tolerances for the chemical.

Data lacking are a mutagenic study to fulfill the other genotoxic effects requirement. The company has been notified of the deficiency and has agreed to perform the study.

The pesticide is useful for the purposes for which these tolerances are sought. The nature of the residue is adequately understood for the purpose of establishing tolerances. Adequate analytical methodology, high-pressure liquid chromatography (HPLC) with an ultraviolet detector for milk, meat, and meat byproducts of cattle and for the RACs grass forage, fodder, and hay group (Method III of the Pesticide Analytical Manual, Vol. II), is available for enforcement purposes. The methods are listed in the PAM II.

There are currently no actions pending against the registration of this chemical. No secondary residues are expected to occur in poultry or eggs from this use. Any secondary residues occurring in milk, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep will be covered by existing tolerances. Any secondary residues occurring in kidney of cattle, goats, hogs, horses, and sheep will be covered by the proposed tolerance.

Based on the information cited above, the Agency has determined that the establishment of tolerances by amending 40 CFR part 180 will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 1, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.428(a) and (b), by adding and alphabetically inserting entries for the following crop grouping and raw agricultural commodities, to read as follows:

§ 180.428 Metsulfuron methyl; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Grass, fodder	15.0
Grass, forage	15.0
Grass, hay	15.0
* * * * *	

(b) * * *

Commodities	Parts per million
* * * * *	
Cattle, kidney	0.5
* * * * *	
Goats, kidney	0.5
* * * * *	
Horses, kidney	0.5
* * * * *	
Sheep, kidney	0.5
* * * * *	

[FR Doc. 90–6097 Filed 3–20–90; 8:45 am]
BILLING CODE 6560–50–D

40 CFR Part 180

[PP9F3728/R1068; FRL–3733–7]

Pesticide Tolerance for Imazethapyr

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine carboxylic acid (imazethapyr), as its ammonium salt, in or on the legume crop grouping at 0.1 part per million (ppm). The regulation was requested by the American Cyanamid Co. and establishes the maximum permissible level for residues of the herbicide in or on the crop group legume vegetables.

DATES: Effective on March 21, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP9F3728/R1068], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (H7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–1800.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 19, 1989 (54 FR 21664), EPA issued a notice which announced that the American Cyanamid Co., Box 400, Princeton, NJ 08540, had submitted a pesticide petition (PP 9F3728) to EPA proposing to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide imazethapyr, 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-5-ethyl-3-pyridine-carboxylic acid (imazethapyr), as its ammonium salt, in or on the crop grouping legume vegetables at 0.1 ppm.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of this tolerance.

1. Several acute toxicology studies placing technical-grade imazethapyr in Toxicity Category IV.

2. An 18-month oncogenicity study with mice fed diets containing 0, 1,000, 5,000, or 10,000 ppm with no carcinogenic effects observed under the conditions of the study at levels up to and including 10,000 ppm (1,500 mg/kg/day) (highest dose tested [HDT]) and a systemic no-observed-effect level (NOEL) of 5,000 ppm (750 mg/kg/day).

3. A 2-year chronic toxicity/oncogenicity study in rats fed diets containing 0, 1,000, 5,000, or 10,000 ppm with no carcinogenic effects observed under the conditions of the study at levels up to and including 10,000 ppm (500 mg/kg/day [HDT]) and a systemic NOEL of 10,000 ppm (500 mg/kg/day [HDT]).

4. A 1-year feeding study in dogs fed diets containing 0, 1,000, 5,000, or 10,000 ppm with a NOEL of 1,000 ppm (25 mg/kg/day).

5. A developmental toxicity study in rats fed dosage levels of 0, 125, 375, and 1,125 mg/kg/day, with a maternal NOEL of greater than 1,125 mg/kg/day (HDT).

6. A developmental toxicity study in rabbits fed dosage levels of 0, 100, 300, and 1,000 mg/kg/day with a maternal toxicity NOEL of 300 mg/kg/day and a developmental toxicity NOEL of greater than 1,000 mg/kg/day (HDT).

7. A two-generation reproduction study in rats fed dietary levels of 0, 1,000, 5,000, or 10,000 ppm with a NOEL for systemic and reproductive effects of 10,000 ppm (500 mg/kg/day [HDT]).

8. A mutagenic test with *Salmonella typhimurium* (negative); and *in vitro* chromosomal aberration test in Chinese hamster ovary cells (positive without metabolic activation but at dose levels that were toxic to the cells and negative with metabolic activation); an *in vivo* chromosomal aberration test in rat bone marrow cells (negative); an unscheduled DNA synthesis study in rat hepatocytes (negative); and a dominant-lethal study in rats (negative at doses up to and including 2,000 mg/kg).

Based on the NOEL of 25 mg/kg bwt/day in the 1-year dog feeding study, and using a hundredfold uncertainty factor, the acceptable daily intake (ADI) of imazethapyr is calculated to be 0.25 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) is 0.000034 mg/kg bwt/day for existing tolerances for the overall U.S. population. The current action will increase the TMRC by 0.000100 mg/kg bwt/day (0.036 percent of the ADI). These tolerances and previously established tolerances utilize a total of 0.039 percent of the ADI for the overall U.S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6, the current action and previously established tolerances utilize, respectively, a total of 0.128 percent and 0.08 percent of the ADI, assuming that residue levels are at the established tolerances and that 100 percent of the crop is treated.

A maximum tolerated dose (MTD) or a limit dose (20,000 ppm) were not evaluated in the chronic toxicity study with rats. However, the highest dose tested was within 50 percent of the dose level necessary for an adequate oncogenicity study in rats (20,000 ppm or 1,000 mg/kg/day); this chemical is structurally similar to two other pesticides (Scepter and Assert) that were not carcinogenic in rats or mice; and the genetic toxicity studies were negative for imazethapyr. For these reasons, no further oncogenicity testing is required.

The nature of the residue is adequately understood, and adequate analytical methods (gas chromatography with thermionic nitrogen-phosphorus detector) are available for enforcement purposes. There are currently no actions pending against the registration of this chemical. No secondary residues are expected to occur in meat, milk, poultry, or eggs from this use.

The pesticide is useful for the purposes for which this tolerance is sought. Based on the above information, the Agency has determined that the establishment of the tolerance by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the

requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 14, 1990.

Edwin F. Tinsworth,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.447 in the table therein, by adding and alphabetically inserting the crop group legume vegetables, to read as follows:

§ 180.447 Imazethapyr, ammonium salt; tolerances for residues.

* * * * *

Commodities	Parts per million
Legume vegetables	0.1
* * * * *	

[FR Doc. 90–6438 Filed 3–20–90; 8:45 am]

BILLING CODE 6560–50–D

40 CFR Part 180

[PP9E3754/R1061; FRL–3710–8]

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes tolerances for the combined residues of the herbicide glyphosate and its metabolite in or on the following raw agricultural commodities: breadfruit, canistel, dates, jaboticaba, jackfruit, persimmon, soursop, tamarind, and black sapote and white sapote. The regulation to establish maximum permissible levels for residues of the herbicide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATES: This regulation becomes effective March 21, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP9E3754/R1061], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 29, 1990 (55 FR 2844), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 9E3754 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of Florida, California, Hawaii, and Puerto Rico.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose to establish a tolerance for residues of the combined residues of the herbicide glyphosate (N–(phosphonomethyl)glycine) and its metabolite, amino-methylphosphonic acid (AMPA), in or on the raw agricultural commodities breadfruit, canistel, dates, jaboticaba, jackfruit, persimmon, soursop, tamarind, and black sapote and white sapote at 0.2 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 13, 1990.

Edwin F. Tinsworth,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.364(a) is amended by adding and alphabetically inserting the raw agricultural commodities breadfruit, canistel, dates, jaboticaba, jackfruit, persimmons, black sapote and white sapote, soursop, and tamarind, to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Breadfruit	0.2
* * * * *	
Canistel	0.2
* * * * *	
Dates	0.2
* * * * *	
Jaboticaba	0.2
Jackfruit	0.2

Commodities	Parts per million
* * * * *	
Persimmons	0.2
* * * * *	
Sapote, black	0.2
Sapote, white	0.2
* * * * *	
Soursop	0.2
* * * * *	
Tamarind	0.2
* * * * *	

* * * * *

[FR Doc. 90-6440 Filed 3-20-90; 8:45 am]

BILLING CODE 6560-50-D

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1180

Institute of Museum Services; Programs for Assistance to Museums

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final regulations.

SUMMARY: The Institute of Museum Services issues an amendment to its regulations governing museum assessments, 45 CFR 1180.70–1180.76. The funding ceiling established for this grant program is not adequate for new types of technical assistance that will be made available through this grant program during fiscal year 1990 and subsequent fiscal years. Consequently, under the amendment, the Director will set the ceiling at a level appropriate to the type of technical assistance provided, in accordance with the policy direction of the National Museum Services Board and in consultation with the professional organization designated as the program facilitator.

The Institute of Museum Services issues an amendment to its regulations governing the requirement of audited financial statements, 45 CFR 1180.11(c)(4). The amendment makes permanent the authority to defer the audit for small museums.

EFFECTIVE DATE: These regulations are effective March 21, 1990.

FOR FURTHER INFORMATION CONTACT: Rebecca Danvers, Program Director; Room 609, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone: (202) 786–0539.

SUPPLEMENTARY INFORMATION:

General Background

The Museum Services Act ("the Act") Title II of the Arts, Humanities and Cultural Affairs Act of 1976, as amended, establishes an Institute of Museum Services (IMS). IMS is an independent agency placed in the National Foundation on the Arts and the Humanities. The purposer of the Act is stated in section 202, in pertinent part, as follows:

> It is the purpose of the Museum Services Act . . . to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage . . .

The Act lists a number of illustrative activities for which grants may be made, including assisting museums to meet their administrative costs for preserving and maintaining their collections, exhibiting them to the public, and providing educational programs to the public.

The Need for the Amendment

The Institute's regulations contain provisions relating to the Institute's Museum Assessment Program (MAP), which has been conducted since fiscal year 1981, 45 CFR 1180.70–1180.76. MAP is designed to assist museums in carrying out institutional assessments. Grants enable museums to obtain technical assistance in order to evaluate their programs and operations according to generally accepted professional standards. A museum which receives a grant under the program requests assessment through an appropriate professional organization, a term which is defined in the Institute's regulations. See 45 CFR 1180.74(b).

Under present regulations, the amount of a grant to a museum may not exceed $1,400, 45 CFR 1180.73(b). The National Museum Services has determined that this ceiling, which was set in 1986, may not meet the reasonable costs of assessment offered under additional initiatives. The Board has, therefore, determined that the ceiling should be established in accordance with the category of museum assessment in question in order to facilitate operation of each type of assessment.

Currently, there are four types of assessments available: (1) A broad assessment of all of the museum's operations and programs; (2) an assessment of the museum's collections management policies; (3) an assessment of the museum's public relations; and (4) a general conservation survey of the museum's collections and environment.

The purpose of the amendment set forth below is to remove the fixed limitation on the ceiling as set forth in current regulations in order to provide for greater flexibility in accordance with the above-described policy determination of the Board. IMS believes that the program has been successful in achieving its stated objectives and in carrying out the purposes of the Museum Services Act for many museums which otherwise could not be reached by other forms of assistance available under the Act. Accordingly, IMS believes that the amendment will contribute significantly to meeting the purposes of the Act.

The authority in 45 CFR 1180.11(c)(4) to defer the audit requirements for applicants with operating budgets under $50,000 is subject to a time limitation. The proposed amendment eliminates the time limitation and makes permanent the authority of the Director to defer the audit requirement for those museums. IMS believes that granting such a deferral lessens the burden on those applicants without being inequitable to other applicants and that it is therefore appropriate to continue that authority.

IMS published a notice of proposed rulemaking on this amendment in the **Federal Register** on January 17, 1990 (55 FR 1592). No comments were received.

Executive Order 12291

The amendment has been reviewed in accordance with Executive Order 12291. It is classified as non-major because it does not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Director certifies that the amendment will not have a significant economic impact on a substantial number of small museums. To the extent that it affects States and State agencies it will not have an impact on small entities because States and State agencies are not considered to be small entities under the Regulatory Flexibility Act. The amendment will affect certain museums receiving federal financial assistance under the Museum Services Act. However, it will not have significant economic impact on the small entities affected because it does not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

These regulations do not contain any information collection requirements

under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 45 CFR Part 1180

Museums, National boards.

Dated: March 5, 1990.

Daphne Murray,

Director, Institute of Museum Services.

(Catalog of Federal Domestic Assistance No. 45.301, Museum Services Program)

The Institute of Museum Services amends part 1180 of title 45 of the Code of Federal Regulations as set forth below:

1. The authority citation for part 1180 continues to read as follows:

Authority: 20 U.S.C. 961 et seq.

2. Revise § 1180.11(c)(4) to read as follows:

§ 1180.11 Basic requirements which a Museum must meet to be considered for funding.

* * * * *

(c) * * *

(4) The Director is authorized to defer the audit requirement set forth in paragraph (c)(2) of this section in the case of a museum with non-federal operating income of $50,000 or less, exclusive of the value of non-cash contributions (in the fiscal period preceding the fiscal period for which the deferral is requested), if the Director finds that exceptional circumstances justify a deferral and that the grant of the deferral will not be inequitable to other applicants. A deferral may be granted only upon those conditions and in light of those assurances which the Director deems appropriate in order to ensure that the purposes of this paragraph are achieved.

* * * * *

3. Revise § 1180.73(b) to read as follows:

§ 1180.73 Form of assistance; limitation on amount.

* * * * *

(b) The amount of a grant to a museum under this subpart will be determined by the Director, in accordance with the policy direction of the Board regarding the maximum amount of a grant to be awarded for the various categories of assistance under this subpart and in consultation with the appropriate professional organization arranging for the assessment in question.

[FR Doc. 90–6361 Filed 3–20–90; 8:45 am]

BILLING CODE 7036-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 22, and 94

[General Docket 82–243; FCC 90–64]

Service and Technical Rules for Government and Non-Government Fixed Service Usage of the Frequency Bands 932–935 MHz and 941–944 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's Rules in response to five petitions for clarification/reconsideration of the Commission's *Second Report and Order* in this proceeding (54 FR 10326, March 13, 1989). It clarifies lottery procedures to be used, explains how mutual exclusivity is to be determined in the new fixed bands, and modifies certain rules with respect to one-way use of the 932–932.5/941–941.5 MHz point-to-multipoint bands. The objective of this action is to satisfy Government and non-Government demand for a fixed service below one gigahertz.

EFFECTIVE DATE: April 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, telephone (202) 653–8116.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Final Rule in General Docket 82–243, FCC 90–64, Adopted February 8, 1990, and Released March 15, 1990.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Final Rule

1. In the *First Report and Order* adopted on November 21, 1984, in this proceeding (50 FR 4650; February 1, 1985), the Commission allocated the 932–935/941–944 MHz bands for Government and non-Government (private and common carrier) fixed service usage on a co-primary basis. In the *Second Report and Order* adopted on February 9, 1989 (54 FR 10326; March 13, 1989), the Commission adopted procedures and rules to be followed in sharing the bands. Specifically, the *Second Report and Order* designated the 932–932.5/941–941.5 MHz bands for point-to-multipoint use and the 932.5–935/941.5–944 MHz bands for point-to-point use, held that the bands are primarily intended for two-way use, specified that coordination between Government and non-Government users would be accomplished via the Interdepartment Radio Advisory Committee of the National Telecommunications and Information Administration (NTIA), established an initial one-week window for the filing of applications, and decided that lotteries would be used to choose among mutually exclusive applications.

2. Petitions for Clarification and/or Reconsideration of the *Second Report and Order* were filed by five parties in April 1989. For the most part, the petitions concerned the point-to-multipoint portion of the allocation; *i.e.*, the 932–932.5/941–941.5 MHz bands. The petitions for clarification expressed interest in the issues of frequency coordination, mutual exclusivity, and lottery procedures, while the petitions for reconsideration pertained to one-way use of the point-to-multipoint bands.

3. With regard to frequency coordination, the Commission finds that this activity is generally unnecessary during the initial filing window because there will be no licensees with whom to coordinate. However, since there remain 121 one-way broadcast auxiliary stations operating in the 942–944 MHz band on a grandfathered basis, the Commission will require that applications that may affect these stations include evidence that frequency coordination has been performed in accordance with § 21.100(d) of the Commission's Rules. After the initial filing window has closed and licenses have been issued, subsequent applications for the point-to-point channels must include evidence that frequency coordination has been performed with existing users in accordance with § 21.100(d). Frequency coordination will not apply to the point-to-multipoint bands at 932–932.5/941–941.5 MHz.

4. Regarding mutual exclusivity and lottery procedures, the Commission will treat all point-to multipoint channels as fungible during the initial filing window because there are no significant differences between frequency pairs. Therefore, while it shall permit point-to-multipoint applicants to specify a channel preference during the initial filing window, the Commission will make all point-to-multipoint channel assignments of those applications filed during the initial filing window. All

applications filed after the initial filing window must request a specific channel.

5. The Commission will use the 70 mile control station co-channel distance separation currently specified in part 22 of our Rules to determine which point-to-multipoint applications are mutually exclusive. While a larger separation would provide greater assurance of interference-free service, the Commission believes that 70 miles is sufficient separation, if good engineering practices are used, and will be adequate for the needs of all common carrier and many private radio users. Further, given the large volume of point-to-multipoint applications anticipated in the new bands, the Commission is convinced that there is a critical need to reuse channels as intensively as practicable.

6. Despite this somewhat lesser distance separation that the Commission is adopting for the point-to-multipoint channels, it believes that long "daisy chains" of mutually exclusive applications likely will develop during the initial filing window and, thus, lotteries will be required. Therefore, the Commission will hold a nationwide lottery among point-to-multipoint applications filed during the initial filing window. This lottery will include a ranking of all acceptable point-to-multipoint applications, whether or not they are mutually exclusive with other applications. The Commission is using this ranking procedure in order to avoid the time-consuming task of determining upon receipt of the applications which are mutually exclusive.

7. To simplify the ranking procedure, the Commission will assign a number to each Government and non-Government point-to-multipoint application that has not been dismissed or otherwise found unacceptable. A single random drawing of all the assigned numbers will be conducted to determine the order in which applications are to be ranked. To the extent possible, each applicant will be assigned its channel preference. When this is not possible, or if no channel preference is specified, the lowest available channel will be assigned. If it is not possible to grant an application, that application will be dismissed. The process will continue until all initially-filed applications have either been assigned a channel or dismissed.

8. Regarding point-to-point applications, the Commission will require that applicants select a channel and show evidence of coordination with any potentially-affected broadcast auxiliary licensees. It cannot treat point-to-point channels as fungible, due to these pre-existing broadcast auxiliary users. The Commission will begin processing these applications by sorting applications that have not been dismissed or otherwise found unacceptable by the channel requested and will initially assign channels for which there is only one application in a geographic area. At the end of this process, it will determine how many applications are mutually exclusive and whether there are other available channels in the same channel group. If there are other available channels, it will afford the mutually exclusive applicants the opportunity to resolve these situations by applying for a different channel. To the extent that there are no other available channels or to the extent that mutually exclusive applications remain after this process is concluded, it will then conduct lotteries for each channel among all remaining groups of mutually exclusive applicants.

9. After the initial assignment process has concluded for both point-to-point and point-to-multipoint channels, the Commission will issue a list or lists of all applications that have been granted. At that time, it will also establish the date after which new applications can be filed for the use of this spectrum. From this date forward, applications will be processed on a daily first-come, first-served basis. In the event of mutually exclusive applications being filed on the same day, lotteries will be held for each channel in accordance with the Commission's normal lottery procedures.

10. Regarding one-way use of point-to-multipoint channels, the Commission finds that permitting such use on a routine basis is desirable. In light of the efficiency with which paging operators are able to use an unpaired channel for control purposes, the special showing, as specified in the *Second Report and Order*, now appears to be unnecessary. The Commission also clarifies its rules with respect to several technical considerations concerning the point-to-multipoint bands.

Ordering Clause

11. For the foregoing reasons, *it is ordered* that the petitions filed by Motorola, Inc., Utilities Telecommunications Council, Paging Network, Inc., Telocator, and PacTel Paging, Inc. *are granted* to the extent indicated herein, and are denied in all other respects. *It is further ordered* that the Motion for Stay Pending Clarification and/or Reconsideration filed by PacTel Paging, Inc. *is dismissed. It is further ordered* that under the authority contained in 47 U.S.C. secs. 154(i), 303(c), 303(f), 303(g), and 303(r), parts 1, 21, 22, and 94 of the Commission's Rules are amended, as specified below, effective April 20, 1990. *It is further ordered* that this proceeding *is terminated.*

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 21

Domestic public fixed radio services, Radio.

47 CFR Part 22

Public mobile service, Radio.

47 CFR Part 94

Private operational-fixed microwave service, Radio.

Rule Changes

12. Part 1 of title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

§ 1.962 [Amended]

14. In Section 1.962, paragraph (i) is removed.

15. Part 21 of title 47 of the Code of Federal Regulations is amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

16. The authority citation for part 21 continues to read as follows:

Authority: Secs. 4 and 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, unless otherwise noted.

17. Section 21.31 is amended by revising paragraph (f) to read as follows:

§ 21.31 Mutually exclusive applications.

* * * * *

(f) Applicants for the 932.5–935/941.5–944 MHz bands shall select a frequency pair. Applicants for these bands may select an unpaired frequency only upon a showing that spectrum efficiency will not be impaired and that unpaired spectrum is not available in other bands. During the initial filing window, frequency coordination is not required, except that an application for a frequency in the 942–944 MHz band must be coordinated to ensure that it does not affect an existing broadcast auxiliary service licensee. After the initial filing window, an applicant must submit evidence that frequency

coordination has been performed with all licensees affected by the application. All frequency coordination must be performed in accordance with § 21.100(d) of the Commission's Rules. In the event of mutually exclusive applications occurring during the initial filing window for the 932.5–935/941.5–944 MHz bands, applicants shall be given the opportunity to resolve these situations by applying for an alternative frequency pair, if one is available. To the extent that there are no other available frequencies or to the extent that mutually exclusive applications remain after this process is concluded, lotteries shall be conducted for each frequency pair among all remaining mutually exclusive applications, assuming appropriate coordination with existing broadcast auxiliary stations can be concluded, where necessary. In the event of mutually exclusive applications being received for these bands on the same day after the initial filing window has closed and a subsequent filing window opened, lotteries shall be conducted for each frequency pair among all mutually exclusive applications.

18. Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICES

19. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise amended.

20. Section 22.31 is amended by revising paragraph (g) to read as follows:

§ 22.31 Mutually exclusive applications.

* * * * *

(g) During the initial filing window for frequencies in the 932–932.5/ 941–941.5 MHz bands, applicants may specify a frequency preference, but the Commission shall assign all frequencies. After the initial filing window, an applicant must select the frequency or frequency pair for which it is applying. With respect to unpaired frequencies, an applicant must specify a frequency in the 932–932.5 MHz band if all planned remote stations are located within 48 kilometers of the control station. In the event of mutually exclusive applications occurring in the 932–932.5/941–941.5 MHz bands during the initial filing window, a nationwide random drawing to rank applications shall be conducted among all applications that have not been dismissed or otherwise found unacceptable. This drawing shall include applications for both paired and unpaired frequencies. In the event mutually exclusive applications are received for the 932–932.5/941–941.5 MHz bands on the same day after the initial filing window has closed and a subsequent filing window opened, lotteries shall be conducted for each frequency or frequency pair among all mutually exclusive applications.

21. Section 22.106 is amended by revising the section heading and adding new paragraphs (b)(3) and (b)(4) following the note in section (b)(2)(iii) to read as follows:

§ 22.106 Emission limit.

* * * * *

(b) * * *

(3) For those transmitters that operate in the frequency bands 932–932.5/941–941.5 MHz with a 12.5 kHz bandwidth,

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 2.5 kHz up to and including 6.25 kHz: At least 53 $\log_{10}$ (f_d/2.5) decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 6.25 kHz up to and including 9.5 kHz: At least 103 $\log_{10}$ (f_d/3.9) decibels;

(iii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 9.5 kHz up to and including 15 kHz: At least 157 $\log_{10}$ (f_d/5.3) decibels;

(iv) On any frequency removed from the center of the authorized bandwidth by a displacement frequency greater than 15 kHz: At least 50 plus 10 $\log_{10}$ (P) or 70 decibels, whichever is the lesser attenuation.

(4) For those transmitters that operate in the frequency bands 932–932.5/941–941.5 MHz with a bandwidth greater than 12.5 kHz,

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5 kHz up to and including 10 kHz: At least 83 $\log_{10}$ (f_d/5) decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 10 kHz up to and including 250 percent of the authorized bandwidth: At least 116 $\log_{10}$ (f_d/6.1) decibels or 50 plus 10 $\log_{10}$ (P) or 70 decibels, whichever is the lesser attenuation;

(iii) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 plus 10 $\log_{10}$ (output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

* * * * *

22. Section 22.501 is amended by revising the introductory text of paragraph (g)(1) before the chart, the introductory text of paragraph (g)(3), and paragraph (g)(5) to read as follows:

§ 22.501 Frequencies.

* * * * *

(g)(1) The frequencies listed in this paragraph are available to control stations utilized within a multiple address system that requires the use of at least four simultaneously operated remote base stations operated on the same frequency assignment. These frequencies will be assigned only when there are four or more remote sites listed on the application for license. The frequencies may be used in paired or unpaired configurations. When paired, the higher frequency will be used by the control/relay station, and the lower frequency will be used by the control station.

* * * * *

(3) The assignment of frequencies operating in the 932–932.5/941–941.5 MHz bands, and the reassignment of frequencies operating in the 928.8625–928.9875/959.8625–959.9875 MHz bands will be governed by the following criteria:

* * * * *

(5) Stations in multiple address systems on the 941–941.5 MHz channels will not be authorized to use effective radiated power exceeding 600 watts. Stations in multiple address systems on the 932–932.5 MHz channels will not be authorized to use effective radiated power exceeding 30 watts.

* * * * *

23. Part 94 of title 47 of the Code of Federal Regulations is amended as follows:

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

24. The authority citation for part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

25. Section 94.15 is amended by revising the introductory text of paragraph (b), and paragraph (e), to read as follows:

§ 94.15 Policy governing the assignment of frequencies.

* * * * *

(b) Except as provided in § 94.25(k), all applications for new or modified stations must contain an engineering

analysis of the potential interference between the proposed facilities and previously authorized facilities and pending applications. The application must contain as supplemental information:

* * * * *

(e) Except as provided in paragraph (h) of this section, frequencies will be assigned in pairs for those stations employing full-duplex transmission, with one of the frequencies designated as the station transmit frequency and the other as the receive frequency. Provision is made in some bands for use of both paired and unpaired frequencies for one-way operations. Applicants requesting the use of paired frequencies in the 932–932.5 and 941–941.5 MHz bands for one-way master station transmissions to four or more remote stations will be assigned a frequency in the 932–932.5 MHz band, if available, unless planned remotes are to be located beyond 48 kilometers from the master station. Except for the 932–932.5/941–941.5 MHz bands, assignment of a paired frequency for one-way operations will be made only upon a showing that spectrum efficiency will not be impaired and that unpaired frequencies are not available in other fixed spectrum. However, operation on frequencies not in accordance with the foregoing will be authorized only upon a showing that the interference criteria of this part could not be met or that an exception is required to prevent intrasystem interference.

* * * * *

26. Section 94.25 is amended by adding a new paragraph (k) to read as follows:

§ 94.25 Filing of applications.

* * * * *

(k) Applications for frequencies in the 932–935 and 941–944 MHz bands shall be filed during an initial one-week period, to be specified by Commission public notice. During this initial filing period, applicants must perform frequency coordination only to the extent of protecting existing grandfathered broadcast auxiliary stations in the 942–944 MHz band. After this initial filing period, applications for the 932–935/941–944 MHz bands will not be accepted until further public notice is given by the Commission. During the initial filing period, applications for frequencies in the 932–932.5 and 941–941.5 MHz bands need not specify the exact frequency, but thereafter must include the specific frequency requested. All applications for frequencies in the 932.5–935 and 941.5–944 MHz bands must specify the frequency requested.

27. Section 94.63 is amended by revising paragraph (a) and paragraph (d)(4)(i), redesignating existing paragraph (d)(4)(ii) as paragraph (d)(4)(iii), and adding a new paragraph (d)(4)(ii) to read as follows:

§ 94.63 Interference protection criteria for operational fixed stations.

(a) Before filing an application for new or modified facilities under this part, the applicant must perform a frequency engineering analysis to assure that the proposed facilities will not cause interference to existing or previously applied-for stations in this service of a magnitude greater than that specified in the criteria set forth in paragraph (b) of this section, unless otherwise agreed to in accordance with § 94.15(b). As an exception to the above requirement, when the proposed facilities are to be operated in the bands 932–935 MHz, 941–944 MHz, 10,550–10,680 MHz, 17,700–19,700 MHz, 21,200–21,800 MHz, 22,400–23,000 MHz, or 38,600–40,000 MHz (excluding those frequencies set out in § 94.189), applicants shall follow the prior coordination procedure specified in § 21.100(d) of this chapter. In addition, when the proposed facilities are to be operated in the bands 2655–2690 MHz, or 12,500–12,700 MHz, applications shall also follow the procedures in §21.706 (c) and (d) and the technical standards and requirements of part 25 of this chapter as regards licensees in the Communication-Satellite Service. See also § 94.77.

* * * * *

(d)(4)(i) For multiple address stations in the 928–929/952–960 MHz bands, a statement that the proposed system complies with the following co-channel separations from all existing stations and pending applications:

Fixed-to-fixed..... 145 Km (90 miles)
Fixed-to-mobile..... 113 Km (70 miles)
Mobile-to-mobile..... 81 Km (50 miles)

Multiple address systems employing only remote stations will be treated as mobile for the purposes of determining the appropriate separation. For mobile operation, the mileage is measured from the reference point specified on the license application.

(d)(4)(ii) For multiple address stations in the 932–932.5/941–941.5 MHz bands, a statement that the proposed system complies with the following co-channel separation from all existing stations and pending applications:

Fixed-to-fixed..... 113 Km (70 miles)

* * * * *

28. Section 94.73 is amended in paragraph (a) by revising the entries for the 932–932.5 MHz and 941–941.5 MHz bands to read as follows:

§ 94.73 Power limitations.

* * * * *

Frequency Band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP [2]	
	Fixed (W)	Mobile (W)	Fixed (dBW)	Mobile (dBW)
*	*	*	*	*
932–932.5			+17	
*	*	*	*	*
941–941.5			+30	
*	*	*	*	*

[2] Peak envelope power shall not exceed five times the average power.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–6359 Filed 3–20–90; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 55, No. 55
Wednesday, March 21, 1990

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.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0687]

Truth in Lending; Home Equity Disclosure and Substantive Rule

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on whether to delete or revise a provision in Regulation Z (Truth in Lending) that permits creditors to freeze the credit line when the rate cap on a home equity line is reached. The Board also is soliciting comment on the timing rule for providing disclosures about any repayment phase provided for in an agreement. The rules in question relate to the Home Equity Loan Consumer Protection Act of 1988, which requires creditors to provide consumers with information for open-end credit plans secured by the consumer's dwelling, and imposes substantive limitations on these plans. Although the final regulations implementing the law were adopted in June 1989, questions about the rate cap provision and the timing of disclosures for the repayment phase have been raised in recent litigation.

DATES: Comments must be received on or before April 20, 1990.

ADDRESSES: Comments should refer to Docket No. R-0687 and be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays or to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street NW.) any time. Comments will be available for inspection in the Freedom of Information Office, Room B-1122 of the Eccles Building, between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Leonard Chanin, Senior Attorney, or Sharon Bowman, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-3667 or 452-2412; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Home Equity Loan Consumer Protection Act was enacted in November 1988. On January 23, 1989, the Board published for comment a proposed rule to implement the statute (54 FR 3063) and on June 9, 1989, adopted a final rule (54 FR 24670). Compliance with the regulation was mandatory as of November 7, 1989.

On November 1, 1989, Consumers Union filed suit against the Board challenging certain aspects of the regulation. *Consumers Union* v. *Federal Reserve Board,* No. 89-3008 (U.S. District Court for the District of Columbia). Among other issues, Consumers Union challenges the provision in the regulation permitting creditors to suspend advances of credit during any period the rate cap is reached. Consumers Union also challenges the part of the regulation permitting creditors to give disclosures about any "repayment" period (that is, when advances are no longer made and the consumer is paying off the amount borrowed) at the time the repayment period begins, rather than at the time of application. This notice relates to these two issues.

Proposed Amendments to Regulation Z

(i) *Rate Cap Provision.* Under section 137(c)(1) of the act, creditors are generally prohibited from unilaterally changing the terms of the plan after the account has been opened. Section 137(c)(2) of the act sets forth certain circumstances in which the creditor may prohibit additional extensions of credit or reduce the credit limit for a plan. Under section 105 of the Truth in Lending Act , the Board is authorized to provide for adjustments and exceptions for transactions that the Board believes are necessary or proper to effectuate the act, prevent circumvention or evasion, or facilitate compliance

Pursuant to the statute, the final regulation issued by the Board in June 1989 contained substantive limitations on the way home equity plans may be structured. The regulation incorporates the exceptions in section 137(c)(2) of the act limiting the ability of a creditor to change the terms of a plan after the account has been opened. The regulation adds an exception under which a creditor could freeze a line of credit if the rate cap is reached. Section 226.5b(f)(3)(vi)(G) permits a creditor to suspend additional advances or reduce the credit limit during any period in which the index value plus margin (the APR corresponding to the periodic rate) reaches the maximum APR (lifetime "cap") provided for in the agreement.[1] If the index and margin drop below the cap, credit privileges must be reinstated.

The regulation does not expressly require that the contract (as opposed to the disclosures) state that a creditor has the right to freeze a line of credit if the rate cap is reached. Creditors are specifically required to disclose if they have retained the ability to freeze a line when the rate cap is reached, and this disclosure duty may be met by including it in the agreement. As a practical matter, the Board believes that most creditors who wish to preserve this right include the provision in their contracts.

In the supplemental information accompanying the proposed regulation, the Board noted that the legislative history of the act supports the idea that a creditor could include in the agreement a provision permitting the suspension of advances of credit if the rate cap is reached. Very few commenters addressed this part of the proposed regulation. As a result, the administrative record does not contain much detail concerning this exception.

In the course of the litigation, questions have been raised about the inclusion of this provision in the regulation. In light of these questions, the Board is seeking comment on the advantages and disadvantages to consumers and creditors if the provision is deleted. Comment also is requested on alternatives, such as allowing

[1] Section 226.30 of the regulation, which implements section 1204 of the Competitive Equality Banking Act of 1987, requires creditors to include a maximum rate cap in their agreements for variable-rate open-end plans secured by a consumer's dwelling.

creditors to freeze the line if the rate cap is reached, but requiring them to expressly provide for this circumstance in their contracts.

(ii) *Delayed Timing Provision.* Some home equity plans provide in the initial agreement for two distinct phases: A "draw" period during which advances may be taken and a "repayment" period during which the balance is paid off and no new funds are advanced. Under the regulation, creditors are required to provide complete disclosures about both the draw and the repayment phases of the plan.

Several commenters requested guidance on the applicability of the home equity rule to the repayment phase of a plan. However, there was little discussion in the record on the question of whether consumers or creditors would be better served if the more detailed repayment disclosures were provided with the application or at the time of conversion to the repayment period.

In the supplemental information accompanying the final rule (54 FR 24672), the Board stated that while full disclosure about any repayment phase must be provided, creditors have a choice with regard to when those disclosures must be given. Creditors can either provide the information at the time the other disclosures are given (that is, with the application), or defer the bulk of the disclosures until the repayment phase begins. A sample form, G–14C, was provided in the appendix to the regulation for creditors using the second alternative. (The Board also stated that, even if a creditor chooses to give the bulk of the repayment disclosures at conversion, the basic information about the repayment phase—such as its length and how the minimum payment will be figured—must be provided with the other application disclosures.) The rule concerning delayed disclosure is also reflected in comment 5b–3 of the proposed Official Staff Commentary to the regulation, published for comment on November 22, 1989.

This rule has been challenged in the suit filed by Consumers Union referenced above. In addition there is a concern about whether the rulemaking record contains adequate information to support the Board's action. The Board is soliciting comment on the advantages and disadvantages of the delayed timing rule.

Comments Requested

Interested parties are invited to submit comments on the proposal. Depending on the resolution of the rate cap and delayed timing issues, the Board may make conforming changes to the regulation, the model forms and clauses in Appendix G, and the Official Staff Commentary. With the final rule the Board also will provide guidance on the effective date of any changes, as well as whether and how any changes should be reflected in creditors' contracts and disclosures. Because prompt resolution of this matter is in the public interest, the comment period is 30 days. The comment period ends on April 20, 1990.

Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3245.

List of Subjects in 12 CFR Part 226

Advertising; Banks; Banking; Consumer protection; Credit; Federal Reserve System; Finance; Penalties; Rate limitations; Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight the revisions that would be necessary if the regulation were changed. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets. Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board proposes to amend Regulation Z, 12 CFR part 226, by removing § 226.5b(f)(3)(vi)(G), by modifying §§ 226.5b(f)(3)(i), 226.5b(f)(3)(vi)(E) and 226.5b(f)(3)(vi)(F), and by removing form G–14C in appendix G.

1. The authority citation for part 226 would continue to read:

Authority: Section 105, Truth in Lending Act, as amended by sec. 605, Public Law No. 96–221, 94 Stat 170 (15 U.S.C. 1604 *et seq*); Section 1204(c), Competitive Equality Banking Act, Pub. L. No. 100–86, 101 Stat. 552.

2. The proposed amendment to § 226.5b(f) would read as follows:

Subpart B—Open-End Credit

§ 226.5b Requirements for home equity plans.

* * * * *

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise: * * *

(3) Change any term, except that a creditor may:

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which: * * *

(E) the priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; ►or◄

(F) the creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice ►.◄ [; or (G) the maximum annual percentage rate is reached.] * * *

3. In the alternative, the proposed amendment to § 226.5b(f) would read as follows:

Subpart B—Open-End Credit

§ 226.5b Requirements for home equity plans.

* * * * *

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise: * * *

(3) Change any term, except that a creditor may:

(i) ►Provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum annual percentage rate is reached. A creditor also may ◄ provide in the initial agreement that specified changes will occur if a specified event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment). * * *

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which: * * *

(E) the priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; ►or◄

(F) the creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice ►.◄ [; or (G) the maximum annual percentage rate is reached.] * * *

4. The proposed amendment to Appendix G would be amended by removing Form G–14C as follows:

Subpart D—Miscellaneous

Appendix G—Open-End Model Forms and Clauses

* * * * *

[G–14C—Home Equity Sample (Repayment phase disclosed later) * * *]

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 16, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–6425 Filed 3–20–90; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 26147; Notice No. 90–7]

RIN 2120–AD37

Use of Nitrogen or Other Inert Gas for Tire Inflation in Lieu of Air; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This action makes a correction to the Notice of proposed rulemaking published on March 5, 1990 (55 FR 7876). In the dates section we inadvertently inserted the wrong date. This action corrects that omission.

FOR FURTHER INFORMATION CONTACT: Brenda Courtney, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone: (202) 267–3327.

SUPPLEMENTARY INFORMATION:

History

This document corrects the comment date previously published in the **Federal Register** of March 5, 1990 (55 FR 7876). The FAA would like to change the July 2, 1990 comment date to read September 3, 1990.

Deborah Swank,

Acting, Program Management Staff, Office of Chief Counsel.

[FR Doc. 90–6479 Filed 3–20–90; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 500 and 582

[Docket No. 89N–0213]

Restriction on Level of Copper in Animal Feed; Withdrawal of Proposal

AGENCY: Food and Drug Administration, HHS.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing its proposed rule that would have limited the maximum level of copper compounds in poultry and swine feed to good feeding practices, not to exceed 15 parts per million (ppm). The circumstances surrounding its use as a substance that is generally recognized as safe (GRAS) under 21 CFR 582.80 remain unchanged.

FOR FURTHER INFORMATION CONTACT: Samuel L. Hansard, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 14, 1973 (38 FR 25694), FDA published a proposal that would have placed restrictions on the use of copper compounds in poultry and swine feed. The proposal would have amended the regulations for certain copper substances that are GRAS by limiting to good feeding practices, at a level not to exceed 15 ppm, the amount of copper that could be added to swine and poultry feed. The notice covered the following copper compounds: copper carbonate, copper chloride, copper gluconate, copper hydroxide, copper orthophosphate, copper pyrophasphate, and copper sulfate. The proposal would have amended 21 CFR 121.101(f) (currently 21 CFR 582.80), which provides that these copper compounds are GRAS when used in accordance with good feeding practice.

In 1967, FDA received a new animal drug application (NADA) requesting approval to add copper to swine feed, up to 250 ppm, to promote growth. In reviewing the application, the agency identified questions concerning the safety of human food derived from swine consuming copper. The data then available also raised preliminary questions as to the environmental effects of feeding high levels of copper to animals. In addition, the agency received a report that high levels of copper were being fed to swine and poultry. Accordingly, the agency proposed to limit the levels of copper added to animal feed.

The initial comment period, which closed November 2, 1973, was later extended by FDA to December 12, 1973, by a notice published in the **Federal Register** of November 26, 1973 (38 FR 32496). The comment period was reopened and extended to July 3, 1974, by a notice published in the **Federal Register** of April 4, 1974 (38 FR 12259).

Eighty-four comments were filed with FDA's Dockets Management Branch (HFA–305). The comments included 30 from industry, 22 from university and cooperative extension service faculty, 12 from national associations and state livestock and poultry producer organizations, 1 from the Office of the Secretary, U.S. Department of Agriculture, 1 from the Committee on Agriculture, U.S. House of Representatives, and 18 from other individuals or small groups.

Eighty-one of the 84 comments opposed the proposed restriction. The comments generally stated that the listed copper compounds had been used for some time, were generally recognized as safe and, therefore, should be subject to use solely in accordance with good nutritional feeding practices. A number of the opposing comments expressed strong opposition to what the comments perceived as an attempt by FDA to establish good feeding practices by setting limits on the use of essential nutrients. Other comments emphasized the need for periodic feeding of copper (mainly copper sulfate) as a time-tested nutritional adjunct in modern poultry operations. Many of the comments which opposed the proposal included copies of published research and research reports that substantiated the written comments and supported the examples of industry usage and experience which were submitted.

Three comments favored the FDA proposal. The comments in general stated that the proposed restriction was justifiable, and one comment stated further that the restriction on use should be extended to sheep because that species was more susceptible to copper toxicity.

The 1973 proposal did not provide an estimate of the extent to which swine and poultry were being fed supplemental copper in excess of 15 ppm. The comments submitted in response to the 1973 proposal did not provide a reliable basis for quantifying such use.

There have been no reports of significant increases in feed use levels of copper since 1973. The National

Academy of Sciences-National Reserach Council (NAS/NRC) recommendations for nutritional supplementation of copper in feeds remain at low levels, that is, 8 ppm for poultry and 6 ppm for swine. (See "Nutrient Requirements of Poultry," 8th Rev. Ed. 1984; "Nutrient Requirements of Swine," 9th Rev. Ed. 1988; National Academy Press, Washington, DC.) The NAS/NRC nuritional recommendations are generally accepted as minimum requirements in the livestock and poultry industries. It has not been necessary for FDA to take regulatory action, based on use of excessive levels of copper in animal feed, since the agency published the proposal in 1973. The agency has not received any reports of human or animal health problems associated with the addition of copper salts to animal feed. Results of the U.S. Department of Agriculture's testing for residues of copper in the edible portions of hogs and broilers in recent years support the conclusion that copper is not being added to the diets of those species at excessively high levels. Since 1973, FDA has received new scientific literature concerning human safety and the environmental effects of copper that is added to animal feed. None of this literature causes new concerns about the safety of current use levels of copper in animal feed. In addition, the agency has affirmed that copper gluconate, copper sulfate, and cuprous iodide are GRAS as direct human food ingredients (49 FR 24118; June 12, 1984). Finally, the mere passage of time in the years since the agency issued the proposal suggests that publication of a final rule at this time would not be appropriate.

FDA has concluded that the available data and information do not require restricting supplemental levels of copper salts in swine and poultry feeds to 15 ppm. As a result of the review of all the available data, and considering the comments submitted in response to the 1973 proposal, the agency has concluded that the 1973 proposal should be withdrawn. The agency concludes that the use of copper in animal feed for nutritional purposes can be regulated adequately under 21 CFR 582.80 without establishing quantitative limits on such use.

However, the withdrawal of the 1973 proposal does not constitute an endorsement of the use of levels of copper above nutritionally-required amounts in animal feeds. Regulatory action will be considered for animal feeds containing copper compounds that are found to be adulterated or misbranded under the Federal Food, Drug, and Cosmetic Act. Since publication of the September 14, 1973 proposal, the agency has made available Compliance Policy Guide 7126.11, entitled "The Status of Vitamins and Minerals in Type B and Type C Medicated Feed and in Non-medicated Feed" (published July 21, 1976, as revised June 1, 1986). That document states, among other things, that FDA will not object to the marketing of feeds that contain concentrations of nutrients that are reasonably consistent with sound nutritional practice. In the future, if the Agency determines that the use at high levels of copper compounds as feed ingredients is widespread, or the agency receives new evidence that current use levels present risks to the health of humans or to the environment, FDA will consider whether to take a more aggressive role in the regulatory control of copper compounds.

Therefore, the proposal to amend 21 CFR parts 121 and 135 (currently 21 CFR parts 582 and 500, respectively), published in the **Federal Register**, of September 14, 1973 (38 FR 25694), is hereby withdrawn.

The Center for Veterinary Medicine has concluded that, because this action is the withdrawal of a proposal and therefore does not change the regulatory status of copper for use in animal feed, this action is a type that does not require the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act.

This notice is issued pursuant to sections 201(s), 409, 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(s), 348, 371(a)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10).

Copies of the comments, related correspondence, and scientific literature received by FDA since the publication of the proposal are on file and available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m. Requests should be identified with the docket number found in brackets in the heading of this document.

Dated: March 12, 1990.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 90–6343 Filed 3–20–90; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket Nos. 87–5 and 89–12]

RIN 2125–AC30

Truck Length and Width Exclusive Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** on December 26, 1989 (54 FR 52951). In it, the FHWA requested comments from all interested parties to determine what criteria and procedures the Secretary should use to determine if safety or efficiency enhancing devices are to be excluded under sections 411(h) and 416(b) of the Surface Transportation Assistance Act of 1982 (STAA) [Pub. L. 97–425, 96 Stat. 2097] as amended, when measuring the length and width of vehicles for compliance with federally mandated dimensions.

The comment period is presently scheduled to close March 26, 1990. The FHWA has received a petition from the Truck Trailer Manufacturers Association to extend this closing date to June 1, 1990, in order for them to obtain measurements of new, in-service, and repaired semitrailers; to describe the methods of manufacture; and to estimate the economic impact of the proposal in the ANPRM on manufacturers, carriers, shippers, and consumers. After carefully considering the request, the FHWA has decided to provide the additional opportunity for comment.

The comment period is, therefore, being extended to Friday June 1, 1990.

DATES: Comments on this docket must be received on or before June 1, 1990.

ADDRESSES: Submit written, signed comments, to FHWA Docket No. 89–12, Federal Highway Administration, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Commenters may, in addition to submitting "hard copies" of their comments, submit a floppy disk (either 1.2Mb or 360Kb density) in a format that is compatible with word processing programs Word Perfect or WordStar. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t.,

Monday through Friday except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Max Pieper, Office of Motor Carrier Information Management and Analysis, (202–366–4029) or Mr. Charles Medalen, Office of the Chief Counsel (202–366–1354), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

Authority: Secs. 411 and 416 of Pub. L. 97–424, 96 Stat. 2097, 2150; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: March 13, 1990.

T.D. Larson,

Administrator.

[FR Doc. 90–6420 Filed 3–20–90; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; notice of hearing and extension of comment period.

SUMMARY: On December 22, 1989, Pennsylvania Department of Environmental Resources—Bureau of Mining and Reclamation submitted to OSM proposed regulatory amendments to the Pennsylvania regulatory program under the Surface Mining Control and Reclamation Act of 1977. OSM announced receipt of the amendment in the February 26, 1990, **Federal Register** (55 FR 6647) and solicited public comments on the proposed regulatory changes. The February 26, 1990, notice stated that the public comment period would end on March 28, 1990, and if a hearing on the amendment is requested, that the hearing would be held on March 23, 1990, at the Penn Harris Motor Inn, Camp Hill, Pennsylvania.

Several individuals requested that a hearing be held and also requested that the place of the hearing be changed to a location in Western Pennsylvania. OSM is honoring this request and in order to give interested parties ample notification of the change in hearing location, the date of the hearing has also been changed. In consequence, the deadline for submitting public comments has been extended.

This notice sets forth the times and location of the pending public hearing, and the extended deadline that public comments can be submitted to OSM regarding the adequacy of the proposed amendment.

DATES: Written comments must be received on or before 4:00 p.m. on April 8, 1990, to ensure consideration in the rulemaking process. The public hearing will be held at 9:00 a.m. on April 3, 1990.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below. Copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

Pennsylvania Department of Environmental Resources, Office of Environmental Energy Management, 10th Floor, Fulton Building, 3rd and Locust Streets, P.O. Box 2063, Harrisburg, Pennsylvania 17120, Telephone: (717) 787–4682.

The public hearing will be held at the Radisson Hotel Pittsburgh, 101 Mall Boulevard, Monroeville, Pennsylvania 15046.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Telephone (717) 782–4036.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: March 12, 1990.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 90–6407 Filed 3–20–90; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 168a

[DoD Instruction 3218.aa]

National Defense Science and Engineering Graduate Fellowships

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) proposes the following part to govern the National Defense Science and Engineering Graduate (NDSEG) Fellowship Program, DoD's newest fellowship program. The part implements policies and procedures contained in a new statutory provision, 10 U.S.C. 2191, that was added by section 843 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Pub. L. 101–189). As required by 10 U.S.C. 2191, a regulation governing the specifics of the NDSEG fellowship program will be published at a later date and codified as 32 CFR part 168b.

The NDSEG fellowship program was created by the Department of Defense Appropriations Act, 1989. DoD supported the first class of NDSEG fellows beginning in the fall of 1989.

Section 9096 of the Department of Defense Appropriations Act, 1990 (Pub. L. 101–165) funded the program for a second year. As a result, DoD will support a second class of fellows for a three-year period beginning in the fall of 1990. DoD will select the fellows from the pool of applicants that responded to an announcement that closed in January 1990.

DoD intends to continue to NDSEG fellowship program, subject to the availability of Congressional authorizations and appropriations. The next NDSEG competition, for fellowships beginning in the fall of 1991, would be conducted in the fall and winter of 1990.

DATES: Comments should be forwarded no later than April 20, 1990.

ADDRESSES: Office of the Deputy Director, Defense Research and Engineering (Research and Advanced Technology), room 3E114, the Pentagon, Washington, DC 20301–3080.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Herbst, telephone 202–694–0205.

SUPPLEMENTARY INFORMATION: A single brochure describes the three DoD programs that provide portable fellowships for graduate study in science and engineering; the NDSEG

fellowship program, the Office of Naval Research Graduate Fellowship Program, and the U.S. Air Force Laboratory Graduate Fellowship Program. One may obtain the brochure or further information about the NDSEG fellowship program by writing to: NDSEG Fellowship Program; P.O. Box 1211; Research Triangle Park; North Carolina 27709-2211.

List of Subjects in 32 CFR Part 168a

Grant programs—science and technology, Research, Scholarships and fellowships, Science and technology.

Accordingly, title 32 of the Code of Federal Regulations, subchapter E, is proposed to be amended to add part 168a as follows:

PART 168a—NATIONAL DEFENSE SCIENCE AND ENGINEERING GRADUATE FELLOWSHIPS

Sec.

168a.1 Purpose.
168a.2 Applicability.
168a.3 Definition.
168a.4 Policy and procedures.
168a.5 Responsibilities.

Authority: 10 U.S.C. 2191.

§ 168a.1 Purpose.

This part:

(a) Establishes guidelines for the award of National Defense Science and Engineering Graduate (NDSEG) Fellowships, as required by 10 U.S.C. 2191.

(b) Authorizes, in accordance with 10 U.S.C. 2191 and consistent with DoD 5025.1, the publication of a regulation which will be codified at 32 CFR part 168b.

§ 168a.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies (hereafter referred to collectively as "DoD Components").

§ 168a.3 Definition.

Sponsoring Agency. A DoD Component or an activity that is designated to fund NDSEG fellowships, pursuant to § 168a.5(a).

§ 168a.4 Policy and procedures.

(a) Sponsoring agencies shall award NDSEG fellowships:

(1) Solely to U.S. citizens and nationals who agree to pursue graduate degrees in science, engineering, or other fields of study that are designated, in accordance with § 168a.5(b)(2), to be of priority interest to the Department of Defense.

(2) Through a nationwide competition in which all appropriate actions have been taken to encourage applications from members of groups (including minorities, women, and disabled persons) that historically have been underrepresented in science and engineering.

(3) Without regard to the geographic region in which the applicant lives or the geographic region in which the applicant intends to pursue an advanced degree.

(b) The criteria for award of NDSEF fellowship shall be:

(1) The applicant's academic ability relative to other persons applying in the applicant's proposed field of study.

(2) The priority of the applicant's proposed field of study to the Department of Defense.

§ 168a.5 Responsibilities.

(a) The *Deputy Director, Defense Research and Engineering (Research and Advanced Technology)* (DDDR&E(R&AT)) shall:

(1) Administer this part and issue DoD guidance, as needed, for NDSEG fellowships.

(2) Designate those DoD Components that will fund NDSEG fellowships, consistent with relevant statutory authority.

(3) Issue a regulation in accordance with 10 U.S.C. 2191 and DoD 5025.1-M.

(b) The *Heads of Sponsoring Agencies* or their designees, in coordination with a representative of the *Deputy Director, Defense Research and Engineering (Research and Advanced Technology)* (DDDR&E(R&AT)) shall jointly:

(1) Oversee the nationwide competition to select NDSEG fellowship recipients.

(2) Determine those science, engineering and other fields of priority interest to the Department of Defense in which fellowships are to be awarded.

(3) Assist in the preparation of a regulation, in accordance with 10 U.S.C. 2191 and DoD 5025.1-M, that prescribes.

(i) Procedures for selecting NDSEG fellows.

(ii) The basis for determining the amounts of NDSEG fellowships.

(iii) The maximum amount that may be awarded to an individual during an academic year.

Dated: March 15, 1990.

L.M. Bynum,

Alternate OSD Federal, Register Liaison Officer, Department of Defense.

[FR Doc. 90-6362 Filed 3-20-90; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3746-9; SC-022a]

Approval and Promulgation of Implementation Plans; South Carolina: Volatile Organic Compound (VOC) Emissions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA today proposes to approve and disapprove specific revisions of the volatile organic compound (VOC) regulations as contained in the South Carolina State Implementation Plan (SIP). These revisions were submitted to EPA by the South Carolina Department of Health and Environmental Control on March 16, 1989. The regulation revisions proposed for approval are Regulation No. 62.5, Standard No. 5: section I, parts C.2 (Alternative Emission Limitations) and A.53 (Definition of Petroleum Liquids) and section II, part H.3 (Graphic Arts-Rotogravure and Flexography). EPA is propsing to disapprove Regulation No. 62.5, Standard No. 5: section I, part E.4. (VOC Compliance Testing) which has been identified as being deficient. The revisions identified within each regulation and any applicable deficiencies are discussed in detail in the Supplementary Information section of this notice. The public is invited to submit written comments on this proposed action.

DATES: To be considered, comments must be received on or before April 20, 1990.

ADDRESSES: Written comments should be addressed to Brenda Johnson of EPA Region IV's Air Programs Branch (see EPA Region IV address below). Copies of the material submitted by South Carolina may be examined during normal business hours at the following locations:

Region IV Air Programs Branch, Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29210.

FOR FURTHER INFORMATION CONTACT: Brenda Johnson of the EPA Region IV Air Programs Branch at 404-347-2864 (FTS-257-2864) and at the above address.

SUPPLEMENTARY INFORMATION: On March 16, 1989, the South Carolina Department of Health and Environmental Control submitted to EPA for approval miscellaneous revisions to the South Carolina Air Pollution Control Regulations and Standards. The SIP submittal contained miscellaneous revisions to update references to federal publications, delete obsolete materials, correct typographical and editorial errors and maintain a conformance with federal regulations. The submittal contained revisions to Regulation No. 62.1 and Regulation No. 62.5, Standards No, 1, 2, 4, 5, 5.1, and 7. These revisions involved requirements for permitting, emissions inventory and the prevention of significant deterioration; emissions from graphic arts, fuel burning and process sources; ambient air quality standards; and compliance testing and definitions. The revisions to the volatile organic compounds provisions of Regulation 62.5, Standard No. 5 are acted on in this notice. The remaining revisions will be acted on in another notice. The revisions have undergone State legislative review and approval and became State-effective on February 24, 1989, when they were published in the South Carolina *State Register.*

EPA is proposing approval of the following revisions to Regulation No. 62.5, Standard No. 5:

I. Section I, Part C.2—Alternative Emission Limitations

This provision gives the Department the authority to approve less stringent emission limitations. An exception granted under this provision is not effective until it is submitted to and approved by the EPA Administrator as a source-specific SIP revision. Part 2.b, which allows Department approval of less stringent emission requirements without EPA review, was deleted from this section. Part 2.c was renumbered to 2.b and the revision date to the Clean Air Act reference was added.

II. Section I, Part A.53—Definition of Petroleum Liquids

The petroleum liquids definition was revised to update the American Society for Testing and Materials (ASTM) references that specify certain fuel oils not considered petroleum liquids for the purposes of the regulation.

III. Section II, Part H.3—Graphics Art—Rotogravure and Flexography

Part H.3. of this regulation lists the control systems that are required to be used to achieve compliance. Previously, this section required a specific percent VOC reduction from emissions entering the control system, i.e., the destruction efficiency. The proposed revision deletes the destruction efficiency that must be achieved by carbon adsorption systems, incineration and alternative controls. Although the destruction efficiency was deleted, no change was made to the emission limitations for the source category and source compliance is still the object of the standard. By removing the specific requirements for the control technology alternatives, a source has more flexibility and economic discretion for achieving the overall source emission limits. The overall stringency of the regulation is maintained.

The regulation continues to require that a capture system must be used in conjunction with the control equipment and retains the overall VOC control efficiencies that should be achieved. These control efficiencies are in agreement with the EPA Control Techniques Guidelines for these processes. The control efficiency of a system is determined by the product of the destruction efficiency and the capture efficiency. With this proposed change the source has the option to vary either of these factors to achieve the required control efficiency. Therefore, the regulation does not represent a relaxation and maintains the emission limitations that are required to be achieved by these control systems.

Appendix D of the November 24, 1987, **Federal Register** notice (52 FR 45044) provides guidance to State and local agencies in identifying and correcting regulations that are inconsistent with EPA requirements. The proposed revisions were reviewed in accordance with the requirements of this notice. EPA has determined that the following portions of Regulation No. 62.5, Standard No. 5, are deficient and is therefore proposing to disapprove the requested revisions:

I. Section I, Part E.4.—VOC Compliance Testing

This regulation references test methods and procedures as contained in "The Methodology Manual for Use with Standards on Volatile Organic Compounds". Furthermore, it provides for the approval authority of alternative test methods by the Department.

The Methodology Manual is part of the South Carolina VOC SIP and has been reviewed by EPA. The manual references ASTM methods which are outdated and inconsistent with EPA requirements. Therefore, EPA cannot approve a revision that references these test methods. The portion of this regulation that provides the approval authority of alternative test methods, i.e., director's discretion, is a deviation that must also be corrected. This deviation can be corrected by the removal of this criterion or by requiring each alternative test determination to be submitted for EPA approval as a source specific SIP revision.

The public is invited to participate in this rulemaking by submitting written comments on this proposed action.

Proposed Action: EPA is proposing to approve Regulation No. 62.5, Standard No. 5, section I, parts A.53 and C.2 and, section II, part H.3. The regulation that has been identified as being deficient, Regulation No. 62.5, Standard No. 5: section I, part E.4., is proposed for disapproval.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

List of Subjects In 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401–7642.

Joseph R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 90–6444 Filed 3–20–90; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[PP 9E3769/P507; FRL–3711–3]

Pesticide Tolerance for Methidathion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for residues of the insecticide methidathion in or on

the raw agricultural commodities longan and carambola. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodities was requested in a petition submitted by the Interregional Research Project No. 4 (IR–4).

DATES: Comments, identified by the document control number [PP 9E3769/P507], must be received on or before April 20, 1990.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked "confidential" may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 9E3769 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of Florida. This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide methidathion, O,O–dimethyl phosphorodithioate, S–ester with 4–(mercaptomethyl–2–methoxy–1,3,4–thiadiazolin–5–one) in or on the raw agricultural commodities longan and carambola at 0.1 part per million (ppm). The petitioner proposed that this use of methidathion be limited to Florida based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above. –The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 2–year dog feeding study with a no-observed-effect level (NOEL) of 4 ppm (0.1 mg/kg/day).

2. A two-generation rat reproduction study with a reproductive NOEL of 5 ppm (0.25 mg/kg/day).

3. A rabbit teratology study with a maternal NOEL of 6 mg/kg/day and a developmental NOEL equal to or greater than 12 mg/kg/day.

4. A rat teratology study with a maternal NOEL of 1 mg/kg/day and a developmental NOEL of equal to or greater than 2.25 mg/kg/day.

5. Mutagenicity studies including gene mutation, chromosomal aberrations, and direct DNA damage tests were negative for mutagenic effects.

6. A 2–year mouse feeding/oncogenicity study with a NOEL for systemic effects at 1.6 mg/kg/day (10 ppm) and liver tumors observed in male animals at the 7.5 mg/kg/day (50 ppm) dose level.

7. A 2–year rat feeding/oncogenicity study with a no-observed-effect level (NOEL) of 4 ppm (0.2 milligram (mg)/kilogram (kg)/day) for systemic effects and no indication of carcinogenic potential at any dose tested (0, 4, 16, and 64 ppm).

The Agency had previously reviewed another oncogenicity study in mice that was conducted by Industrial Biotest Laboratories. The study indicated a statistically significant increase in the frequency of hepatocellular adenomas in male mice at the high-dose level of 15 mg/kg/day. However, the study was determined to be invalid because of unacceptable methodologies, including partial degradation of methidathion in the diet, low survival of the animals, and deficiencies in animal husbandry. The Methidathion Registration Standard issued in 1983 required the replacement oncogenicity studies in the rat and the mouse that are summarized above. The replacement 2–year rat oncogenicity study indicated no increase in neoplastic lesions in either sex at any dose, but the results of the replacement 2–year mouse oncogenicity study did show an increase in the incidence of combined benign and malignant hepatocellular tumors in male mice at the-high dose level of 16.1 mg/kg/day (100 ppm). Based on the mouse study, the Agency has classified methidathion as a possible human carcinogen (Group C). This classification is based on the Agency's Risk Assessment, published in the Federal Register of September 24, 1986 (51 FR 33992). The evidence as a whole is not considered strong enough to warrant a quantitative estimation of human risk.

In reaching this conclusion, the Toxicology Branch Peer Review Committee considered the following information:

1. The positive carcinogenic effects were found in only one species, the mouse, and one sex, the male.

2. Tumors were discovered in animals exposed to very high doses. Adenomas (benign tumors) were only considered to be biologically significant at 16.1 mg/kg/day (HDT); carcinomas, although increased at 7.5 mg/kg/day, were significant only at 16.1 mg/kg/day; combined adenoma/carcinoma were significantly increased at 50 ppm (7.5 mg/kg/day) and 100 ppm (16.1 mg/kg/day).

3. The rat study was negative for oncogenic effects at all levels, i.e., 0, 4, 40, and 100 ppm (equivalent to 0, 0.2, 2, and 5 mg/kg/day, respectively).

4. There are no close structural analogs with carcinogenic concerns identified.

5. Methidathion is not mutagenic in several acceptable studies (in vitro point mutation assays, both mammalian and bacterial; nuclear anomaly test; sister chromatid exchange; dominant lethal test).

The reference dose (ADI), based on the 2–year dog feeding study NOEL of 0.1 mg/kg/day and using a 100–fold safety factor, is calculated to be 0.001 mg/kg/day.

The anticipated residue contribution (ARC) from existing tolerances for the overall U.S. population is calculated to be 0.000641 mg/kg/day (64.1 per cent of the ADI). The additional exposure to methidathion from the proposed tolerances on longan and carambola cannot be assessed because food consumption data for these commodities are either negligible or nonexistent. The only existing data on these commodities show a food consumption estimate of 0.000001 mg/kg body weight/day for both commodities, for the overall U.S. population. The Agency's dietary risk evaluation system (DRES) cannot calculate dietary estimates less than 10^{-6}

mg/kg body weight/day. However, contribution to exposure to methidathion from the proposed tolerances is expected to be negligible.

The nature of the residue is adequately understood, and an adequate analytical method is available in the Pesticide Analytical Manual (PAM), Vol. II, for enforcement purposes. No secondary residues in meat, milk, poultry, or eggs are expected since longan and carambola are not considered a livestock feed commodity. There are currently no actions pending against the continued registration of this chemical. –Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.298 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E3769/P507]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 7, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

1. The authority citation for part 180 continues to read as follows: –

Authority: 21 U.S.C. 346a and 371.

2. Section 180.298(c) is amended by adding and alphabetically inserting in the table therein the commodities carambola and longan, to read as follows:

§ 180.298 Methidathion; tolerances for residues.

* * * * *

(c) * * *

Commodities	Parts per million
Carambola	0.1
* * * * *	
Longan	0.1

[FR Doc. 90–6212 Filed 3–20–90; 8:45 am]

BILLING CODE 6560–50–D

40 CFR Part 372

[OPTS–400044; FRL–3711–5]

Ozone Depleting Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know; Receipt of Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of petition.

SUMMARY: EPA has received a petition from three State Governors and the Natural Resources Defense Council to add seven ozone depleting chemicals to the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). Because this petition was submitted by State Governors, the statute requires that these chemicals be added to the list automatically unless EPA acts within 180 days by initiating rulemaking to add the chemicals or by publishing an explanation of why the chemicals do not meet the statutory criteria for listing. Because of the special nature of this petition, EPA is requesting public comment on the petition at this time.

DATES: Written comments must be submitted on or before May 7, 1990.

ADDRESSES: Written comments must be submitted in triplicate to: OTS Docket Clerk, TSCA Public Docket Office, Environmental Protection Agency, Mail Stop TS–793, Rm. NE–G004, 401 M St., SW., Washington, DC 20460, Attention: Docket Control Number OPTS–400044.

FOR FURTHER INFORMATION CONTACT: Robert J. Israel, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., – Washington, DC 20460, –Toll free: 800–535–0202, In Washington, DC and Alaska, 202–479–2449.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This petition is submitted under section 313(d) and (e)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99-499, "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities that manufacture, process, or otherwise use toxic chemicals to report annually their environmental releases of such chemicals. Section 313 establishes an initial list of toxic chemicals that is composed of more than 300 chemicals and chemical categories. Any person may petition the Agency to add chemicals to or delete chemicals from the list. If a State Governor petitions EPA to add a chemical to the list, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator:

(1) Initiates a rulemaking to add the chemicals to the list, in accordance with section 313(d)(2), or

(2) Publishes an explanation of why the Administrator believes the petition does not meet the statutory requirements under section 313(d)(2) to warrant addition to the list.

II. Description of Petition

A. Introduction

On January 9, 1990, EPA received from Governor Thomas Kean of New Jersey, Governor Mario Cuomo of New York, and Governor Madeleine Kunin of Vermont, as well as the Natural Resources Defense Council, a petition to add seven ozone depleting chemicals to the section 313 list of toxic chemicals. Specifically, the seven chemicals are trichlorofluoromethane (CFC–11) (CAS Registry Number 75–69–4),

dichlorodifluoromethane (CFC–12) (CAS Registry Number 75–71–8), dichlorotetrafluoroethane (CFC–114) (CAS Registry Number 76–14–2), (mono)chloropentafluoroethane (CFC–115) (CAS Registry Number 76–15–3), bromochlorodifluoromethane (Halon 1211) (CAS Registry Number 421–01–2), bromotrifluoromethane (Halon 1301) (CAS Registry Number 75–63–8), and dibromotetrafluoroethane (Halon 2402) (CAS Registry Number 124–73–2).

The petition is based on two EPA documents, "Assessing the Risk of Trace Gases That Can Modify the Stratosphere" (Ref. 1) and "Regulatory Impact Analysis: Protection of Stratospheric Ozone" (Ref. 2). These documents were prepared in support of an EPA rulemaking of August 12, 1988 (53 FR 30566), limiting production and consumption of eight CFCs and Halons because of their depleting effect on stratospheric ozone. Seven of those eight chemicals are the subject of this petition; the eighth, CFC-113 (Freon 113), is already on the section 313 list.

The petitioners contend that the petitioned chemicals satisfy section 313(d)(2)(B) because they are known to cause cancer and other chronic health effects in humans through depletion of the stratospheric ozone layer. The petitioners also claim that these chemicals satisfy section 313(d)(2)(C) because they cause significant adverse effects on the environment. The two documents cited above provide support for these assertions.

The basis for the petitioners' claims is as follows: The seven CFCs and Halons are known to release chlorine or bromine into the stratosphere. Chlorine and bromine act as catalysts to reduce the net amount of stratospheric ozone. Stratospheric ozone shields the earth from ultraviolet-B (UV-B) radiation (i.e., 290 to 320 nanometers). Decreases in total column ozone would increase the percentage of UV-B radiation, especially at its most harmful wavelengths, reaching the earth's surface. Because CFCs and Halons remain in the atmosphere for many decades to over a century, emissions today will influence ozone levels far into the future. Exposure to UV-B radiation is known to cause various adverse human health and environmental effects. A brief summary of the effects that have been cited in the petition is presented below.

B. Chronic Human Health Effects

Exposure to UV-B radiation has been implicated by laboratory and epidemiologic studies as a cause of two types of nonmelanoma skin cancers: squamous cell cancer and basal cell cancer. Studies predict that for every 1 percent increase in UV-B radiation, nonmelanoma skin cancer cases would increase by about 1 to 3 percent.

Recent epidemiological studies, including large case control studies, suggest that UV-B radiation plays an important role in causing malignant melanoma skin cancer. Recent studies predict that for each 1 percent change in UV-B intensity, the incidence of melanoma could increase from 0.5 to 1 percent.

Studies have demonstrated that UV-B radiation can suppress the immune response system in animals, and, possibly, in humans.

Increases in exposure to UV-B radiation are likely to increase the incidence of cataracts and could adversely affect the retina.

Results from one modeling study and one chamber study suggest that increased UV-B penetration may increase the rate of tropospheric ozone formation. Available data suggest that ozone exposure may lead to chronic health effects, including morphological changes to, and impaired functioning of, the lungs.

C. Environmental Effects

Aquatic organisms, particularly phytoplankton, zooplankton, and the larvae of many fishes, appear to be susceptible to harm from increased exposure to UV-B radiation because they spend at least part of their time at or near the surface of waters they inhabit.

Increased UV-B penetration has been shown to result in adverse impacts on plants. Field studies on soybeans suggest that yield reductions could occur in some cultivars of soybeans, while evidence from laboratory studies suggest that two out of three cultivars are sensitive to UV-B.

Laboratory studies with numerous other crop species also show many to be adversely affected by UV-B. Increased UV-B has been shown to alter the balance of competition between plants. While the magnitude of this change cannot be presently estimated, the implications of UV-altered, competitive balance for crops and weeds and for nonagricultural areas such as forests, grasslands, and desert may be far reaching.

D. Summary

The petition states that the seven CFCs and Halons included in the petition contribute to the depletion of stratospheric ozone, which leads to an increase in exposure to UV-B radiation. On these grounds, the petitioners argue, these chemicals can be reasonably anticipated to cause cancer and other serious or irreversible chronic health effects in humans and serious adverse effects on the environment.

It is EPA's intent to evaluate these seven chemicals based on existing assessment documents prepared by EPA. In the absence of compelling public comment objecting to the addition of these chemicals, EPA may choose to let the 180-day deadline pass and rely on the statutory provisions to automatically add these chemicals to the section 313 list.

III. Public Docket

The petition and all reference documents cited therein are contained in the docket number OPTS–400044. All documents, including an index of the docket, are available in the TSCA Public Docket office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

IV. Request for Public Comment

The Agency requests comments on the petition to add seven ozone-depleting chemicals to the section 313 list. All comments should be submitted on or before May 7, 1990. Comments received by the deadline will be considered by the EPA in its review of this petition. Comments may address the toxicity of any or all of these chemicals, the adequacy of the available data for making a determination, the appropriateness of listing these chemicals under section 313 given that their effects are indirect and not confined to the community in which release occurs, or anything else relevant to the Agency's review of this petition.

V. References

(1) Assessing the Risks of Trace Gases That Can Modify the Atmosphere. USEPA. December 1987.

(2) Regulatory Impact Analysis: Protection of Stratospheric Ozone. USEPA. December 1987.

Dated: March 5, 1990.

Linda J. Fisher,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 90–6439 Filed 3–20–90; 8:45 a.m.]

BILLING CODE 6560–50–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90-76; FCC 90-77]

Application Filing Requirements in the Public Land Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Rules amending the application filing requirements in the Public Land Mobile Services are being proposed. Currently applicants submit interference studies as part of their applications. The proposed rules would require a potential applicant to notify current licensees and pending applicants of its proposed frequency usage before its application is filed and resolve any interference disputes or provide an explanation for not resolving the disputes with its application.

DATES: Comments must be filed by May 7, 1990. Reply comments are due by May 22, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gerald Zuckerman, Mobile Services Division, Common Carrier Bureau (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in CC Docket No. 90-76, adopted February 15, 1990 and released March 15, 1990.

The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text of this notice may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

The following collection of information contained in this proposed rule has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M St., NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should direct their comments to Eyvette Flynn, (202) 395-3785, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: None.

Title: Amendment of part 22 of the Commission's Rules to Require the Prior Coordination of Public Land Mobile Service Applications.

Action: Proposed new collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion.

Estimated Annual Burden: 2500 responses; 3750 hours total; 1.50 hours average burden per response. (The foregoing estimates are based on the proposals contained in the Notice of Proposed Rulemaking).

Needs and Uses: The proposed coordination rules require potential Public Land Mobile Service applicants to provide existing user and applications with prior filed applications with notice of its technical proposal. Upon completion of coordination the applicant may file its application within six months of the date coordination was initiated. Unresolved technical problems must be explained in the application. This information will be used by Commission staff in processing the application.

Summary of Notice of Proposed Rulemaking

1. Applicants in the Public Land Mobile Services (which include paging and certain two-way mobile telephone systems) currently are permitted to file applications without coordinating their proposed frequency use with existing licensees or prior filed applicants whose operation or proposed operation might be affected. The Commission's staff must examine each engineering proposal to determine whether interference might result. Also, sometimes Petitions to Deny are filed by existing licensees or applicants who claim that an applicant's proposal will cause interference.

2. The Notice of Proposed Rulemaking suggests the adoption of prior coordination requirements into Rulepart 22 that are similar to the procedures that are in use in the Domestic Public Fixed Radio Services (Rulepart 21). Under the proposed rules, applicants would be required to coordinate their proposed frequency usage with existing licensees and earlier filed applicants.

3. To comply with the proposed rules a potential applicant would send written notice of its proposal to the existing licensees and applicants who would have 30 days to indicate whether the proposal would cause interference to their proposal. The prospective applicant must either modify its proposal to meet an objection or submit a statement explaining the reasons for not resolving the problem. Coordination must be completed prior to the filing of an application.

4. This is a non-restricted notice and comment rulemaking proceeding. *See* 1.1231 of the Commission's rules, 47 CFR 1.1231 for the governing permissible *ex parte* contacts.

List of Subjects in 47 CFR Part 22

Communications common carriers, Public land mobile services.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-6360 Filed 3-20-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

Incidental Take of Marine Mammals in the Gulf of Mexico

AGENCY: National Marine Fisheries Service; NOAA, Commerce.

ACTION: Extension of comment period concerning the notice of receipt of request for rulemaking and request for information.

SUMMARY: NMFS will extend for 30 days the comment period on the request from the American Petroleum Institute for a small take of spotted and bottlenose dolphins incidental to the removal of oil and gas drilling and production structures in state waters and on the Outer Continental Shelf in the Gulf of Mexico over the next 5 years. The first notice was published in the Federal Register on January 30, 1990 (55 FR 3074). The extension was requested by several organizations interested in submitting comments.

DATES: Comments and information should be received by April 16, 1990.

ADDRESSES: Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Protected Species Management Division, NMFS, (301) 427-2323.

Dated: March 15, 1990.

Samuel W. McKeen,

NMFS Program Management Officer.

[FR Doc. 90-6401 Filed 3-20-90; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 55
Wednesday, March 21, 1990

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

Forest Service

Draft Supplement to the Final Environmental Impact Statement for the National Forests in Florida Land and Resource Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare a supplement to an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final supplement to the Final Environmental Impact Statement (FEIS) for the National Forests in Florida Land and Resource Management Plan (LRMP) filed in January 1986. The supplement is for a proposed action to consider amending the Forest Land and Resource Management Plan by changing the goals, objectives, and/or standards and guidelines pertaining to: (1) Management of the native longleaf pine/wiregrass community, (2) strategies for enhancement of the red-cockaded woodpecker, (3) retention of hardwood mast areas, (4) restoration of pine on titi-encroached areas, (5) management of wilderness study areas, (6) management of savannahs, (7) the use of plowed firelines, (8) management of off-highway vehicles, (9) desired future condition of each management area, and (10) interim management of National Forest System lands along potentially eligible and eligible Wild and Scenic Rivers. This proposed action is likely to result in a significant amendment to the LRMP and, therefore, will be prepared in compliance with the direction at 36 CFR 219.10(f) for a significant amendment.

The agency invites written comments and suggestions that are within the scope of the proposed action and analysis for the supplement. In addition, the agency gives notice of the full environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate in the process and contribute to the final decision.

DATES: Comments related to the issues to be addressed should be received by May 4, 1990, to ensure timely consideration.

ADDRESSES: Send written comments and suggestions to William C. Bodie, Acting Forest Supervisor, National Forests in Florida, Suite 4061, 227 N. Bronough St., Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT: Mark Warren, Planning Staff Officer, (904) 681–7265.

SUPPLEMENTARY INFORMATION: The National Forests in Florida Land and Resource Management Plan (LRMP) was approved on January 6, 1986. There were three administrative appeals of the decision to select Alternative 10 as the LRMP to be implemented. One appeal was dismissed. The Regional Forester entered into a period of negotiation with the other two appellants in an effort to reach a settlement agreement with them. It has become evident that an agreement on all issues will not be reached. As a result, an amendment to the LRMP is needed to address issues that were discussed during the settlement negotiations and to accommodate other changes that are needed to reflect current conditions. The National Forests in Florida LRMP, as amended, will remain in effect and continue to be implemented during preparation of the supplement to the FEIS.

No public meetings are planned at this time. Individuals who, in the past, have indicated an interest in the Forest's planning process will be notified about the scope of the proposed action and about the process to identify issues. General notice to the public concerning the scope of the proposed action and the issue identification process will be published in a newsletter and/or news releases.

In preparing the draft supplement to the FEIS, the Forest Service will develop, as a minimum, range of alternatives that: (1) Describe various acreages and criteria for locations where the native pine/wiregrass community will be managed, and the mixes of timber harvest, site preparation, reforestation and prescribed burning methods to be used in managing the community, (2) analyze different methods of timber harvest, varying rotation ages, increases and decreases in live and snag tree retention, and different amounts and kinds of prescribed burning—all related to strategies for enhancement of the red-cockaded woodpecker, (3) examine various amounts of hardwood mast areas, (4) look at different levels of pine restoration on titi-encroached areas and the procedures for doing it, (5) explore various prescriptions, with different resource emphasis, for managing the wilderness study area, (6) analyze different methods for managing savannahs, (7) propose different procedures and mitigating measures for plowing firelines, (8) examine different combinations of areas where off-highway vehicle use would be regulated to various degrees, (9) ampify and refine the desired future condition for each management area, and (10) propose standards and guidelines for managing the resources on National Forest System lands along potentially eligible and eligible Wild and Scenic Rivers until eligibility and suitability studies are completed.

The draft supplement to the FEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by February 1991. At that time, EPA will publish a notice of availability of the draft supplement in the **Federal Register.**

The comment period on the draft supplement to the FEIS will be 90 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the National Forests in Florida participate at this time. To be most helpful, comments on the draft supplement should be as specific as possible and may address the adequacy of the supplement or the merits of the alternatives discussed (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v.

NRDC, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*., 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final.

After the comment period ends on the draft supplement, the comments will be analyzed and considered by the Forest Service in preparing the final supplement. The final supplement is scheduled to be completed by August 1991. In the final supplement, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the final supplement, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

The responsible official is John E. Alcock, Regional Forester, Southern Region, 1720 Peachtree Road, NW., Atlanta, Georgia 30367.

Dated: March 13, 1990.

Marvin C. Meier,

Deputy Regional Forester.

[FR Doc. 90-6384 Filed 3-20-90; 8:45 am]

BILLING CODE 3410-11-M

Exemption From Appeal, Baldy Fire Recovery Project

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Baldy Fire Recovery Project.

SUMMARY: The Forest Service is exempting from administrative appeals its decision to rehabilitate National Forest System Lands (NFSL) and sell salvageable timber on lands burned in the 1987 wildfires. The project area is located on the Klamath National Forest on lands bordered by Dillon Creek, Indian Creek, the Klamath River and the Siskiyou Wilderness.

During the severe fire season of 1987, extensive areas on the Klamath National Forest were burned and now need restoration. The proposed restoration consists of rehabilitation of NFSL damaged by wildfire and the recovery of dead and dying timber which is still merchantable. Any further delay in activities necessary to restore these damaged lands or remove this salvageable timber will result in unacceptable degradation of the physical and biological condition of NFSL and a further deterioration of the fire-damaged timber. Additional delays will also significantly increase the risk of severe forest insect and pest infestation of the already damaged as well as the intermingled and ajacent undamaged trees.

The Forest Supervisor has determined through an environmental analysis, which is documented in the Draft Environmental Impact Statement (DEIS), that there is good cause to expedite this project. The Baldy Fire Recovery Project is necessary for the rehabilitation of the damaged NFSL and for the recovery of the dead and dying timber that resulted from the Bald-Ten wildfire in the summer and fall of 1987. The wildfire affected portions of the Clear Creek and Oak Flat Creek drainages on the Klamath National Forest, California. The DEIS, which documents the expected environmental effects of the action, also documents extensive public involvement and addresses issues raised by the public.

Due to the length of time it has taken to develop an acceptable restoration and rehabilitation program and to properly evaluate effects of the program, the time remaining for program accomplishment has become critical. Any additional delays will result in damage to presently undamaged resources and could result in a complete loss of the salvageable resources as well.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeals the decision for the Baldy Fire Recovery Project Final Environmental Impact Statement (FEIS). The decision to rehabilitate Klamath NFSL and offer salvage timber for sale in the Baldy Fire Recovery Project Area will not be subject to administrative appeal and review pursuant to 36 CFR part 217.

EFFECTIVE DATE: This decision will be effective March 21, 1990.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to the Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA, 630 Sansome Street, San Francisco, CA 94111, (415) 705-2648, or Carmine Lockwood, Baldy Fire Recovery Project Coordinator, Happy Camp Ranger District, Klamath National Forest, P.O. Box 377, Happy Camp, CA 96039, (916) 493-2243.

ADDITIONAL INFORMATION: The catastrophic wildfires of 1987 burned an estimated 260,000 acres of NFSL on the Klamath National Forest. The Baldy analysis area (approximately 79,349 acres) encompasses two watersheds; Clear and Oak Flat Creeks. The analysis area is bounded on the north by Elk Lick Ridge, on the east by the Klamath River, on the south by the Kelsey Range, and on the west by the Klamath National Forest boundary. This area was burned by the Bald-Ten wildfire.

The Baldy Fire Recovery Project Area lies entirely within the analysis area which consists of approximately 14,208 acres that are bordered by Oak Flat Creek, South Fork of Clear Creek, the Klamath River, and the Siskiyou Wilderness. Within this project area approximately 10,400 acres of NFSL were burned in varying intensities by the Bald-Ten Fire. Approximatley 768 acres of the most severely burned areas in the Bald-Ten Fire Recovery Project Area are proposed for harvest. These lands need to be promptly rehabilitated and the timber removed that was killed or severely damaged by the wildfire.

Analyses of the rate of deterioration of the damaged timber and its related value indicates that about 113 thousand board feet, with an estimated value of $93,000, would be lost to insects and decay as a result of any further delays. Additional delays would also result in an estimated loss of $7,781 to Siskiyou County in National Forest Receipts. Furthermore, the reforestation of approximately 468 acres of severely and moderately burned acres would be delayed an additional year resulting in the loss of 252,000 seedlings, valued at $38,000, which are in the nursery and scheduled for planting on those acres.

On January 3, 1989, the Klamath National Forest Supervisor published in the **Federal Register** a Notice of Intent to Prepare an Environmental Impact Statement for a proposal to implement fire recovery activities on a portion of the Bald-Ten Fire on the Happy Camp District. Scoping was conducted by the Klamath National Forest, pursuant to 40 CFR 1501.7, to determine the significant issues related to the Baldy Fire Recovery Project proposal. These scoping sessions were held in Yreka and Happy Camp, California on February 4, 1989, and March 2, 1989, respectively. Additional meetings and field trips, both formal and informal, were held with interested publics. In compliance with the National Environmental Policy Act, the analysis for this proposal was documented in the Baldy Recovery Project DEIS, which was issued for public review on January 20, 1989. The

Notice of Availability for the DEIS appeared in the **Federal Register** on February 2, 1990. Public comments will be received and addressed. The FEIS and Record of Decision are expected to be issued in June 1990. The associated planning records are located at the Happy Camp Ranger District, P.O. Box 377, Happy Camp, CA 96039.

Dated: March 6, 1990.

David M. Jay,

Deputy Regional Forester.

[FR Doc. 90-6528 Filed 3-20-90; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 900254-0054]

Foreign Availability Assessment: Array Processors

AGENCY: Notice of initiation of an assessment and request for comments.

SUMMARY: Pursuant to section 5(f) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) is initiating an assessment of foreign availability of certain array processors to controlled countries. OFA is seeking public comments on the foreign availability of such items.

DATES: The period for submission of information will close April 20, 1990.

ADDRESSES: Submit information relating to this foreign availability assessment to: Dr. Irwin M. Pikus, Office of Foreign Availability, Bureau of Export Administration, U.S. Department of Commerce, Room SB-701, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Freedom of Information Record Inspection Facility, Room 4518, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Randy Pratt, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-5953.

SUPPLEMENTARY INFORMATION: Under sections 5(f) and 5(h) of the EAA, OFA assesses the foreign availability of goods and technology whose export is controlled for national security reasons. Part 791 of the Export Administration Regulations (EAR) (15 CFR 730 *et seq.*) establishes the foreign availability procedures and criteria. OFA is publishing this notice pursuant to sections 5(f)(3) and 5(f)(9) of the EAA.

On February 1, 1990, OFA accepted for filing a foreign availability submission pursuant to section 5(f) of the EAA relating to decontrol of array processors with an equivalent multiply rate of six million operations per second to controlled countries. This item is controlled for national security reasons under Export Control Commodity Number (ECCN) 1565A(h)(1) of the Commodity Control List (15 CFR 799.1, Suppl 1): Computers and related equipment.

Upon acceptance of the submission, OFA initiated a foreign availability assessment of the item. By July 1, 1990, consistent with the requirements of the EAA, the Department intends to submit for publication in the **Federal Register** its determination of the foreign availability of the item.

To assist OFA in assessing such foreign availability, any person may submit relevant information to OFA at the above address.

The following information would be specially useful:

—Product names and model designations of the U.S. and non-U.S. items;
—names and locations of non-U.S. sources;
—key performance elements, attributes, and characteristics of the items on which quality comparisons may be made;
—non-U.S. sources' production quantities and/or sales of any allegedly comparable item;
—an estimate of market demand and the potential economic impact of the control on the U.S. item;
—extent to which any allegedly comparable item is based on U.S. technology;
—product names, model designations, and value of U.S. controlled parts and components incorporated in any allegedly comparable item; and
—information supporting the proposition that the foreign item is in fact available to the country or countries for which foreign availability is certified.

Evidence supporting such relevant information may include, but is not limited to: Foreign manufacturers' catalogs, brochures, or operations or maintenance manuals; articles from reputable trade publications; photographs; and depositions based upon eyewitness accounts. Supplement No. 1 to part 791 of the EAR provides additional examples of evidence that would be helpful to the investigation.

OFA will also accept comments or information accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason.

The information for which confidential treatment is requested should be submitted to OFA separately from any non-confidential information submitted. The top of each page should be marked with the term "Confidential Information." OFA either will accept the submission in confidence or, if the submission fails to meet the standard for confidential treatment, return it.

A non-confidential summary must accompany such submissions of confidential information. The summary will be make available for public inspection.

Information OFA accepts as privileged under section (b) (3) or (4) of the Freedom of Information Act (5 U.S.C. 522) will be kept confidential and will not be available for public inspection, except as authorized by law. Communications between the United States Government and foreign governments will not be made available for public inspection.

All other information received in response to this notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires written comments. Oral comments must be followed by written memoranda, which also will be a matter of public record and will be available for public review and copying.

The public record of information received in response to this notice will be maintained in the Bureau of Export Administration's Freedom of Information Records Inspection Facility, Room 4518, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations.

Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377-2593.

Because of the strict statutory time limitations in which Commerce must make its determination, the period for submission or relevant information will close 30 days from the date of

publication of this notice. The Department will consider all information received before the close of the comment period in developing the assessment. Information received after the end of the period will be considered if possible, but its consideration cannot be assured.

Accordingly, the Department encourages persons who wish to provide information related to this foreign availability submission to do so at the earliest possible time to permit the Department the fullest consideration of the information.

Dated: March 15, 1990.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 90-6449 Filed 3-20-90; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Allocation of Duty-Exemptions for Calendar Year 1990 Among Watch Producers Located in the Virgin Islands and Guam

AGENCY: Import Administration, International Trade Administration, Department of Commerce; and Office of the Secretary, Department of the Interior.

ACTION: Allocation of duty-exemptions for calendar year 1990 among producers located in the Virgin Islands and Guam.

SUMMARY: This action allocates 1990 duty-exemptions for watch producers located in the Virgin Islands and Guam pursuant to Public Law 97-446.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 377-1660.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 97-446, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the U.S. insular possessions and the Northern Mariana Islands. In accordance with § 303.3(a) of the regulations (15 CFR part 303), we have maintained for 1990 the 1989 total quantity of watches and watch movements (6,700,000 units) which may be entered free of duty from the insular possessions and the Northern Mariana Islands. Of this amount, 4,700,000 units may be allocated to Virgin Islands producers, 1,000,000 to Guam producers, 500,000 to American Samoa producers and 500,000 to Northern Mariana Islands producers (53 FR 52678).

The criteria for the calculation of the 1990 duty-exemption allocations among insular producers are set forth in § 303.14 of the regulations as amended December 30, 1988 (53 FR 52994).

The Departments have verified the data submitted on application form ITA-334P by producers in the territories and inspected the current operations of all producers in accordance with § 303.5 of the regulations.

The verification established that in calendar year 1989 the Virgin Islands watch assembly firms shipped 2,700,184 watches and watch movements into the customs territory of the United States under Public Law 97.446. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 1989 plus the creditable wages paid by the industry during calendar year 1989 to residents of the territory totalled $6,400,323.

There is only one producer in Guam. Publication of the Guam data, accordingly, would disclose competitively sensitive information.

The calendar year 1990 Virgin Islands and Guam annual allocations set forth below are based on the data verified by the Departments in the Virgin Islands and Guam. The allocations reflect adjustments made in data supplied on the producers' annual application forms (ITA Form-334P) as a result of the Departments' verification; and reallocation of duty-exemptions which have been voluntarily relinquished by some producers pursuant to § 303.6(b)(2) of the regulations.

The duty-exemption allocations for calendar year 1990 in the Virgin Islands are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc	500,000
Hampden Watch Co., Inc	300,000
Master Time Co., Inc	250,000
Progress Watch Co., Inc	620,000
Unitime Industries, Inc	700,000
Tropex, Inc	500,000
Timex V.I., Inc	750,000

The duty-exemption allocation for Guam is as follows:

Name of firm	Annual allocation
Timewise Ltd	800,000

Lisa B. Barry,

Principal Deputy Assistant, Secretary for Import Administration.

William E. Houston,

Deputy Assistant Secretary for Territorial and International Affairs.

[FR Doc. 90-6450 Filed 3-20-90; 8:45 am]

BILLING CODE 3510-DS-M; 4310-93-M

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel in panel review of final determination made by the International Trade Administration, Import Administration, in an administrative review respecting Replacement Parts For Self-Propelled Bituminous Paving Equipment from Canada, Secretariat File No. USA-89-1904-03.

SUMMARY: By decision dated March 7, 1990, the Binational Panel affirmed the Department of Commerce's determination of March 27, 1989 (54 FR 12467), in the administrative review of the existing antidumping duty order, T.D. 77-222, respecting replacement parts for self-propelled bituminous paving equipment from Canada. A copy of the complete Panel decision is available from the United States Secretary, FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the Federal Register on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the Federal Register on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

Background

In 1977, the U.S. Department of the Treasury published T.D. 77–222, an antidumpting duty order covering parts for self-propelled bituminous paving equipment from Canada. On March 27, 1989, the Department of Commerce published its determination in the administrative review of the order for the period September 1, 1986 through August 31, 1987. On April 11, 1989, Blaw Knox Construction Equipment Corporation, the petitioner in the original antidumping proceeding, filed a Notice of Intent to Commence Judicial Review of that determination. On April 26, 1989, in compliance with the Rules, Allatt Paving Equipment Division of Ingersoll-Rand Canada, Inc. (formerly Fortress Allatt, Ltd.) filed a Request for Panel Review of the determination. Based upon its review of the pleadings and after oral argument by the participants before the panel, the binational panel affirmed Commerce's determination as being reasonable and supported by substantial evidence.

Dated: March 15, 1990.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 90–6451 Filed 3–20–90; 8:45 am]

BILLING CODE 3510–GT–M

Medical College of Virginia; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Education, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 85–268.

Applicant: Medical College of Virginia, Richmond, VA 23298.

Instrument: NMR Spectrometer.

Manufacturer: Oxford Research Systems, United Kingdom.

Intended Use: See notice at 50 FR 36127, September 5, 1985.

Comments: Comments protesting the granting of duty-free entry, on the grounds that it was willing to provide an equivalent instrument, were received from Varian Associates, Inc. on September 25, 1985.

Decision: Approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as it is intended to be used, could have been made available to the applicant without excessive delay within the meaning of subsection 301.5(d)(4) of the regulations at the time the foreign instrument was ordered (May 8, 1985).

Reasons: Subsection 301.5(d)(4) of the regulations provides as follows:

Excessive delivery time. Duty-free entry of the instrument shall be considered justified without regard to whether there is being manufactured in the United States an instrument of equivalent scientific value for the intended purposes if excessive delivery time for the domestic instrument would seriously impair the accomplishment of the applicant's intended purposes. * * * In determining whether the differences in delivery times cited by the applicant justifies duty-free entry on the basis of excessive delivery time, the Director shall take into account (A) the normal commercial practice applicable to the production of the general category of instrument involved; (B) the efforts made by the applicant to secure delivery of the instruments (both foreign and domestic) in the shortest possible time; and (C) such other factors as the Director finds relevant under the circumstances of a particular case.

The applicant requested proposals for a 2.4 tesla, 40-cm bore NMR spectrometer and imaging unit to be used for developing non-invasive, in vitro medical procedures for more effective diagnosis and treatment of disease. At the time of the purchase, May 8, 1985, Bruker was marketing such instruments with a 30- to 60-day delivery schedule and guaranteed specifications.

Two U.S. manufacturers, General Electric Co. and Varian Associates, Inc., were producing NMR systems having comparable delivery times but with substantially narrower bore widths (31 and 33 cm, respectively). Both companies were willing to bid a wide-bore NMR system but, since these products were still under development, they were unable to offer a firm delivery schedule or guaranteed final specifications. Neither manufacturer was able or willing to assure delivery in less than a year. The applicant was about to launch a new research initiative, had committed extensive resources toward this effort, and feared that a delay of a year or more would severely impair its progress and might possibly jeopardize the funding of certain grants.

The Bruker NMR was shipped on May 31, 1985. Accordingly, we find that the domestic manufacturers' inability to deliver a comparable instrument within the time required by the applicant's project requirements amounts to "excessive delivery" within the meaning of § 301.5(d)(4) and would have seriously impaired the accomplishment of the applicant's intended purposes.

In addition to the foregoing considerations, the foreign instrument provides an extensive 48-line pulse programmer with 25 nanosecond timing resolution.

The National Institutes of Health, in its memorandum dated January 4, 1990, advises that (1) The capabilities of the foreign instrument cited above are pertinent to the applicant's intended purposes, (2) excessive delivery time on the part of the domestic manufacturers was a pertinent consideration and (3) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use at the time it was ordered.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs.

[FR Doc. 90–6452 Filed 3–20–90; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments

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

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed in 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 2841, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC.

Docket Number: 89–201R.

Applicant: Texas A&M University, Department of Chemistry, College Station, TX 77843.

Instrument: X-Ray Photoelectron Spectrometer, Model MAX–100.

Manufacturer: Leybold AG, West Germany. Original notice of this resubmitted application was published in the **Federal Register** of August 21, 1989.

Docket Number: 90–033.

Applicant: Pennsylvania State University, University Park, PA 16802.

Instrument: Surface Probe, Model Kelvin Probe S.

Manufacturer: Delta-Phi Electronik, West Germany.

Intended Use: The instrument will be used for studies of the ejection distribution from keV ion-bombarded single crystal metals which is characterized as the kinetic energy and angle-resolved study of the desorbed netural atoms. In addition, the instrument will be used for educational purposes in the course Chemistry 601.

Application Received by Commissioner of Customs: February 21, 1990.

Docket Number: 90–034.

Applicant: University of Arizona, Department of Mining & Geological Engineering, Building #12, room 229, Tucson, AZ 85721.

Instrument: Borehole Conductivity Probe, Model EM39.

Manufacturer: Geonics, Canada.

Intended Use: The instrument will be used by students for MS and Ph.D. thesis research. Thesis topics include: (1) Monitoring water recharge, water contamination and *in situ* leaching and (2) measurement of background resistivity for interpretation of other geophysical measurements.

Application Received by Commissioner of Customs: February 21, 1990.

Docket Number: 90–037.

Applicant: Virginia Polytechnic Institute & State University, Animal Science Department, Smithfield Horse Unit, Blacksburg, VA 24061–0306.

Instrument: High Speed Treadmill (for horses).

Manufacturer: Kagra International, Inc., Switzerland.

Intended Use: The instrument will be used to study the physiological responses of horses to exercise and specific diets. Non-painful experiments on live, intact horses working on a treadmill, will include measurements of heart rate, respiration and blood composition. In addition, the instrument will be used in the courses #5995 and #7994 for graduate research with the objective of training in research methods in the field of exercise physiology with emphasis on the influence of nutrition.

Application Received by Commissioner of Customs: February 23, 1990.

Docket Number: 90–038.

Applicant: The Regents of the University of California, San Diego, La Jolla, CA 92093.

Instrument: Electron Microscope, Model JEM–120EX/SEG/DP/DP.

Manufacturer: JEOL, Ltd., Japan.

Intended Use: The instrument will be used for the study of the ultrastructure of various tissues (kidney, liver, pancreas, anterior pituitary, blood cells, endothelial cells) and in culture (normal and cancer cells).

Application Received by Commissioner of Customs: February 26, 1990.

Docket Number: 90–039.

Applicant: California State University at Long Beach, 1250 Bellflower Boulevard, Long Beach, CA 90840.

Instrument: Electron Microscope, Model JEM–1200EXII.

Manufacturer: JEOL, Ltd., Japan.

Intended Use: The instrument will be used to evaluate a variety of experiments which aim to study:

—biomineralization in cells,
—metal deposition and accretion in vesicles,
—haemocyanin synthesis in cell cultures,
—fibroblastic dedifferentiation of primary cell lines,
—metal induced cellular and cytoplasmic lesions,
—metallothionein protein localization,
—intermediate neurofilament aggregation and association,
—neurofilament topology,
—aplastic and symplastic vessel communication,
—pneumocystis infection induced changes in cellular adhesion,
—microbial plaques involved in metal corrosion,
—tributyltin induced imbalances in spermiogenesis,

The instrument will also be used for instructional purposes to teach both undergraduates and graduates the principles of transmission electron microscopy.

Application Received by Commissioner of Customs: February 26, 1990.

Docket Number: 90–040.

Applicant: Pennsylvania State University, Department of Meteorology, 503 Walker Building, University Park, PA 16802.

Instruments: Two (2) Copper Lasers, Model CU15–A.

Manufacturer: Oxford Lasers, Ltd., United Kingdom.

Intended Use: The instruments will be used in conjunction with other instruments that measure different trace gases and meteorological parameters. The experiments include measurements from the ground and from NASA aircraft in a variety of environments and tests of diurnal, seasonal, altitude, and location effects on abundances and fluxes.

Application Received by Commissioner of Customs: February 27, 1990.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 90–6453 Filed 3–20–90; 8:45 am]

BILLING CODE 3510–DS–M

National Telecommunications and Information Administration

Comprehensive Policy Review of Use and Management of the Radio Frequency Spectrum: Extension of Reply Comment Period

AGENCY: National Telecommunications and Information Administration (NTIA).

ACTION: Notice of inquiry; extension of time for reply comments.

SUMMARY: On December 9, 1989, NTIA published a Notice of Inquiry requesting public comment on the use and management of the radio frequency spectrum in the United States. Comments were to be filed on or before February 23, 1990. NTIA has received over 85 comments on this study and therefore is extending the reply comment date from March 30, 1990 to April 20, 1990.

DATES: Reply comments due on or before April 20, 1990.

ADDRESSES: Comments (seven copies) should be sent to: Office of Policy Analysis and Development, NTIA, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Room 4725, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Joseph L. Gattuso, Office of Policy Analysis and Development, 202/377–1880, or Michael Allen, Office of Spectrum Management, 202/377–0805.

Dated: March 16, 1990.

Janice Obuchowski,

Assistant Secretary of Commerce for Communications and Information.

[FR Doc. 90–6436 Filed 3–20–90; 8:45 am]

BILLING CODE 3510–60–M

COMMISSION FOR THE IMPROVEMENT OF THE FEDERAL CROP INSURANCE PROGRAM

Meeting of the Commission.

Under the Federal Crop Insurance Commission Act of 1988 (7 U.S.C 1508 Note), notice is hereby given of the following meeting of the Commission for the Improvement of the Federal Crop Insurance Program:

Date: April 4, 1990.

Time: 8:30 a.m.-noon, and 1:00 p.m.-5:30 p.m.

Place: Crystal Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington, VA 22202, Telephone: (703) 920–3230.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To review the extent to which the Commission's recommendations for improvements in the Federal Crop insurance program are being implemented; to draft the Commission's March 1990 monthly report; to consider other possible recommendations to improve the program; and to consider any other item of business necessary for the effective functioning of the Commission.

Contact Person: Kellye A. Eversole, Executive Director, Commission for the Improvement of the Federal Crop Insurance Program, 1255 23rd Street, NW., Suite 880, Washington, DC, 20037. Telephone: (202) 887–6700.

Done at Washington, DC, the 19th day of March 1990.

Jackie Q. Pettus,

Acting Executive Director.

[FR Doc. 90–6577 Filed 3–20–90; 8:45 am]

BILLING CODE 3410–PM–M

COMMISSION ON RAILROAD RETIREMENT REFORM

Meeting

ACTION: Meeting.

SUMMARY: The Commission on Railroad Retirement Reform ("the Commission") will hold a meeting on Wednesday, April 4, 1990. The Commission was established by section 2101 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203, enacted December 22, 1987.

DATE, TIME, AND PLACE: April 4, 1990, 9:30 a.m—3 p.m., Association of American Railroads, 50 F Street, NW., Washington, DC (4th Floor Conference Center).

AGENDA: The open meeting will include the receipt of testimony, the review of various staff memorandums, and discussion of final report items.

FOR ADDITIONAL INFORMATION: Contact Maureen Kiser, 202–254–3223, Commission on Railroad Retirement Reform, 111 18th Street NW., Washington, DC 20036.

SUPPLEMENTARY INFORAMTION: See **Federal Register**, Volume 54 FR, No. 40, Thursday, March 2, 1989, Page 8856.

Kenneth J. Zoll,

Executive Director.

[FR Doc. 90–6397 Filed 3–20–90; 8:45 am]

BILLING CODE 6820–63–M

DELAWARE RIVER BASIN COMMISSION

Commission Meeting and Public Hearing

The Delaware River Basin Commission will hold a public hearing on Wednesday, March 28, 1990 beginning at 1:30 p.m. in the Struble Room of the Chester County Library, 400 Exton Square Parkway, Exton, Pennsylvania. Please be advised that parking for this meeting is limited to the adjacent shopping mall parking lot rather than the library's parking facilities. The hearing will be part of the Commission's regular business meeting which is open to the public.

An informal pre-meeting conference among the Commissioners and staff will be open for public observation at about 11:00 a.m. at the same location and will include discussions of the Upper Delaware Ice Jam Project; petition to reclassify waters and DRBC-NPS Scenic Rivers protection strategies and amendment of Compact section 15.1(b) to fund the F. E. Walter Reservoir project.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact:

1. *Borough of East Stroudsburg D–84–63 CP (Renewal).* An application for the renewal of a ground water withdrawal project to supply up to 15 million gallons (mg)/30 days of water to the applicant's distribution system from Well No. 3. Commission approval on February 27, 1985 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 28.2 mg/30 days. The project is located in East Stroudsburgh Borough, Monroe County, Pennsylvania.

2. *Warwick Water and Sewer, Inc. D–86–55 CP.* An application for approval of a ground water withdrawal project to supply up to 7.34 mg/30 days of water to the applicant's distribution system from new Well No. 3 and to retain the existing withdrawal limit from Well Nos. 1 and 2 at 6.23 mg/30 days. The project is located in Warwick Township, Bucks County, in the Southeastern Pennsylvania Ground Water Protected Area.

3. *Mercer County Improvement Authority D–88–86–CP.* An application to withdraw up to 0.39 million gallons per day (mgd) of surface water to irrigate a proposed municipal golf course to be located in Mercer County Central Park, West Windsor Township, New Jersey. The project intake will be installed at Lake Mercer on Assunpink Creek, a tributary of the Delaware River. This 2,087 acre-feet reservoir was included in the Comprehensive Plan as a flood control and recreational project by Docket No. D–65–5 CP. The 150-acre golf course will require one inch of water per week (from April 1 to October 30) for irrigation.

4. *Milford-Trumbauersville Area Sewer Authority D–88–88 CP.* An application to expand a 0.4 mgd sewage treatment plant to process an average design flow of 0.5 mgd. The project is designed to provide tertiary treatment of domestic wastewater in Trumbauersville Borough and Milford Township. Treatment plant effluent will continue to be discharged to Unami Creek, a tributary of Perkiomen Creek, but a cascading outfall will be constructed. The plant is located off the Northeast Extension of the Pennsylvania Turnpike in Milford Township, Bucks County.

5. *Oxford Textile, Inc. D–89–22.* An application to increase a surface water withdrawal from 1.2 mgd to 1.45 mgd for use as process water in the applicant's testile finishing facility. Water will be withdrawn from its two existing intakes on Furnace Brook located in Oxford Township, Warren County, New Jersey.

6. *Manwalamink Water Company D–89–50 CP.* An application for approval of a ground water withdrawal project to supply up to 4.32 mg/30 days of water to the applicant's distribution system from new Well No. 6, and to retain the existing withdrawal limit from all wells at 15 mg/30 days. The project is located in Smithfield Township, Monroe County, Pennsylvania.

7. *Pottstown, Borough Authority D–89–55 CP.* An application to upgrade and expand the applicant's existing 7.4 mgd sewage treatment plant (STP) to treat an average design flow of 15.6 mgd. The

upgrade STP will continue to provide secondary treatment, replace the existing biological treatment facilities with an activated sludge process, and discharge treated effluent to the Schuylkill River. The STP is located on Industrial Highway (Moser Road) in the Borough of Pottstown, Montgomery County, Pennsylvania.

8. *City of Milford D–89–95 CP.* An application for approval of a ground water withdrawal project to supply water to the applicant's distribution system from new Well Nos. 10–14, and to decrease the existing withdrawal limit of 75 mg/30 days from all wells to 64 mg/30 days. The project is located in the City of Milford, Kent and Sussex Counties, Delaware.

9. *Borough of Schuylkill Haven D–89–96 CP.* An application for withdrawal of surface water from the Upper and Lower Tumbling Run Reservoirs, located on Tumbling Run, a tributary of the Schuylkill River, and for approval of two existing stand-by water supply wells (Nos. 1 and 6), all to serve the applicant's distribution system. The proposed surface water withdrawal will average 2.8 mgd, an increase of 0.2 mgd over the existing withdrawal, and the intake is in the Lower Tumbling Run Reservoir. The stand-by wells will be able to supply a combined total of up to 0.22 mdg. All project withdrawals are located in North Manheim Township, Schuylkill County, Pennsylvania.

10. *Bristol Borough Water and Sewer Authority D–89–97 CP.* A surface water withdrawal project to increase supply for projected water users in the applicant's existing service area. The proposed withdrawal with average 11.0 mgd, an increase of 6.0 mdg over the existing withdrawal, and the intake is in the Delaware River at Radcliffe and Walnut Streets, Bristol Borough, Bucks County Pennsylvania.

11. *Merck Pharmaceuticals Manufacturing Division D–89–100.* An application for approval of a ground water withdrawal project to supply up to 9.75 mg/30 days of water to the applicant's industrial plant for new Decontamination Well Nos. 9 and 11, and to retain the existing withdrawal limit from all wells of 25 mg/30 days. The project is located in Upper Gwynedd Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

12. *Borough of Shoemakerville D–90–7 CP.* An application for approval of a ground water withdrawal project to supply up to 5.4 mg/30 days of water to the applicant's distribution system from new Well No. 6, and to limit the withdrawal from all wells to 7.5 mg/30 days. The project is located in Shoemakerville Borough, Berks County, Pennsylvania.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: March 13, 1990.

Susan M. Weisman,

Secretary.

[FR Doc. 90–6394 Filed 3–20–90; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF DEFENSE

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Dependents Schools (DoDDS), Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: April 20, 1990, 9 a.m. to 5 p.m.; April 21, 1990, 9 a.m. to 3 p.m..

ADDRESS: Hotel Continental, Tirrenia, Italy.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn Witcher, Public Affairs Officer, DoD Dependents Schools, 2461 Eisenhower Avenue, Alexandria, Virginia, 22331–1100, Telephone: (202) 325–0867.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Public Law 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Secretaries, 12 members are appointed jointly by the Secretaries. Members include representatives of educational institutions and agencies, professional employee organizations, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDDS, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes discussions about the national educational goals and President's initiatives, advanced placement courses, education of handicapped dependents, academic achievement encouragement, mentor support program, the teacher transfer program, development of a homework policy, communication throughout the system, initiatives in the DoDDs Management Improvement Program, and responses to the recommendations made by the Council during its January meeting.

Dated: March 15, 1990.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 90–6357 Filed 3–20–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Military Traffic Management Command; Carrier Participation in the International Through Government Bill of Lading (ITGBL) Program

AGENCY: Military Traffic Management Command, Department of the Army, DOD.

ACTION: Modification of international household goods and unaccompanied baggage solicitation.

SUMMARY: The Military Traffic Management Command (MTMC) is responsible for soliciting rates for services for the movement of military personnel and civilian employees' household goods and unaccompanied baggage shipments, on a worldwide basis. In this regard, MTMC is soliciting comments on a proposed modification to its solicitation for international household goods and accompanied baggage shipments. This program, referred to as the International Through Government Bill of Lading (ITGBL) Program, provides Department of Defense-approved carriers two opportunities per 12-month period (April

thru September; and October thru March), to submit bids for shipment awards. International shipment awards are made on Personal Property Government Bills of Lading and are based on the carrier having an acceptable performance score (as determined from performance on previous shipments); the carrier having a qualified agent; and the competitiveness of a carrier's rate. Presently, the ITGBL solicitation has no specific amount or limit on how much traffic or revenue a single carrier may capture on a worldwide basis. Individual carriers are selected on certain rate channels where they are the successful, low rate carrier. However, in terms of gross revenue or traffic which may be captured by a single carrier, there is no specific limit.

The ITGBL Program, however, previously contained a limit or "cap" on the total dollar value (based on estimated tonnages) a carrier could capture. The previous directive was in effect until April 1, 1989, and is quoted below:

Primary Tonnage Threshold. The objective threshold for primary Class 1 and 2 traffic, which may be awarded, is 20% of the dollar value of the worldwide primary tonnage. MTMC reserves the right to revise the objective in instances of insufficient rate competition. A sample of the procedures followed by MTMC in maintaining this threshold has been provided to the bureaus/associations.

The Military Traffic Management Command is reviewing this solicitation as it pertains to the directives which govern the total amount of revenue a carrier may receive, based on estimated tonnages, and the impact this directive has on past and current solicitations. In this regard, MTMC solicits comments on the following areas:

a. Should there be a "cap" or other limitations in the solicitation which places a maximum or ceiling on the amount of revenue a carrier may capture during a 6-month rate cycle?

b. Should a ceiling or maximum revenue cap be placed in the solicitation, at what dollar threshold or percentile of revenue should it be placed?

c. The impact a cap would have on competition and rates.

d. The method, procedure, and rules for withdrawing or otherwise removing tonnage, in excess of the cap, from a carrier which exceeds the stated threshold.

e. Other comments which would impact on traffic management, customer service, carrier performance, and areas which relate to the solicitation.

DATES: Comments much be submitted on or before April 20, 1990.

ADDRESSES: Comments on the ITGBL Program should be addressed to the Director of Personal Property, Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Francis A. Galluzzo, Acting Director, MTPP, (703) 756–1140 or Mr. Thomas M. Ogles, Jr., Chief, Rate Acquisition Division, MTPP, (703) 756–2383. Chief, Rate Acquisition Division, MTPP, (703) 756–2383.

MTMC is providing notice of the clarification of the ITGBL Program and offering a 30-day period for receiving and considering the views of all interested parties. Timely, written comments will be reviewed and considered prior to publication of a final directive.

Kenneth L. Denton,

Alternate Army Liaison Officer With the Federal Register.

[FR Doc. 90–6290 Filed 3–20–90; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

Intent To Prepare a Revised Draft Environmental Impact Statement (DEIS) For The Proposed Savannah Harbor Deepening Project in Chatham County, Georgia, and Jasper County, South Carolina

AGENCY: U.S. Army Corps of Engineers (Savannah District), DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action is the deepening of the existing authorized Savannah Harbor Channel from River Mile 19.5 to a point approximately 11.4 miles oceanward of River Mile 0.0. The purpose of this action is to improve navigation in the Savannah Harbor, thereby, making the harbor more attractive to the national and international shipping industry.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and revised DEIS can be answered by: Mr. David Crosby, Biologist, U.S. Army Corps of Engineers, Planning Division, P.O. Box 889, Savannah, Georgia 31402–0889.

SUPPLEMENTARY INFORMATION:

Previous Reports: The original DEIS for this project was prepared as part of the Savannah Harbor Comprehensive Study. The scope of this study included all aspects concerning navigation of the lower Savannah River and associated impacts on adjacent lands and facilities. The proposed DEIS will be a revision to the DEIS published in a document titled *Draft Feasibility Report and Environmental Impact Statement, Savannah Harbor, Georgia, Comprehensive Study* dated September 1987. The availability of the original DEIS was advertised in the **Federal Register** on September 11, 1987, Volume 52, No. 176.

Authority: The Savannah Harbor Comprehensive Study was authorized by resolutions adopted by the Senate Public Works Committee on July 10, 1972, and the House of Representatives Committee on Public Works on October 12, 1972. The scope of the study was expanded by the energy and water development bill for fiscal year 1984.

Proposed Action: The proposed action addressed in the revised DEIS is the deepening of the existing authorized Savannah Harbor Channel from River Mile 19.5 to a point approximately 11.4 miles oceanward of River Mile 0.0.

Alternatives: Six alternative deepening plans will be investigated in the revised DEIS along with the no action alternative. The six alternatives vary in the depth of the deepening, type of equipment used and/or the proposed disposal areas for the dredged material.

Scoping Process: A public meeting was held in Savannah, Georgia, on March 4, 1981, to gather comments and opinions on what the original DEIS should accomplish. On April 1, 1981, an Interagency Coordination Meeting was held to discuss the DEIS in detail. On November 30, 1982, a second public meeting was held in Savannah, Georgia, to obtain comments on the scope of the document. Following publication of the original DEIS, a third public meeting was held on October 8, 1987, to present the findings of the DEIS and allow public comment on the document.

In view of the amount of past public participation in the scoping of the document, no further scoping meetings are proposed. However, additional scoping input from potentially affected Federal, State, and local agencies or interests is invited by this notice.

Significant issues to be analyzed in the revised DEIS include, but will not be limited to, anticipated impacts on water quality, sediment accumulation, benthic communities, fish and wildlife resources, endangered and threatened species, and cultural resources. A new numerical model is being developed to address the issue of upstream salinity increases due to the proposed deepening project. This information will be used to assess the project's impacts on the Savannah National Wildlife Refuge and adjacent marshes. However, the impacts of existing projects on salinity levels

and other environmental parameters in the river are beyond the scope of this document and will need to be addressed in a separate document.

The evaluation of this project shall be conducted so as to comply with the various Federal and State Environmental Statutes and Executive Orders and associated review procedures. When the Revised Draft Feasibility Report and DEIS are completed for review, a combined document will be filed with the U.S. Environmental Protection Agency to be coordinated and reviewed under the National Environmental Policy Act procedures. The DEIS will contain a U.S. Fish and Wildlife Coordination Report, a section 404(b)(1) Evaluation, a Section 103 Evaluation, and a Determination of Consistency with the South Carolina Coastal Zone Management Program.

Availability: A combined document consisting of a Draft Feasibility Report and DEIS will be made available to the public in November 1990. A local public hearing will be scheduled after coordination of the draft document.

Ralph V. Locurcio,

Colonel, U.S. Army, District Engineer.

[FR Doc. 90-6395 Filed 3-20-90; 8:45 am]

BILLING CODE 3710-HP-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ST84-0779-003]

East Texas Industrial Gas Co.; Extension Reports

March 14, 1990.

The company listed below has filed an extension report pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and part 284 of the Commission's regulations giving notice of their intention to continue sales of natural gas for an additional term of up to 2 years.[1]

The table below lists the name and address of the company selling pursuant to part 284; the party received the gas; the date the extension report was filed; and the effective date of the extension. A "D" indicates a sale by an intrastate pipeline extended under § 284.146.

Lois D. Cashell,

Secretary.

Extension List

February 25, 1990

[1] Notice of this extension report does not constitute a determination that a continuation of service will be approved.

Docket No.	Seller	Recipient	Date Filed	Part 284 Subpart	Effective Date	Expiration Date [2]
ST84-0779-003 [1]	East Texas Industrial Gas Co., P.O. Box 460, Marshall, TX 75670.	Mississippi River Transmission Corp	02-25-90	D	04-19-90	05-26-90

[1] This extension report was filed after the date specified by the Commission's Regulations, and shall be the subject of a further Commission order.
[2] The pipeline has sought Commission approval of the extension of this transaction. The 90-day Commission review period expires on the date indicated.

[FR Doc. 90-6372 Filed 3-20-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1922; Alaska]

City of Ketchikan, et al.; Intent To File an Application for a New License

March 14, 1990.

Take notice that on February 6, 1990, the City of Ketchikan, dba Ketchikan Public Utilities, the existing licensee for the Beaver Falls Hydroelectric Project No. 1922, filed a notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commissions Regulations (revised January 9, 1990). The original license for Project No. 1922 was issued effective May 1, 1945, and expires April 30, 1995.

The project is located on Beaver Falls Creek in Ketchikan Gateway Borough, Alaska. The principal works of the Beaver Falls Project include two rock-filled concrete-faced dams and a diversion dam; two reservoirs; an intake gate to a tunnel leading to three penstocks; two powerhouses with a total installed capacity of 7,100 kW; transmission line connections; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 2930 Tongass Avenue, Ketchikan, AK 99901, Attn: Margret Moll, telephone (907) 225-1000.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 90-6373 Filed 3-20-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2705; Washington]

City of Seattle, Washington; Intent To File an Application for a New License

March 14, 1990.

Take notice that the City of Seattle, Washington, the existing licensee for the Newhalem Creek Hydroelectric Project No. 2705, filed a notice of intent to file an application for a new license, pursuant to 18 CFR 16.6 of the Commissions Regulations (revised January 9, 1990). The original license for Project No. 2705 was issued effective January 1, 1970, and expires December 31, 1994.

The project is located on the Newhalem Creek in Whatcom County, Washington. The principal works of the Newhalem Project include a 10-foot-high, 45-foot-long concrete overflow diversion dam; a sluiceway and intake structure; a 6-foot by 7-foot unlined tunnel and a 33-inch-diameter steel penstock totalling 3,300 feet in length; a powerhouse with an installed capacity of 1,750 kW; a transmission line connection; and appurtenant facilities.

Pursuant to 18 CFR 16.7, the licensee is required henceforth to make available certain information to the public. This information is now available from the licensee at 1015 Third Avenue, Seattle, Washington 98104.

Pursuant to 18 CFR 16.8, 16.9 and 16.10, each application for a new license and any competing license applications

must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 1992.

Lois D. Cashell,

Secretary.

[FR Doc. 90-6374 Filed 3-20-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-92-000]

Southern Natural Gas Co.; Request for Limited Waiver

March 14, 1990

Take notice that on March 7, 1990, Southern Natural Gas Company, (Southern) petitioned the Commission pursuant to rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (1984), for a limited waiver of its obligation to charge certain customers the unauthorized overrun penalty specified in section 6 of its OCD and G Rate Schedule of its FERC Gas Tariff, Sixth Revised Volume No. 1.

Southern states that from December 22, 1989, to December 26, 1989, (waiver period), its experienced extraordinary operating conditions on its system due to an unprecedented level of severely cold weather combined with the loss of fifty percent of its field supply. Southern states that these conditions forced it to curtail its system to its customers' highest priority requirements. Southern states that because of the record cold temperatures, however, several customers took unauthorized overrrun gas to meet their customers' temperature-sensitive needs. Southern states that it is requesting the limited waiver in recognition of its customers' cooperation in maximizing the level of service across Southern's system during the waiver period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 22, 1990. 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 in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 90-6375 Filed 3-20-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Special Research Grant Program Notice 90-5; Health Effects Research

AGENCY: Office of Energy Research, DOE.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (OER), U.S. Department of Energy (DOE) announces its interest in receiving applications for Special Research Grants in support of the Human Genome Initiative. This initiative is a coordinated multidisciplinary research effort aimed at developing creative and innovative resources and technologies which will lead to a detailed understanding of the human genome at the molecular level. Several research goals are encompassed in this Notice: (1) Research and conferences will be supported to develop technologies and innovative resources necessary for the physical mapping of human chromosomes, i.e., establishing the original linear order of DNA fragments. This includes development of improved automated systems for analysis of DNA fragments and clones, and a better means of obtaining DNA as purified chromosomes or chromosome fragments; (2) Research and conferences will be supported for development of advanced DNA sequencing technology, particularly innovative new approaches with potential for rapid, cost-effective sequencing of a milion bases per day, this includes non-gel techniques and direct imaging approaches; (3) Research and conferences will be supported to develop data management systems for use in DNA mapping and sequencing, including data structures, retrieval schemes, user interfaces and advanced database theory. Also desired are improved algorithms and hardware for analyzing DNA sequences, including identification of homologies, regulatory sites, and protein coding regions; and (4) Research and conferences will be supported that address ethical, societal and legal issues that may arise from applications of knowledge and materials resulting from the Human Genome Initiative. These proposals should be focused and address specific issues related to the Initiative. For a more detailed description of issues and specific research topics to be addressed relative to this goal, please see the announcement in the NIH Guide to Grants and Contracts, Vol. 19, No. 4, January 26, 1990, entitled "Ethical, Legal and Social Implications of the Human Genome Initiative".

PREAPPLICATION AND FURTHER INFORMATION: Before preparing a formal application, potential applicants are encouraged to submit a brief preapplication in accordance with 10 CFR 600.10(d)(2) which consists of two to three pages of narrative describing the research project objectives and method of accomplishment. These will be review relative to the scope and the research objectives of the DOE human genome program. Preapplications should be received by April 23, 1990, and sent to the following address: Dr. Benjamin J. Barnhart, Office of Health and Environmental Research, ER-72 (GTN), Washington, DC 20545, (301) 353-5037. A response to the preapplications discussing the potential program relevance of a formal application will be communicated within four weeks after receipt of the preapplication, but not later than May 23, 1990. Telephone and telefax numbers are required to be part of the preapplication.

DATES: Formal applications submitted in response to this Notice must be received by the Division of Acquisition and Assistance Management by August 8, 1990, for consideration by an ad hoc review panel in September 1990.

ADDRESSES: Formal applications referencing Program Notice 90-5 are to be sent to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER-64, room G-236, Washington, DC 20545, Attn: Program Notice 90-5.

SUPPLEMENTARY INFORMATION: It is anticipated that approximately $2M will be available for grant awards during FY 1991. Multiple year funding of awards is expected, subject to the availability of future funds. Information about development and submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures may be found at 10 CFR part 605. The Office of Energy Research (ER), as part of its grant regulations, requires at 10 CFR 605.11(b) that any grantee funded by ER and performing research that involves recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall

comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules: May 7, 1986" (51 FR 16957, May 7, 1986). Application kits and copies of 10 CFR part 605 are available from the U.S. Department of Energy, Division of Acquisition and Assistance Management (see above address). Telephone requests may be made by calling (301) 353–5037. Instructions for preparation of an application are included in the application kit. The Catalog of Federal Domestic Assistance number for this program is 81.049.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 90–6454 Filed 3–20–90; 8:45 am]

BILLING CODE 6450–01–M

DOE/NSF Nuclear Science Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date & Time: Friday, March 30, 1990 from 9 a.m. to 6 p.m.

Place: Room 1E–245, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., Washington, DC.

Contact: Cathy Hanlin, Division of Nuclear Physics, U.S. Department of Energy, Washington, DC 20545, (301) 353–3613.

Purpose of Committee: To advise the Department of Energy and the National Science Foundation on the scientific priorities within the field of basic nuclear science research.

Tentative Agenda:

- Report on the budgets and status of the NSF nuclear physics program.
- Report on the budgets and status of the DOE nuclear physics program.
- Discussion of Implementation of the Long Range Plan.
- Prospective for stable isotope pool.
- Public comment and new business.

Public Participation: The meeting is open to the public. The Chairperson of the Committee 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 make oral statements pertaining to agenda items should contact Cathy Hanlin at the address or telephone number listed above.

Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. This notice is being published less than 15 days prior to the meeting due to the urgent need for NSAC's advice and due to unforeseen delays encountered in appointing members of the Committee.

Minutes: Available for public review and copying at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 16, 1990.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 90–6455 Filed 3–20–90; 8:45 am]

BILLING CODE 6450–01–M

Office of Hearings and Appeals

Cases Filed During the Week of February 9 through February 16, 1990

During the Week of February 9 through February 16, 1990, the appeals and applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by any aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 15, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of February 9 through February 16, 1990]

Date	Name and Location of Applicant	Case No.	Type of Submission
2/12/90	Natural Resources Defense Council, Washington, DC	LFA–0031	Appeal of an Information Request Denial.

IF GRANTED: The January 11, 1990 Freedom of Information Request Denial issued by the DOE Records Management Office would be rescinded, and the Natural Resources Defense Council would receive deleted sections from the requested documents.

REFUND APPLICATIONS RECEIVED

Date received	Name of firm	Case No.
11/20/89	Merchants Square Exxon.	RF307–10076
2/9/90 thru 2/16/90.	Atlantic Richfield Applications Received.	RF304–11194 thru RF304–11318
2/9/90 thru 2/16/90.	Crude Oil Refund Applications Received.	RF272–78462 thru RF272–78478
2/9/90 thru 2/16/90.	Shell Oil Refund Applications Received.	RF315–9848 thru RF315–9868
2/9/90	Alex Raagas Gulf	RF300–10996
2/12/90	Salzano Servicenter	RF300–10997
2/12/90	Waters Oil Co	RF307–10103

REFUND APPLICATIONS RECEIVED—Continued

Date received	Name of firm	Case No.
2/12/90	C.W. Beasley Oil Co., Inc.	RF307–10104
2/13/90	American Can Co	RF307–10106

[FR Doc. 90–6456 Filed 3–20–90; 8:45 am]

BILLING CODE 6450–01–M

Cases Filed During the Week of February 16 Through February 23, 1990

During the Week of February 16 through February 23, 1990, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of

service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: March 15, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

List of Cases Received by the Office of Hearings and Appeals

[Week of February 16 through February 23, 1990]

Date	Name and location of applicant	Case No.	Type of submission
2/20/90	ARCO/Glen Rock Car Wash Memphis, TN	RR304-8	Request for Modification/Rescission in the ARCO Refund Proceeding.
IF GRANTED: The May 12, 1989 Decision and Order (Case No. RF304-2340) issued to Glen Rock Car Wash would be modified regarding the firm's Application for Refund submitted in the ARCO refund proceeding.			
2/22/90	City of Long Beach Washington, DC	LEF-0012	Implementation of Special Refund Procedures.
IF GRANTED: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in connection with September 14, 1989 payment made by the City of Long Beach to refund excess tertiary incentive benefits.			
2/22/90	Corwell Construction Company Clinton, OK	RR272-46	Request for Modification/Rescission in the Crude Oil Refund Proceeding.
IF GRANTED: The November 21, 1989 Decision and Order (Case No. RF272-51555) issued to Corwell Construction Company would be modified regarding the firm's Application for Refund submitted in the crude oil refund proceeding.			
2/23/90	Knox Nelson Oil Company, Inc. Pine Bluff, AR	LEE-0011	Exception to the Reporting Requirements.
IF GRANTED: Knox Nelson Oil Company, Inc. would not be required to file Form EIA-782-B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."			

Refund Applications Received

[Week of February 16 to February 23, 1990]

Date received	Name of refund proceeding/name of refund applicant	Case No.
2/2/90	Charter, Standard Oil Company, Amoco/California	RQ23-546, RQ21-547, RQ251-542.
2/16/90 through 2/23/90.	Crude Oil Refund Applications Received	RF272-78479 through RF272-78496.
2/16/90 through 2/23/90.	Shell Oil Refund Applications Received	RF315-9869 through RF315-9875.
2/20/90	J.H. Massengale	RF300-10998.
2/20/90	C.F. Millender	RF300-10999.
2/20/90	Sidney Orton Gulf	RF300-11000.
2/20/90	Precision Auto Body	RF300-11001.
2/20/90	Colonial Gulf	RF300-11002
2/20/90	Squire Exxon	RF307-10107.
2/20/90	J & B Arco	RF304-11319.
2/20/90	Manchester Auto Wash	RF304-11320.
2/20/90	Belmont Shore Arco	RF304-11421.
2/20/90	Nahas Bros. Arco	RF304-11322.
2/20/90	Bob Conkling Tire Company	RF304-11323.
2/20/90	Ohmer Bassford	RC272-78
2/21/90	Texas Street Shell	RF315-9874.
2/22/90	Larry Gunn	RF307-10108.

[FR Doc. 90-6457 Filed 3-20-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3747-3]

Agency Information Collection Acitivites; Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.),* this notice announces that the 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 collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 20, 1990.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Emission Defect Information Report/Records. (ICR # 0282.03; OMB # 2060-0048). This is a renewal of a previously approved collection.

Abstract: Motor vechicle and engine manufacturers must submit reports and keep records of their voluntary recall campaign to EPA. Manufacturers must inform EPA of emission noncomformities which prompted the recall. They must submit reports for six consecutive quarters of specific

emission defects, and parameters affected by the defects, in 25 or more vehicles of a model year in actual use. Manufacturers must also keep records of their recalls, causes for each recall, and how the emission defects are corrected. EPA uses these data to ensure compliance with Federal recall regulations, and if necessary, to enforce Federal emission standards.

Burden Statement: The public reporting burden for this collection of information is estimated to average 4 hours per response for reporting, and 18 hours annually per recordkeeper. This estimate includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Manufacturers of motor vehicles and motor vehicle's engines.

Estimated No. of Respondents: 25.

Estimated Total Annual Burden on Respondents: 1,000 hours.

Frequency of Collection: Once per recall plus six consecutive quarters.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch, 401 M Street SW., Washington, DC 20460.

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: March 13, 1990.

Paul Lapsley, Director,

Regulatory Management Division.

[FR Doc. 90-6442 Filed 3-20-90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00279A; FRL-3709-7]

FIFRA Scientific Advisory Panel; Appointments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is given of the appointment of two members to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel established pursuant to section 25(d) of FIFRA, as amended (86 Stat. 973 and 89 Stat. 751; 7 U.S.C. 136 et seq.). Public notice of nominees along with a request for public comments appeared in the **Federal Register** of Wednesday, August 16, 1989 (54 FR 33767).

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (H7509C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 821, Crystal Mall Building No. 2, Arlington, VA, (703-557-4369/2244).

SUPPLEMENTARY INFORMATION: Congress mandated that the Scientific Advisory Panel would consist of seven members selected from candidates nominated by the National Science Foundation (NSF) and the National Institutes of Health (NIH). Congress also mandated that the terms of appointment would be staggered. The list of nominees, including biographical data, appeared in the **Federal Register** of August 16, 1989 (54 FR 33767). Five comments were received in response to this Notice.

Dr. Curtis C. Travis and Dr. John T. Wilson have been appointed to serve as members of the FIFRA Scientific Advisory Panel. Dr. Travis is Director, Health and Safety Research Division, Oak Ridge National Laboratory. He will provide the experience and technical background needed in the area of cancer risk assessment. Dr. Wilson is a Pediatrician and Pharmacologist, and Professor of Pharmacology at Louisiana State University Medical Center. The decision to appoint Drs. Travis and Wilson is based upon several factors, including comments received, their expertise in cancer risk assessment and health related issues to young animals (including humans), the need for a disciplinary mix, the need for wide geographic representation, and the need for broader scientific views.

Meetings of the Scientific Advisory Panel are always announced in the **Federal Register** at least 15 days prior to each meeting.

Dated: March 13, 1990.

Henry F. Habicht,

Deputy Administrator.

[FR Doc. 6437 Filed 3-20-90; 8:45 a.m.]

BILLING CODE 6560-50-D-

[FRL-3747-1]

Government-owned Inventions; Available for Licensing

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for licensing in the United States in accordance with 35 U.S.C. 207 and 37 CFR part 404 (1989).

Copies of patents or patent applications cited are available from the person indicated below. Requests for copies of patents must include the patent number and requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications to avoid premature disclosure.

DATE: March 21, 1990.

FOR FURTHER INFORMATION AND COPIES OF PATENTS OR APPLICATIONS CONTACT: Benjamin Bochenek, Office of General Counsel (LE-132G), U.S. Environmental Protection Agency, Washington, DC 20460, Telephone [202] 382-5460.

Patents

Patent 4,281,246: Continuous-Flow Solution Concentrator and Liquid Chromatograph/Mass Spectrometer Interface and Methods for Using Both; issued July 28, 1981.

Patent 4,675,464: Chemical Destruction of Halogenated Aliphatic Hydrocarbons; issued June 23, 1987.

Patent 4,713,343: Biodegradation of Halogenated Aliphatic Hydrocarbons; issued December 15, 1987.

Patent 4,786,485: Lignosulfonate-Modified Calcium Hydroxide for SO_2 Control During Furnace Injection (utilization of modified sorbent for SO_2 control); issued November 22, 1988.

Patent 4,882,309: Lignosulfonate-Modified Calcium Hydroxide for SO_2 Control During Furnace Injection (manufacture of modified sorbent for SO_2 control); issued November 21, 1989. Division of Patent 4,786,485.

Patent 4,822,381: Electroprecipitator with Suppression of Rapping Reentrainment; issued April 18, 1989.

Patent 4,842,748: Methods for Removing Volatile Substances from Water Using Flash Vaporizaiton; issued June 27, 1989.

Patent 4,885,139: Combined Electrostatic Precipitator and Acidic Gas Removal System; issued December 5, 1989.

Patent 4,904,283: Enhanced Fabric Filtration Through Controlled Electrostatically Augmented Dust Deposition; issued February 27, 1990.

Patent Applications

Patent Application 07/201,242: Description Inlet Apparatus for Gas-Aerosol Sampling; filed May 25, 1988.

Patent Application 07/350,425: Method for the Destruction of Halogenated Organic Compounds in a Contaminated Medium; filed May 11, 1989.

Patent Application 07/400,359: Lignosulfonate-modified Calcium Hydroxide for SO_2 Control During Furnace Injection (makes adjustments to hydration and furnace injection

parameters); filed August 30, 1989. Continuation of Patent 4,786,485.

E. Donald Elliott,

Assistant Administrator and General Counsel.

[FR Doc. 90-6446 Filed 3-20-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3747-4]

National Drinking Water Advisory Council; Open Meeting

Under section (1)(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 (Pub. L. 99-339), will be held at 9 a.m. on April 12, 1990, and at 8:30 a.m. on April 13, 1990, at the U.S. Environmental Protection Agency, Region 1 Office, JKF Federal Building, Boston, Massachusetts 02203. Council Subcommittees will hold their meetings on April 9 and 10, 1990.

The purpose of the meeting will be to seek the Council's advice and comments on the concept of consolidated monitoring and the preparation of a guidebook for State Site Specific Compliance Decisions. The Agency will also ask guidance from the Council on the following issues: Primacy Issues and EPA Direction for the Surface Water Treatment/Total Coliform Rules implementation; State Capacity Initiative; Public Water Supply Systems Enforcement Initiatives; and the implementation of the National Training Strategy.

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be one presenter for each statement. Any oustide parties interested in presenting an oral statement should petition the Council by telphone at (202) 382-2285. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before April 4, 1990.

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 the members before any final discussion or vote is completed. Statements received after a meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Drinking Water (WH-550A), 401 M Street SW., Washington, DC 20460 or at 202/382-2285.

Dated: March 14, 1990.

Robert Wayland,

Acting Assistant Administrator for Water.

[FR Doc. 90-6443 Filed 3-20-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3747-2]

Intent To Grant an Exclusive Patent License

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and intent.

SUMMARY: Pursuant to 37 CFR part 404, notice is hereby given that the U.S. Patent No. 4,479,877, entitled "Removal of Nitrate from Water Supplies Using a Tributyl Amino Strong Base Anion Exchange Resin" is available for licensing and that the U.S. Environmental Protection Agency (EPA) intends to grant an exclusive license to Boyle Engineering Corporation of Newport Beach, California.

The proposed exclusive license will contain appropriate terms, limitations and conditions to be negotiated in accordance with the U.S. Government Patent Licensing Regulation at 37 CFR part 404, EPA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days from the Date of this Notice the EPA Patent Counsel receives, at the address below, written objections to the grant, together with supporting documentation. The Patent Counsel and other EPA officials will review all written responses and then recommend to the Director, Risk Reduction Engineering Laboratory, U.S. EPA, Cincinnati, Ohio, who has been delegated the authority to issue patent licenses under 35 U.S.C. 207, whether to grant the exclusive license. However, pursuant to 37 CFR part 404, EPA will not grant an exclusive license less than 90 days from the Date of this Notice.

DATES: Comments to this notice must be received by May 21, 1990.

ADDRESSES: Benjamin Bochenek, Patent Counsel, Office of General Counsel (LE-132G), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Benjamin Bochenek, (202) 382-5460.

SUPPLEMENTARY INFORMATION: EPA intends to grant to Boyle Engineering Corporation of Newport Beach, California, an exclusive license to practice the invention disclosed in U.S. Patent No. 4,479,877, entitled "Removal of Nitrate from Water Supplies Using a Tributyl Amino Strong Base Anion Exchange Resin," filed October 30, 1984. Patent rights to this invention are assigned to the United States of America as represented by the Administrator of EPA. Boyle Engineering Corporation has submitted a complete and sufficient application for a license.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404.

E. Donald Elliott,

Assistant Administrator and General Counsel.

[FR Doc. 90-6447 Filed 3-20-90; 8:45 am]

BILLING CODE 6560-50-M

[OPP-240087; FRL-3713-9]

State Registration of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 26 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register**.

DATES: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Vivian Moses, Jr., Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 254, CM #2, 1921 Jefferson Davis Hwy,, Arlington, VA 22202, (703)-557-3755.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not

approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in September through December of 1989. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

EPA SLN No. AL 89 0009. Rainbow Manufacturing Co. Registration is for Rainbow Wasp to be used on mounds to control fire ants around electrical and telephone equipment installations. October 12, 1989.

EPA SLN No. AL 89 0010. Degesch America. Registration is for Degesch Fumigant to be used on sweet potatoes to control sweet potato weevil. December 19, 1989.

Arizona

EPA SLN No. AZ 89 0017. Uniroyal Chemical Co. Registration is for B-Nine SP (R) to be used on cut flowers and potted plants in greenhouses as a growth regulator. September 18, 1989.

EPA SLN No. AZ 89 0018. Gowan Co. Registration is for Gowan Prometryn 4L to be used on transplanted celery to control annual broadleaf weeds. September 18, 1989.

EPA SLN No. AZ 89 0020. Valent U.S.A. Registration is for Monitor Spray to be used on alfalfa seed to control bermuda grass. November 11, 1989.

EPA SLN No. AZ 89 0021. Mobay Corp. Registration is for Def *6 Emulsion to be used as a desiccant on cotton. November 11, 1989.

EPA SLN No. AZ 89 0022. Nor-Am Chemical Co. Registration is for Dropp 50/WP to be used on cotton for defoliation. October 16, 1989.

EPA SLN No. AZ 89 0023. Mobay Corp. Registration is for Furadan 4F to be used on table grapes to control variegated leaf-hoppers. January 16, 1990.

Arkansas

EPA SLN No. AR 89 0010. Rhone-Poulenc Ag. Co. Registration is for Roval 4 Flowable to be used on rice to control sheath blight. July 24, 1989.

EPA SLN No. AR 89 0011. ICI Americas, Inc. Registration is for Karate Insecticide to be used on cotton to control budworm, bollworm, armyworm, lupus bugs, and stink bugs. August 18, 1989.

California

EPA SLN No. CA 89 0043. Desert Ag. Services. Registration is for Red Top Sevin to be used on Jojoba grasshoppers to control Schistocarca shoshonea. July 26, 1989.

EPA SLN No. CA 89 0045. City of Stockton Municipal Utilities Department. Registration is for Vectobac-12-AS to be used for sewage oxidation in pond #4. August 7, 1989.

EPA SLN No. CA 89 0046. Uniroyal Chemical Co. Registration is for the use of Casoron 4G to be used on lawn turf to control dandelion and prickly ox tongue thistle. October 4, 1989.

EPA SLN No. CA 89 0047. California Department of Food and Agriculture Pest Department. Registration is for Brom-O-Gas to be used on nonfood empty spaces to control various insects, worms, and snails. August 21, 1989.

EPA SLN No. CA 89 0054. Chevron Chemical Co. and Valent U.S.A. Registration is for use of Ortho Diquat and Valent Diquat to be used on almonds to control grass and broadleaf weeds. October 26, 1989.

EPA SLN No. CA 89 0055. ICI Americas, Inc. Registration is for Gramoxone Herbicide to be used on preharvest crop desiccant on alfalfa grown as seed. September 12, 1989.

EPA SLN No. CA 89 0058. Valent U.S.A. Registration is for the use of Dibrom 8 Emulsion to be used for control of aphids on swiss chard. December 12, 1989.

Colorado

EPA SLN No. CO 89 0004. Sentry, Inc. Registration is for use of Tra-kil to be used in wintering honey bee hives for control of trachael mite. April 4, 1989.

Florida

EPA SLN No. FL 89 0029. Southern Mill Creek Products Co. Registration is for Dursban bait insecticide to be used on strawberries and citrus for control of cockroaches. July 17, 1989.

EPA SLN No. FL 89 0030. Hoechst-Roussel Agri-Vet. Registration is for Hoelon R 3EC to be used on turf to control goosegrass, crawfoot grass, and silver crabgrass. August 4, 1989.

EPA SLN No. FL 89 0032. Valent U.S.A. Registration is for Cobra Herbicide to be used on pine seedlings to control annual broadleaf weeds. September 29, 1989.

EPA SLN No. FL 89 0033. ICI Americas, Inc. Registration is for Demon EC Insecticide to be used on turf to control moth fly larvae. November 8, 1989.

EPA SLN No. FL 89 0034. Agri/Division Ciba Geigy. Registration is for Tilt Fungicide to be used on corn grown for seed to control leaf blight rust. October 6, 1989.

EPA SLN No. FL 89 0035. Setre Chemical Co. Registration is for Setre Cythion Malathion to be used on slash pine to control flower thrips. October 9, 1989.

EPA SLN No. FL 89 0036. Rhone-Poulenc Chemical Co. Registration is for Sevin S Brand 80 S Carbaryl to be used on citrus to control citrus weevil. October 10, 1989.

EPA SLN No. FL 89 0037. Rhone-Poulenc. Registration is for the use of Sevin Brand 4F to be used on citrus to control adult citrus weevil. October 10, 1989.

EPA SLN No. FL 89 0038. Valent U.S.A. Registration is for the use of diquat to be used on tomatoe vines after final harvest. October 27, 1989.

EPA SLN No. FL 89 0039. Rainbow Manufacturing Co. Registration is for use of Wasp Killer II to be used on mounds to control imported fire ants. January 1, 1990.

EPA SLN No. FL 89 0040. Amvac Chemical Corp. Registration is for the use of Citrus Fix to be used on citrus as a plant growth regulator. November 7, 1989.

EPA SLN No. FL 89 0041. Valent U.S.A. Registration is for the use of monitor spray to be used on potatoes to control sweet potato whitefly. November 21, 1989.

EPA SLN No. FL 89 0043. Fairfield American Corp. Registration is for use of Permanone 10% EC for ground ULV application to control adult mosquitoes and biting flies. November 28, 1989.

Georgia

EPA SLN No. GA 89 0005. Rainbow Manufacturing Co. Registration is for the use of Wasp Killer II to be used to treat ant mounds to control imported fire ants. September 14, 1989.

EPA SLN No. GA 89 0006. Rhom & Haas Co. Registration is for the use of Goal Herbicide to be used to treat onions. October 11, 1989.

EPA SLN No. GA 89 0007. Drexel Chemical Co. Registration is for use of Drexel Defol to be used on gourds. September 29, 1989.

Hawaii

EPA SLN No. HI 89 0004. E.I. du Pont. Registration is for the use of Benlate 50F to be used on ginger roots to control fusarium yellow disease in Hawaii. November 24, 1989.

EPA SLN No. HI 89 0005. Micro-Flo Co. Registration is for the use of Blue Shield to be used on turf grass to control algae. November 24, 1989.

Illinois

EPA SLN No. IL 89 0004. FMC Corp. Registration is for the use of Talstar 10 WP to be used on ornamental trees, plants, and flowers to control several insect pests. August 21, 1989.

EPA SLN No. IL 89 0006. USDA/APHIS/Animal Damage Control. Registration is for use of DRC 1339 to be used on toxic bait to control starlings. December 29, 1989.

Kansas

EPA SLN No. KS 89 0001. Dow Chemical Co. Registration is for Tordon 22K Weed Killer to be used to control musk thistle, prickly-pear, cactus, broom snakeweed, and leafy spurge on wasteland. November 29, 1989.

Kentucky

EPA SLN No. KY 89 0003. USDA/APHIS/ADC. Registration is for the use of ORC-1339 (Starlicide) to be used for bird control, feral pigeons, common crows, starlings, red-winged blackbird, common grackles, and brown-headed cowbirds. November 27, 1989.

Louisiana

EPA SLN No. LA 89 0013. FMC Corp. Registration is for Ammo-Thiodan to be used on cotton to control cotton thrips, budworms, plant bugs, and cotton fleas. August 3, 1989.

EPA SLN No. LA 89 0014. Valent U.S.A. Registration is for Orthene 90S to be used on soybeans, cabbage, and corn to control looper cloveworm, caterpillar, and bugs. August 8, 1989.

EPA SLN No. LA 89 0015. ICI Americas, Inc. Registration is for the use of Karate Insecticide to be used on cotton and pears. August 15, 1989.

EPA SLN No. LA 89 0016. Rainbow Manufacturing Co. Registration is for the use of Rainbow Wasp Killer II to be used on ant mounds to control fire ants. October 27, 1989.

Michigan

EPA SLN No. MI 89 0007. Valent U.S.A. Registration is for the use of Valent Diquat Herbicide to be used on potatoes for desiccation of potato vine to facilitate harvest. September 14, 1989.

EPA SLN No. MI 89 0008. Rhom & Haas Co. Registration is for the use of Goal 1.6E Herbicide to be used on onion to control weeds. December 12, 1989.

EPA SLN No. MI 89 0009. Rhom & Haas Co. Registration is for the use of Goal 1.6E Herbicide to be used on muck-grown peppermint and spearmint. December 12, 1989.

Mississippi

EPA SLN No. MS 89 0017. Rainbow Manufacturing Co. Registration is for the use of Rainbow Wasp Killer II to be used as treatment on ant mounds for control of imported fire ants. August 23, 1989.

EPA SLN No. MS 89 0018. Buckman Laboratories. Registration is for the use of Busan 1132 to be used on unseasoned logs and timber to protect from deterioration by wood-destroying insects. September 27, 1989.

EPA SLN No. MS 89 0019. Setre Chemical Co. Registration is for use of Liquid DSMA to be used on cotton by aerial and ground equipment. December 28, 1989.

EPA SLN No. MS 89 0020. Setre Chemical Co. Registration is for use of MSMA to be used on cotton by aerial and ground equipment. December 28, 1989.

Montana

EPA SLN No. MT 89 0011. E.I. du Pont. Registration is for the use of Alley Herbicide to be used on wheat. August 10, 1989.

EPA SLN No. MT 89 0012. Unicol Chemicals. Registration is for the use of Enquik to be used on potatoes as a vine desiccant. August 14, 1989.

EPA SLN No. MT 89 0013. Valent U.S.A. Registration is for the use of Valent Diquat Herbicide to be used as a desiccant on (rape) canola. September 1, 1989.

Nevada

EPA SLN No. NV 89 0004. Nevada Department of Agriculture. Registration is for the use of Ortho Diquat Herbicide to be used on onion and onion bulbs to control weeds. August 4, 1989.

EPA SLN No. NV 89 0005. ICI Americas, Inc. Registration is for use of Gramoxone to be used on alfalfa to control weeds. August 16, 1989.

New Jersey

EPA SLN No. 89 0011. Valent U.S.A. Registration is for use of Lactofen to be used on soybeans to control weeds. November 2, 1989.

North Carolina

EPA SLN No. NC 89 0010. E.I. du Pont. Registration is for the use of Asana XL Insecticide to be used on blueberries to control insect species. September 19, 1989.

EPA SLN No. NC 89 0011. Rainbow Manufacturing Co. Registration is for the use of Wasp Killer II to be used on mounds to control imported fire ants. December 19, 1989.

Oregon

EPA SLN No. OR 89 0011. E.I. du Pont. Registration is for the use of Du Pont Karmex DF to be used on ryegrass to control weeds. August 10, 1989.

EPA SLN No. OR 89 0012. Mobay Corp. Registration is for the use of Morestan 25% Wettable Powder to be used on nonbearing hops to control mites. August 14, 1989.

EPA SLN No. OR 89 0013. E.I. du Pont. Registration is for the use of Du Pont Herbicide Metsulfuron to be used on winter wheat to control weeds. September 21, 1989.

Pennsylvania

EPA SLN No. PA 89 0007. Ciba Geigy Corp. Registration is for use of Hydro Formaldehyde Disinfectant to be used in mushroom houses for disinfecting tools and equipment. September 8, 1989.

Puerto Rico

EPA SLN No. PR 89 0002. Rhone-Poulenc Ag Co. Registration is for Ethrel 480 to be used as a coffee growth regulator. July 21, 1989.

EPA SLN No. PR 89 0003. Fermenta Animal Health Co. Registration is for the use of Ectrin Insecticide to be used on cattle for cattle tick eradication and fly control. November 6, 1989.

South Carolina

EPA SLN No. SC 89 0003. ICI Americas, Inc. Registration is for the use of Reflex 2LC Fomesafen to be used on soybeans to control witchweed. June 28, 1989.

EPA SLN No. SC 89 0006. ICI Americas, Inc. Registration is for the use of Imidan 50 WP Fonophos to be used to control pales weevil and pitch-eating weevil in loblolly pine seedlings and nursery beds. November 15, 1989.

Texas

EPA SLN No. TX 89 0012. Great Lakes Chemical Co. Registration is for the use of methyl bromide to be used on imported forest wood products to control quarantine pests. October 24, 1989.

EPA SLN No. TX 89 0013. Great Lakes Chemical Co. Registration is for the use of methyl bromide to be used on nonfood/nonfeed products to control quarantine pests. October 24, 1989.

Utah

EPA SLN No. UT 89 0002. USDA/APHIS/ADC. Registration is for the use of DRC-1339/56228 to be used on treated

bird food to control starlings. November 28, 1989.

Vermont

EPA SLN No. VT 89 0001. Monsanto Agricultural Co. Registration is for the use of Ranger Herbicide sodium for control of perennial weeds. September 7, 1989.

Washington

EPA SLN No. WA 89 0020. Uniroyal Chemical Co. Registration is for use of Comite to be used on alfalfa (grown for seed) to control two-spotted spider mite complex. September 8, 1989.

EPA SLN No. WA 89 0022. ICI Americas, Inc. Registration is for the use of Fusilade 2000 Herbicide to be used on alfalfa grown for seed to control weeds. August 1, 1989.

EPA SLN No. WA 89 0023. Wilbur-Ellis Co. Registration is for the use of Wilbur-Ellis DF to be used on hops to control red spider mites. August 14, 1989.

EPA SLN No. WA 89 0024. E.I. du Pont. Registration is for the use of du Pont Vydate L Insecticide/Nematicide to be used on apples to control leafminers. August 24, 1989.

EPA SLN No. WA 89 0025. E.I. du Pont. Registration is for the use of Finesse Herbicide to be used on winter wheat to control several weeds. September 14, 1989.

EPA SLN No. WA 89 0026. Valent U.S.A. Registration is for the use of Orthene 75 Acephate to be used on sweet grain lupine. October 11, 1989.

EPA SLN No. WA 89 0027. Rhom & Haas Corp. Registration is for the use of Kelthane MF Dicofol to be used on Christmas trees to control weeds. October 10, 1989.

EPA SLN No. WA 89 0028. E.I. du Pont. Registration is for the use of Harmony Extra Herbicide to be used on wheat and barley to control certain broadleaf weeds. January 1, 1990.

EPA SLN No. WA 89 0033. Mobay Corp. Registration is for the use of Metasystox-R Spray Concentrate to be used on field-grown nursery stock including Christmas trees to control weeds. November 21, 1989.

EPA SLN No. WA 89 0034. Aceto Agricultural Chemical Co. Registration is for use of Simazine 80W Herbicide to be used to control broadleaf weeds. December 8, 1989.

Authority: Section 24, as amended, 92 Stat. 835 (7 U.S.C. 136).

Dated: March 7, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-6098 Filed 3-20-90; 8:45 am]

BILLING CODE 6560-50-D

[OPP-30228A/30229B; FRL-3714-1]

Sumitomo Chemical Inc.; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Sumitomo Chemical America Inc., to register the pesticide products Danitol 2.4 EC Spray and Danitol Technical containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 15, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM#2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–557–2400).

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register** of July 6, 1983 (48 FR 31081) and November 16, 1983 (48 FR 52124), which announced that Sumitomo Chemical America Inc., 345 Park Ave., New York, NY 10154, had submitted applications to conditionally register the pesticide products Danitol 2.4 EC Spray and Danitol Technical (EPA File Symbols 39398–RT and 39398–RA), containing the active ingredient fenopropathrin (alpha cyano-3-phenoxybenzyl 2,2,3,3-tetramethyl cyclopropanecarboxylate at 30.01 and 90.0 percent respectively; an active ingredient not included in any previously registered products.

These applications were approved on December 22, 1989, for Danitol 2.4 EC Spray for greenhouse use on ornamentals and nonbearing fruit trees (EPA Reg. No. 39398–17) and Danitol Technical for formulating use only (EPA Reg. No. 39398–16).

The Agency has considered all required data on risks associated with the proposed use of fenopropathrin (alpha cyano-3-phenoxybenzyl 2,2,3,3-tetramethyl cyclopropanecarboxylate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of fenopropathrin (alpha cyano-3-phenoxybenzyl 2,2,3,3-tetramethyl cyclopropanecarboxylate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on fenopropathrin (alpha cyano-3-phenoxybenzyl 2,2,3,3-tetramethyl cyclopropanecarboxylate.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the Natural Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Docket, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM#2, Arlington, VA 22202 (703–557–4456). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: March 5, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90–6441 Filed 3–20–90; 8:45 am]

BILLING CODE 6560–50–D

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Puerto Rico Ports Authority/Intermares Mfg. Co. Inc. Terminal Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal

Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200331

Title: Puerto Rico Ports Authority/ Intermares Manufacturing Co., Inc. Terminal Agreement.

Parties: Puerto Rico Ports Authority (Authority) Intermares Manufacturing Co., Inc. (IMCI).

Synopsis: The Agreement provides IMCI certain preferential use and certain exclusive use of marine terminal facilities at the extension of Pier No. 12, San Juan, Puerto Rico. In addition to specific monthly rental charges which will be revised every three years, IMCI will pay wharfage and dockage charges normally assessed by the Authority or a minimum annual payment of $40,000, whichever is higher, plus demurrage and any other charges which would normally be assessed by the Authority. The term of the Agreement is for ten years.

By Order of the Federal Maritime Commission.

Dated: March 15, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–6352 Filed 3–20–90; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed; Georgia Ports Authority and Tokai Shipping Co., Ltd.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224–011001–001

Title: Georgia Ports Authority/Tokai Shipping Co., Ltd. Terminal Agreement

Parties:

Georgia Ports Authority (GPA)

Tokai Shipping Co., Ltd.

Synopsis: The Agreement amends paragraph 5a of the basic agreement. It provides that 65 percent of GPA's tariff rate on wharfage and dockage will apply for volumes over 150,000 tons.

Dated: March 16, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90–6430 Filed 3–20–90; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 90–10]

International Paper Co. v. "K" Line (Kawasaki Kaisha, Ltd.); Filing of Complaint and Assignment

Notice is given that a complaint filed by International Paper Company ("Complainant") against "K" Line (Kawasaki Kaisha, Ltd.) ("Respondent") was served March 15, 1990. Complainant alleges that Respondent violated section 10(b)(10) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b)(10), by misrating a shipment of CAX II Woodpulp in Rolls from New Orleans, Louisiana, to Kobe, Japan. Complainant requests that the proceeding be conducted pursuant to the shortened procedure contained in subpart K of the Commission's rules, 46 CFR 502.181 *et seq.*

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the furthers terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by March 15, 1991, and the final decision of the Commission shall be issued by July 15, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 90–6429 Filed 3–20–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Banca Commerciale Italiana S.p.A. Milan, Italy

In the matter of proposal to provide securities brokerage and investment advisory services on a combined basis, provide corporate finance advisory services, provide foreign exchange advisory services, and act as riskless principal.

Banca Commerciale Italiana S.p.A., Milan, Italy ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "Act") and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for prior approval to engage through BCI Capital Corporation, New York, New York ("Company"), a *de novo* subsidiary, in the following activities: (1) Providing securities brokerage and investment advisory services on a combined basis to institutional customers, including discretionary management services; (2) providing corporate finance advisory services by acting as a financial advisor with respect to structuring, financing, and negotiating domestic and international mergers and acquisitions, joint ventures, divestitures, leveraged buyouts, capital raising vehicles, interest rate swaps, interest rate caps, interest rate collars, currency swaps, similar hedging devices, and other corporate transactions; (3) performing feasibility studies, principally in the context of determining the attractiveness and feasibility of particular corporate transactions; (4) providing valuation services; (5) rendering fairness opinions in connection with corporate transactions; (6) providing general information and statistical forecasting with respect to foreign exchange markets, advisory services designed to assist customers in monitoring, evaluating, and managing their foreign exchange exposures, and transactional and execution services with respect to foreign exchange; (7) acting as riskless principal in buying and selling securities; and (8) acting as riskless principal by entering into spot and forward transactions in the foreign exchange market. Company would provide the proposed services to institutional customers throughout the United States and abroad.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Applicant has applied to engage in brokerage and investment advisory activities on a combined basis as set forth in the Board's Orders approving those activities for a number of bank holding companies. *See, e.g., The Royal Bank of Canada*, 74 Federal Reserve Bulletin 334 (1988); *J.P. Morgan & Co. Incorporated*, 73 Federal Reserve Bulletin 810 (1987).

Applicant has applied to engage in providing corporate finance advisory services, performing feasibility studies, providing valuation services, and rendering fairness opinions pursuant to the Board's Order in *The Fuji Bank, Limited*, 75 Federal Reserve Bulletin 577 (1989).

Applicant has applied to engage in providing general information and statistical forecasting with respect to foreign exchange markets, advisory services designed to assist customers in monitoring, evaluating, and managing their foreign exchange exposures, and transactional services with respect to foreign exchange, as described in § 225.25(b)(17) of the Board's Regulation Y (12 CFR 225.25(b)(17)), except that Company would itself execute foreign exchange transactions and would take positions in foreign exchange for its own account in connection with its proposed riskless principal activities. Applicant contends that it will provide such foreign exchange advisory and transactional services, not as a separate activity, but solely as an incident to its securities brokerage, investment advisory, and corporate finance advisory services. In addition, Applicant believes that the combination of engaging in foreign exchange advisory services and executing foreign exchange transactions is closely related to banking and a proper incident thereto. Applicant points out that the advisory services are authorized under Regulation Y, except for the fact that Company proposes to execute foreign exchange transactions. Applicant further argues that executing foreign exchange transactions is a traditional banking activity that poses no significant risks or adverse effects.

Applicant has applied to engage in the purchase and sale of all types of securities on the order of investors as "riskless principal" as approved by the Board in prior Orders. *See Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989); *Stichting Amro*, 76 Federal Reserve Bulletin 29 (1990). Applicant has agreed to comply with the limitations placed on riskless principal activities in those Orders.

Finally, Applicant has applied to act as a riskless principal in executing transactions in foreign exchange for its customers. Applicant contends that such activities will be undertaken only as an incident to Company's other activities. Company proposes to enter into spot and forward transactions in the foreign exchange market at the order of a customer. When a customer decides to purchase or sell an amount of foreign currency or a forward contract in a foreign currency, Company would locate a counterparty willing to enter into an offsetting transaction prior to confirming the customer's order. Company then would enter into contemporaneous offsetting transactions with its customer and the counterparty. Applicant contends that the proposed activities are closely related to banking and that permitting bank holding companies to engage in the proposed activities would result in increased competition, customer convenience, and productive efficiency and would raise no substantial risks of unsound banking, conflicts of interest, unfair competition, or similar problems. Applicant argues that adverse effects from such activities would be minimized because Company will be subject to the condition that it observe fiduciary standards in providing foreign exchange services. In addition, Company's customers will be financially sophisticated, and price information is readily available in the foreign exchange market. Company will not maintain an inventory of foreign exchange and so, Applicant argues, it would have no motive to color its advice with respect for foreign exchange to the customers' detriment.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal under the Act. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the Act.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 20, 1990. Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This applicant may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, March 15, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-6391 Filed 3-20-90; 8:45 am]

BILLING CODE 6210-01-M

The Bank of Montreal; Montreal, Quebec, Canada.

In the matter of proposal to underwrite and deal in debt and equity securities to a limited extent, act as agent in the private placement of all types of securities, and engage in riskless principal transactions.

The Bank of Montreal, Montreal, Quebec, Canada ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (the "BHC Act") and § 225.23(a) of the Board's Regulation Y

(12 CFR 225.23(a)), for permission for its indirect subsidiary, Nesbitt Thomson Securities, Inc., New York, New York ("Company"), to underwrite and deal in all types of debt and equity securities ("ineligible securities"), act as agent in the private placement of all types of securities, and act as riskless pincipal in buying and selling securities.

Company is currently authorized to: (1) Provide brokerage and investment advisory services to institutional customers and Company's affiliates; (2) provide advice in connection with financial transactions; (3) provide financial advice to the Canadian federal, provincial and municipal governments and their agents, such as with respect to the issuance of their securities in the United States; (4) provide discount brokerage services; (5) provide portfolio investment advice and research, and furnish general economic information and advice; and (6) underwrite and deal in securities eligible to be underwritten and dealt in by U.S. member banks. *The Bank of Montreal*, 74 Federal Reserve Bulletin 571 (1988).

Applicant has applied to underwrite and deal in ineligible securities in accordance with the limitations set forth in the Board's Order approving these activities for a number of foreign companies. Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC, Barclays Bank PLC, 76 Federal Reserve Bulletin—(1990) (Board Order dated January 4, 1990).

Applicant has proposed to act as agent in the private placement of all types of securities, and to act as riskless principal in buying and selling securities in substantial conformity to the Board's prior Orders. See, Bankers Trust New York Corporation, 75 Federal Reserve Bulletin 829 (1989).

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Applicant contends that permitting bank holding companies to engage in the proposed activities would result in increased competition, gains in efficiency.

Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. With regard to the proposed ineligible securities underwriting and dealing activity, Applicant states that, consistent with section 20, it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board.

In publishing the proposal for comment the Board does not take an position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 7, 1990. Any request for a hearing on this application must, as required by § 262.3(e)) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, March 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-6390 Filed 3-20-90; 8:45 am]

BILLING CODE 6210-01-M

Evergreen Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 9, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Evergreen Bancshares, Inc.*, Tallahassee, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Guaranty National Bank of Tallahassee, Tallahassee, Florida.

Board of Governors of the Federal Reserve System, March 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-6386 Filed 3-20-90; 8:45 am]

BILLING CODE 6210-01-M

First Eastern Corp. Wilkes-Barre, Pennsylvania; Proposal to Conduct Private Placements as Agent of All Types of Securities and Engage in Financial Advisory Services

First Eastern Corp., Wilkes-Barre, Pennsylvania ("First Eastern"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage through its wholly owned subsidiary, First Eastern Merchant Banking Group, Inc., Doylestown, Pennsylvania ("Company"), in the placement, as agent for issuers, of all types of securities, and providing financial advisory services. First Eastern is proposing to engage in these activities through Company on a nationwide basis.

First Eastern is currently authorized to engage through Company in providing discount brokerage services, as well as underwrite and deal in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member

banks are authorized to underwrite and deal in under 12 U.S.C. 24 and 335.

First Eastern proposes to engage, through Company, in the placement, as agent for issuers, of all types of securities. First Eastern has committed that Company will conduct its private placement activities in a manner consistent with, and subject to, all of the prudential limitations approved by the Board in *J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990).

First Eastern also proposes that Company will engage in, for institutional customers: (i) Acting as financial adviser, either on a retainer or success fee basis, to provide corporate finance advisory services, including advice with respect to structuring, financing and negotiating domestic and international mergers, acquisitions, joint ventures, divestitures, leveraged buyouts, capital raising vehicles, financial restructurings, diversifications, recapitalizations, stock repurchases, and other corporate transactions, and to provide ancillary services or functions incidental to the foregoing activities; (ii) performing feasibility studies, principally in the context of determining the financial attractiveness and feasibility of particular corporate transactions; (iii) providing valuation services in connection with the foregoing; and (iv) providing fairness opinions in conection with the foregoing.

First Eastern has committed to abide by the conditions set out in the Board's Order in *The Fuji Bank, Limited*, 75 Federal Reserve Bulletin 577 (1989), with respect to Company's financial advisory service activities.

Section 4(c)(8) of the Bank Holding Company act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking as to be a proper incident thereto." The Board has previously determined that the proposed activities are closely related to banking.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." First Eastern contends that permitting Company to engage in the proposed activities would result in enhanced service and convenience for customers, as well as increased competition for the proposed services.

The Board has previously determined that approval of the proposed private placement activities would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), relying on *Securities Industry Ass'n* v. *Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 107 S.Ct 3228 (1987).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Philadelphia.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than April 20, 1990.

Board of Governors of the Federal Reserve System, March 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–6385 Filed 3–20–90; 8:45 am]

BILLING CODE 6210–01–M

William C. Martin, Jr.; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 4, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. *William C. Martin, Jr.*, Aliceville, Alabama; to acquire an additional 0.52 percent of the voting shares of First National Bancshares of West Alabama, Inc., Aliceville, Alabama, and thereby indirectly acquire First National Bank of Pickens County, Aliceville, Alabama.

Board of Governors of the Federal Reserve System, March 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–6389 Filed 3–20–90; 8:45 am]

BILLING CODE 6210–01–M

Saastopankkien Keskus-Osake-Pankki (Skopbank), et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than April 9, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Saastopankkien Keskus-Osake-Pankki (Skopbank)*, Helsinki, Finland; to acquire Union Mortgage Company, Inc., Dallas, Texas, and Astrum Funding Corp, Great Neck, New York, and thereby engage in Making, acquiring, servicing, purchasing and selling mortgage loans for their own account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Banks, Inc.*, St. Louis, Missouri; to acquire Clayton Savings and Loan Association, Clayton, Missouri, and thereby engage in operating a thrift institution pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-6387 Filed 3-20-90; 8:45 am]

BILLING CODE 6210-01-M

Societe Generale; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in §225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 9, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Societe Generale*, Paris, France; to engage *de novo* through its subsidiary, Societe Generale Touche Remnant Corporation, New York, New York, in providing investment or financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 15, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-6388 Filed 3-20-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[File No. 871-0084]

Bellingham-Whatcom County Multiple Listing Bureau; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Washington state multiple listing service from refusing to publish exclusive agency listings or listings containing reserve clauses, from restricting the solicitation of homeowners with current listings for future business, and from suggesting or fixing any commission split or other fees between any listing broker and any selling broker. In addition, the order would require respondent to distribute a statement describing the provisions of the order to all its members.

DATES: Comments must be received on or before May 21, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Randy Brook, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Avenue, Seattle, WA 98174, (206) 442-4656.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

[File No. 871-0084]

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission has initiated an investigation of certain acts and practices of Bellingham-Whatcom County Multiple Listing Bureau ("BWCMLB"), a corporation. It now appears that BWCMLB is willing to enter into agreement containing an order to cease and desist from the acts and practices being investigated.

BWCMLB by its authorized officer and its attorney, and counsel for the Federal Trade Commission agrees that:

(1) Proposed respondent BWCMLB is a Washington corporation with its office and principal place of business at 1801 "F" Street, Bellingham, Washington 98225.

(2) Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

(3) Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

(4) This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a

period of 60 days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

(5) This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint attached hereto.

(6) This agreement contemplates that, if it is accepted by the Commission, and if this acceptance is not subsequently withdrawn by the Commission pursuant to its Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

(7) Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

The following definitions shall apply to this order:

(1) *Multiple listing service* shall mean a clearinghouse through which member real estate brokerage firms regularly exchange information on listings of real estate properties and share commissions with other members.

(2) *Listing agreement* shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

(3) *Listing broker* shall mean any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(4) *Selling broker* shall mean any broker, other than the listing broker, who locates the purchaser for a listed property.

(5) *Exclusive agency listing* shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property at an agreed commission, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

(6) *Reserve clause listing* shall mean any listing that includes a provision reserving the property owner's right to sell the property to one or more persons individually named in the listing agreement without owing a full commission to the broker.

(7) *Conditional listing* shall mean any exclusive agency or exclusive right to sell listing that makes sale of the property conditional on the purchase or sale of other property.

(8) *BWCMLB* shall mean Bellingham-Whatcom County Multiple Listing Bureau and its successors, assigns, directors, officers, committees, agents, representatives, members, and employees.

I

It is ordered, That respondent BWCMLB, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Restricting or interefering with:

1. The publication of BWCMLB's multiple listing service of any exlusive agency listing of a member; or

2. The publication on BWCMLB's multiple listing service of any reserve clause listing or conditional listing of a member.

B. Adopting or maintaining any policy, or taking any other action that has the purpose, tendency, or effect of restricting or interfering with the solicitation of a listing agreement for any property.

Provided, however, That nothing contained in this subpart shall prohibit BWCMLB from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using information provided to it by BWCMLB that pertains to a specific listed property in the solicitation of a listing agreement for that property. Such reasonable and nondiscriminatory policy may include adoption of a rebuttable presumption that any member soliciting sellers for listings then listed with BWCMLB by another member used information provided to it by BWCMLB in the solicitation, as long as the soliciting member may fully rebut the presumption by providing a declaration under oath or other evidence that the solicitation was based upon information obtained from sources other than BWCMLB.

C. Suggesting or fixing any rate, range, or amount of any division or split of commission or other fees between any selling broker and any listing broker.

II

It is further ordered, That BWCMLB shall:

A. Within thirty (30) days after this order becomes final, furnish an announcement in the form shown in Appendix A to each member of BWCMLB.

B. Within sixty (60) days after this order becomes final, amend its bylaws, rules and regulations, and all other of its materials to conform to the provisions of this order, and provide each member with a copy of the amended bylaws, rules and regulations, and other amended materials.

C. For a period of three (3) years after this order becomes final, furnish an announcement in the form shown in Appendix A to each new member of BWCMLB within thirty (30) days of the new member's admission.

III

It is further ordered, That BWCMLB shall:

A. Within ninety (90) days after this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which BWCMLB has complied and is complying with this order.

B. In addition to the report required by Paragraph III(A), annually for a period of three (3) years on or before the anniversary date on which this order

becomes final, and at such other times as the Federal Trade Commission or its staff may by written notice to BWCMLB require, file a verified written report with the Federal Trade Commission setting forth in detail the manner and form in which BWCMLB has complied and is complying with this order.

C. For a period of five (5) years after this order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which BWCMLB has complied with this order.

D. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in BWCMLB, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in BWCMLB that may affect compliance obligations arising out of this order.

Appendix A

[BWCMLB's Regular Letterhead]

As you may be aware, the Federal Trade Commission has entered into consent decrees with several multiple listing services in order to halt certain multiple listing service practices that have been alleged to be unlawful restraints of trade. To avoid litigation, Bellingham-Whatcom County Multiple Listing Bureau ("BWCMLB") has entered into such a consent agreement. The agreement is not an admission that BWCMLB or any of its members has violated any law. For your information, BWCMLB is prohibited from the following practices:

A. Restricting or interfering with:

1. The publication on BWCMLB's multiple listing service of any exclusive agency listing of a member; or

2. The publication on BWCMLB's multiple listing service of any reserve clause listing or conditional listing of a member.

B. Adopting or maintaining any policy, or taking any other action that has the purpose, tendency, or effect of restricting or interfering with the solicitation of a listing agreement for any property.

Provided, however, That nothing contained in this subpart shall prohibit BWCMLB from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using information provided to it by BWCMLB that pertains to a specific listed property in the solicitation of a listing agreement for that property. Such reasonable and nondiscriminatory policy may include adoption of a rebuttable presumption that any member soliciting sellers for listings then listed with BWCMLB by another member used information provided to it by BWCMLB in the solicitation, as long as the soliciting member may fully rebut the presumption by providing a declaration under oath or other evidence that the solicitation was based upon information obtained from sources other than BWCMLB.

C. Suggesting or fixing any rate, range, or amount of any division or split of commission or other fees between any selling broker and any listing broker.

Bellingham-Whatcom County Multiple Listing Bureau Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the Bellingham-Whatcom County Multiple Listing Bureau ("BWMLB"). The agreement would settle charges by the Commission that BWMLB has violated Section 5 of the Federal Trade Commission Act by restraining competition among real estate brokers in the Bellingham, Washington metropolitan area and its surroundings. The Commission charged BWMLB with injuring consumers by refusing to publish various types of home listings, by unreasonably restricting brokers from soliciting homes sellers, and by unreasonably restricting brokers and sellers from bargaining over commission splits.

BWMLB has agreed to the proposed consent order for settlement purposes only and does not admit that it violated the law as alleged in the complaint.

The Commission has placed the proposed consent order on the public record for 60 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After the close of the comment period, the Commission will again review the agreement, will review the comments received, and will decide whether it should make the agrements' proposed order final or withdraw the agreement.

The Complaint

The Commission has prepared a complaint to issue along with the proposed order. The complaint alleges that BWMLB is an association that includes the vast majority of real estate brokers that deal in residential real estate in the Bellingham, Washington area. BWMLB members compete among themselves and with other real estate brokers. In 1986 sales of residential real estate through BWMLB totaled about $88 million.

According to the compliant, BWMLB has adopted rules that restrain competition in the delivery of brokerage services. For example, BWMLB has refused to accept "exclusive agency" listings for publication. These are agreements between home sellers and brokers whereby the homeowner does not pay a commission, or pays a reduced commission, if he or she makes the sale directly, without assistant from the broker. Instead BWMLB has only accepted "exclusive right to sell" listings. These listings require payment to the broker in the event of any sale, whether or not the broker helps make the sale.

The compliant further alleges that BWMLB has refused to accept for publication "conditional" listings or listings containing "reserve clauses." Conditional listings are ones where the homeowners make sale of the property contingent on his or her completing the purchase of another property. Reserve clauses allow homeowners to reserve the right to sell to specified persons without paying a commission to the broker.

Homeowers may want to use reserve clauses when they have located one or more prospective buyers before entering into a listing agreement.

According to the complaint, BWMLB has prohibited members from soliciting future relistings from consumers who have homes currently listed for sale with other members. This practice deters brokers from initiating contacts with potential clients

Finally, the compliant alleges that BWMLB has deterred real estate brokers from offering or accepting different commission splits, by suggesting in BWMLS's rules that brokers use a 40–60 split in certain circumstances.

According to the complaint, the effects of these restraints have been to restrain competition in the delivery of real estate brokerage services, deprive consumers of the ability to negotiate listing agreements with different terms that they might find more attractive or beneficial, and deprive consumers of the benefits of competition among brokers who might otherwise solicit their business.

The Proposed Consent Order

The proposed consent order prohibits BWMLB from refusing to publish exclusive agency or conditional listings, or listings containing reserve clauses.

The order also prohibits BWMLB from restricting the solicitation of homeowners with current listings for future business. BWMLB is allowed, however, to adopt reasonable rules to ensure that member brokers do not use proprietary information (information not otherwise available to competitors) as the basis for the solicitation. This means, for example, that BWMLB could probibit member brokers from using the current compilation of MLS listings as a basis for selectively targeting listed home sellers for solicitation. Under this order, member brokers could, however, use public information, such as "For

Sale" signs or newspaper advertisements of open houses, as the basis for selecting currently listed home sellers to solicit for future relistings. Public comments is specifically invited on the appropriateness of this order provision. For example, comments are invited on the potential benefits of removing restrictions on solicitation, based on public information, of current home sellers for future relistings (such as the likely extent of: increased solicitation targeted as listed home sellers; increased information to consumers about brokerage terms and services; and increased competition based on commission rates, listing terms, and services). Comments are also invited on any potential costs of removing the restrictions on solicitation (such as the impact, if any, on: the ability of the MLS to police any ban on members' use of current MLS listing information for solicitation; the level of cooperative sales efforts; and the level of use of "For Sale" signs and open houses).

To assist in the Commission's consideration of the appropriateness of the proposed consent order's remedy concerning solicitation of listed homeowners, the Commission invites comments on the desirability of any alternative remedies, including system under which: (1) brokers have to disclose at the time of listing that the MLS bans solicitation, but that the homeowner can receive information from any broker whom he or she contacts; (2) brokers have to disclose that the homeowner can choose whether or not to receive solicitation, which will be permitted if the homeowner chooses to receive them; or (3) brokers could use proprietary information from the MLS in written solicitations and/or in-person or telephone solicitations.

The order also prohibits BWMLB from suggesting or fixing any commission split or other fees between any listing broker and any selling broker.

Finally the order requires BWMLB to distribute a statement describing the substantive provisions of the order to all its members.

The purpose of this analysis is to aid public comment on the proposed order. It is not an official interpretation of the agreement and proposed order and it does not modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 90-6398 Filed 3-20-90; 8:45 am]

BILLING CODE 6750-01-M

[File No. 871-0085]

Puget Sound Multiple Listing Association; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Washington state multiple listing service corporation from refusing to publish exclusive agency listings or listings containing reserve clauses, from restricting the solicitation of homeowners with current listings for future business, and from suggesting or fixing any commission split or other fees between any listing broker and any selling broker. In addition, the order would require respondent to distribute a statement describing the provisions of the order to all its members.

DATES: Comments must be received on or before May 21, 1990.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Randy Brook, Seattle Regional Office, Federal Trade Commission, 2806 Federal Bldg., 915 Second Ave., Seattle, WA. 98174. (206) 442-4656.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

[File No. 871-0085]

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission has initiated an investigation of certain acts and practices of Puget Sound Multiple Listing Association ("PSMLA"), a corporation. It now appears that PSMLA is willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

PSMLA, by its authorized officer and its attorney, and counsel for the Federal Trade Commission agree that:

(1) Proposed respondent PSMLA is a Washington corporation with its office and principal place of business at 11961 124th Avenue N.E. Kirkland, Washington 98034.

(2) Proposed respondent admits all the jurisdictional facts set forth in the attached draft complaint.

(3) Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

(4) This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of 60 days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

(5) This agreement is for settlement purposes only and does not constitute and admission by proposed respondent that the law has been violated as alleged in the draft of complaint attached hereto.

(6) This agreement contemplates that, if it is accepted by the Commission, and if this acceptance is not subsequently withdrawn by the Commission pursuant to its Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the attached draft and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in

the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agree-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

(7) Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

The following definitions shall apply to this order:

(1) *Multiple listing service* shall mean a clearinghouse through which member real estate brokerage firms regularly exchange information on listings of real estate properties and share commissions with other members.

(2) *Listing agreement* shall mean any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

(3) *Listing broker* shall mean any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(4) *Selling broker* shall mean any broker, other than the listing broker, who locates the purchaser for a listed property.

(5) *Exclusive agency listing* shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property at an agreeed commission, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

(6) *Reserve clause listing* shall mean any listing that includes a provision reserving the property owner's right to sell the property to one or more persons individually named in the listing agreement without owing a full commission to the broker.

(7) *PSMLA* shall mean Puget Sound Multiple Listing Association and its successors, assigns, directors, officers, committees, agents, representatives, members, and employees.

I.

It is ordered, That respondent PSMLA, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Restricting or interfering with:

1. The publication on PSMLA's multiple listing service of any exclusive agency listing of a member; or

2. The publication on PSMLA's multiple listing service of any reserve clause listing of a member.

B. Adopting or maintaining any policy, or taking any other action that has the purpose, tendency, or effect of restricting or interfering with the solicitation of a listing agreement for any property.

Provided, however, That nothing contained in this subpart shall prohibit PSMLA from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using information provided to it by PSMLA that pertains to a specific listed property in the solicitation of a listing agreement for that property. Such reasonable and nondiscriminatory policy may include adoption of a rebuttable presumption that any member soliciting sellers for listing then listed with PSMLA by another member used information provided to it by PSMLA in the solicitation, as long as the soliciting member may fully rebut the presumption by providing a declaration under oath or other evidence that the solicitation was based upon information obtained from sources other than PSMLA.

C. Suggesting or fixing any rate, range, or amount of any division or split of commission or other fees between any selling broker and any listing broker.

II.

It is further ordered, That PSMLA shall:

A. Within thirty (30) days after this order becomes final, furnish an announcement in the form shown in Appendix A to each member of PSMLA.

B. Within sixty (60) days after this order becomes final, amend its bylaws, rules and regulations, and all other of its materials to conform to the provisions of this order, and provide each member with a copy of the amended bylaws, rules and regulations, and other amended materials.

C. For a period of three (3) years after this order becomes final, furnish an announcement in the form shown in Appendix A to each new member of PSMLA within thirty (30) days of the new member's admission.

III.

It is further ordered, That PSMLA shall:

A. Within ninety (90) days after this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which PSMLA has complied and is complying with this order.

B. In addition to the report required by Paragraph III(A), annually for a period of three (3) years on or before the anniversary date on which this order becomes final, and at such other times as the Federal Trade Commission or its staff may by written notice to PSMLA require, file a verified written report with the Federal Trade Commission setting forth in detail the manner and form in which PSMLA has complied and is complying with this order.

C. For a period of five (5) years after this order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which PSMLA has complied with this order.

D. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in PSMLA, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in PSMLA that may affect compliance obligations arising out of this order.

Appendix A

[PSMLA's Regular Letterhead]

As you may be awae, the Federal Trade Commission has entered into consent decrees with several multiple listing services in order to halt certain multiple listing service practices that have been alleged to be unlawful restraints of trade. To avoid litigation, Puget Sound Multiple Listing Association ("PSMLA") has entered into such a consent agreement. The agreement is not an admission that PSMLA or any of its members has violated any law. For your information, PSMLA is prohibited from the following practices:

A. Restricting or interfering with:

1. The publication on PSMLA's multiple listing service of any exclusive agency listing of a member; or

2. The publication on PSMLA's multiple listing service of any reserve clause listing of a member.

B. Adopting or maintaining any policy, or taking any other action that has the purpose, tendency, or effect of restricting or interfering with the solicitation of a listing agreement for any property.

Provided, however, That nothing contained in this subpart shall prohibit PSMLA from adopting or enforcing any reasonable and nondiscriminatory policy that prohibits any member from using information provided to it by PSMLA that pertains to a specific listed property in the solicitation of a listing agreement for that property. Such reasonable and nondiscriminatory policy may include adoption of a rebuttable presumption that any member soliciting sellers for listings then listed with PSMLA by another member used information provided to it by PSMLA in the solicitation, as long as the soliciting member may fully rebut the presumption by providing a declaration under oath or other evidence that the solicitation was based upon information obtained from sources other than PSMLA.

C. Suggesting or fixing any rate, range, or amount of any division or split of commission or other fees between any selling broker and any listing broker.

Puget Sound Multiple Listing Association Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from the Puget Sound Multiple Listing Association ("PSMLA"). The agreement would settle charges by the Commission that PSMLA has violated Section 5 of the Federal Trade Commission Act by restraining competition among real estate brokers in the Seattle metropolitan area and its surroundings. The Commission charged PSMLA with injuring consumers by refusing to publish various types of home listings, by unreasonably restricting brokers from soliciting home sellers, and by unreasonably restricting brokers and sellers from bargaining over commission splits.

PSMLA has agreed to the proposed consent order for settlement purposes only and does not admit that it violated the law as alleged in the complaint.

The Commission has placed the proposed consent order on the public record for 60 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After the close of the comment period, the Commission will again review the agreement, will review the comments received, and will decide whether it should make the agreement's proposed order final or withdraw the agreement.

The Complaint

The Commission has prepared a complaint to issue along with the proposed order. The complaint alleges that PSMLA is an association that includes the vast majority of real estate brokers that deal in residential real estate in the Seattle area. PSMLA members compete among themselves and with other real estate brokers. In 1986, sales of residential real estate through PSMLA totaled about $2.8 billion.

According to the complaint, PSMLA has adopted rules that restrain competition in the delivery of brokerage services. For example, PSMLA has refused to accept "exclusive agency" listings for publication. These are agreements between home sellers and brokers whereby the homeowner does not pay a commission, or pays a reduced commission, if he or she makes the sale directly, without assistance from the broker. Instead, PSMLA has only accepted "exclusive right to sell" listings. These listings require payment to the broker in the event of any sale, whether or not the broker helps make the sale.

The complaint further alleges that PSMLA has refused to accept for publication listings containing "reserve clauses." This clause allows homeowners to reserve the right to sell to specified persons without paying a commission to the broker. Homeowners may want to use reserve clauses when they have located one or more prospective buyers before entering into a listing agreement.

According to the complaint, PSMLA has prohibited members from soliciting future relistings from consumers who have homes currently listed for sale with other members. This practice deters brokers from initiating contacts with potential clients.

Finally, the complaint alleges that PSMLA has deterred real estate brokers from offering or accepting different commission splits, by suggesting in PSMLA's rules that brokers use a 50–50 split in certain circumstances.

According to the complaint, the effects of these restraints have been to restrain competition in the delivery of real estate brokerage services, deprive consumers of the ability to negotiate listing agreements with different terms that they might find more attractive or beneficial, and deprive consumers of the benefits of competition among brokers who might otherwise solicit their business.

The Proposed Consent Order

The proposed consent order prohibits PSMLA from refusing to publish exclusive agency listings or listings containing reserve clauses.

The order also prohibits PSMLA from restricting the solicitation of homeowners with current listings for future business. PSMLA is allowed, however, to adopt reasonable rules to ensure that member brokers do not use proprietary information (information not otherwise available to competitors) as the basis for the solicitation. This means, for example, that PSMLA could prohibit member brokers from using the current compilation of MLS listings as a basis for selectively targeting listed home sellers for solicitation. Under this order, member brokers could, however, use public information, such as "For Sale" signs or newspaper advertisements of open houses, as the basis for selecting currently listed home sellers to solicit for future relistings. Public comments is specifically invited on the appropriateness of this order provision. For example, comments are invited on the potential benefits of removing restrictions on solicitation, based on public information, of current home sellers for future relistings (such as the likely extent of: increased solicitation targeted at listed home sellers; increased information to consumers about brokerage terms and services; and increased competition based on commission rates, listing terms, and services). Comments are also invited on any potential costs of removing the restrictions on solicitation (such as the impact, if any, on: the ability of the MLS to police any ban on members' use of current MLS listing information for solicitation; the level of cooperative sales efforts; and the level of use of "For Sale" signs and open houses).

To assist in the Commission's consideration of the appropriateness of the proposed consent order's remedy concerning solicitation of listed homeowners, the Commission invites comments on the desirability of any alternative remedies, including systems under which: (1) brokers have to disclose at the time of listing that the MLS bans solicitation, but that the homeowner can receive information from any broker whom he or she contacts; (2) brokers have to disclose that the homeowner can choose whether or not to receive solicitation, which will be permitted if the homeowner chooses to receive them; or (3) brokers could use proprietary information from the MLS in

written solicitations and/or in-person or telephone solicitations.

The order also prohibits PSMLA from suggesting or fixing any commission split or other fees between any listing broker and any selling brokers.

Finally, the order requires PSMLA to distribute a statement describing the substantive provisions of the order to all its members.

The purpose of this analysis is to aid public comment on the proposed order. It is not an official interpretation of the agreement and proposed order and it does not modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 90-6399 Filed 3-20-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0110]

Drug Export: Coulter™ HIV p24 AG Assay, and Coulter™ HIV p24 AG Neutralization Kit

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Coulter Immunology, Division of Coulter Corp., has filed an application requesting approval for the export of the biological products Coulter™ HIV p24 Ag Assay, and Coulter™ HIV p24 Neutralization Kit to Australia.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFB-120), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Coulter Immunology, Division of Coulter Corp., Hialeah, FL 33010, has filed an application requesting approval for the export of the biological products Coulter™ HIV p24 Ag Assay, and Coulter™ HIV p24 Ag Neutralization Kit to Australia. Coulter™ HIV p24 Ag Assay is an in vitro quantitative Enzyme Immunoassay (EIA) for the detection of p24 antigen of the human immunodeficiency virus (HIV) in plasma, serum, or tissue culture media. It is intended to be used as an aid in the diagnosis and prognosis (monitoring progression of disease) of patients with HIV-1 infection. The Coulter™ HIV p24 Ag Neutralization Kit is for the confirmation of p24 antigen of the HIV-1 in plasma, serum, or tissue culture media specimens found to be repeatedly reactive with the Coulter™ HIV p24 Ag Assay. The application was received and filed in the Center for Biologics Evaluation and Research on February 23, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 2, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: March 5, 1990.

Thomas S. Bozzo,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 90-6400 Filed 3-20-90; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Gastroenterology-Urology Devices Panel

Date, time, and place. April 5, 1990, 8:30 a.m., First Floor Conference Rm., Piccard Bldg., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; closed presentation of data, 4 p.m. to 4:30 p.m.; Ruth W. Hubbard, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1220.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 26, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a device used to treat urinary incontinence.

Closed presentation of data. The committee may discuss trade secret

and/or confidential commercial information regarding this device. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

General and Plastic Surgery Devices Panel

Date, time, and place. April 12, 1990, 9 a.m., First Floor Conference Rm., Piccard Bldg., 1390 Piccard Dr., Rockville, MD.

Type of meeting and contact person. Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1090.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 26, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss two premarket approval applications (PMA's) for absorbable dusting powder for use on surgeon's gloves.

Closed committee deliberations. The committee may review and discuss trade secret and/or confidential commercial information regarding the PMA's listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Veterinary Medicine Advisory Committee

Date, time, and place. April 18 and 19, 1990, 8:15 a.m., Versailles III, Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open committee discussion, April 18, 1990, 8:15 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion 11:30 a.m. to 4:40 p.m.; closed committee deliberations, April 19, 1990, 8:15 a.m. to 11:30 a.m.; Gary E. Stefan, Center for Veterinary Medicine (HFV–244), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–0830.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal diseases and increased animal production.

Agenda—Open public hearing. Any interested persons amy present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. The committee will discuss the FDA survey of milk for drug residues, the future direction of milk sampling and residue prevention, communicating food safety issues, and options for regulation of animal drug screening methods.

Closed commitee deliberations. The committee will review trade secret and/or confidential commercial information relevant to the safety and effectiveness of new animal drugs under review. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. April 19 and 20, 1990, 8:30 a.m., Versailles Ballroom IV, Holiday Inn, 8120 Wisconsin Ave., Betheda, MD.

Type of meeting and contact person. Open public hearing, April 9, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 12:30 p.m., closed presentation of data, 1:30 p.m. to 5 p.m.; closed presentation of data, April 20, 1990, 8:30 a.m. to 3:30 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 5, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss guidelines for investigation of neuromuscular blocking agents.

Closed presentation of data. The committee will hear trade secret and/or confidential commercial information relevant to pending investigational new drugs. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Ophthalmic Devices Panel

Date, time, and place. April 19 and 20, 1990, 9 a.m., Auditorium, Hubert H. Humphrey Bldg., 200 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open public hearing, April 19, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; open public hearing, April 20, 1990, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussions, 10 a.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open committee discussion, 4 p.m. to 5 p.m.; Daniel W.C. Brown, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1080.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 28, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On April 19, 1990, the committee will discuss general issues relating to approvals to premarket approval applications (PMA's) for intraocular lenses (IOL's) and other class III surgical or diagnostic devices, and may discuss specific PMA's for these devices. If discussion of all pertinent IOL's or other class III surgical or diagnostic device issues are not completed, discussion will be continued

the following day. On April 20, 1990, the committee will discuss PMA's for contact lenses and other devices and requirements for PMA approval.

Closed committee deliberations. The committee may discuss trade secret and/or confidential commercial information relevant to PMA's or IOL's, surgical or diagnostic devices, contact lenses, or other ophthalmic devices. These portions of the meeting will be closed to permit discussion of this information (5 U.S.C. 552(c)(4)).

Circulatory System Devices Panel

Date, time, and place. April 30, 1990, 1 p.m., Conference Rm. B, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. This meeting will take place in the form of a telephone conference call. A speaker phone will be provided in the conference room to allow public participation in the open session of the meeting. Open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 3:30 p.m.; closed committee deliberations, 3:30 p.m. to 4:30 p.m.; Jeanette M. Scheppan, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–1205.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 16, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application for a percutaneous transluminal coronary angioplasty (PTCA) catheter.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information regarding the PMA listed above. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. April 30 and May 1, 1990, 8:30 a.m., Bldg. 31, Conference Rm. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, April 30, 1990, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5:30 p.m.; open committee discussion, May 1, 1990, 8:30 a.m. to 2 p.m.; closed committee deliberations, 2 p.m. to 3:30 p.m.; Jack Gertzog, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before April 16, 1990, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The agenda for this meeting has not been developed. Please write or telephone the contact person after April 4, 1990, for further information.

Closed committee deliberations. If necessary, the committee will review trade secret or confidential commercial information relevant to pending product license applications and investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Officer (HFI–35), Food and Drug Administration, Rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcripts may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: March 15, 1990.

James S. Benson,

Acting Commissioner of Food and Drugs.

[FR Doc. 90-6344 Filed 3-20-90; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Eye Institute; Meeting of the Vision Research Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, March 29-30, 1990, Conference Room 8, Building 31C, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on March 29 from 8:30 to 9:30 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public from 9:30 a.m. on March 29 until recess and on March 30 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A/08, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases; 13.868, Anterior Segment Diseases Research; and 13.871 Strabismu, Amblyopia and Visual Processing; National Institutes of Health)

Dated: March 14, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-6392 Filed 3-20-90; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 54 FR 46990, November 8, 1989) is amended to reflect the title change of the Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, to Division of Injury Control.

Section HC-B, Organization and Functions, is hereby amended as follows:

Delete the title for the *Division of Injury Epidemiology and Control (HCN9)* and substitute the following title: *Division of Injury Control (HCN9).*

Dated: March 13, 1990.

William L. Roper,

Director, Centers for Disease Control.

[FR Doc. 90-6383 Filed 3-20-90; 8:45 am]

BILLING CODE 4160-18-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-90-3044]

Submission of Proposed Information Collection OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New

Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted to the proposals for the collections information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 15, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Section III.A. of the June 23, 1989, Decree in *NAACP v. Kemp*, C.A. No. 78–850–S (D. Mass.: 1) Data Collection Form for Multifamily Developments; and 2) Data Collection Form for HUD-Insured Single Family Housing.

Office: General Counsel.

Description of the need for the information and its proposed use: In order to implement Section III.A. of the June 23, 1989, Decree in NAACP v. Kemp, HUD must submit semi-annually "a report . . . setting forth the current racial makeup, family composition, and vacancy rate of HUD assisted housing in the City" of Boston, Massachusetts. The foregoing information collection forms are designed to elicit that information from the owners of HUD-assisted privately owned multifamily housing developments and HUD-insured single family housing in Boston.

Form number: None.

Respondents: Owners of HUD-assisted privately owned multifamily housing developments and HUD-insured single family housing in Boston.

Frequency of submission: Semi-annually.

Reporting burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Semi-annual reports by owners of privately owned HUD-assisted multifamily housing and HUD-assisted single family properties in Boston setting forth current racial makeup, family composition, and vacancy rates.	345 (252 multifamily) (93 single family).		2		16 (multifamily owners 1 (single family owners)		8,064 186

Total estimated burden hours: 8,250.

Status: Extension.

Contact: Ellen Dole, HUD, (617) 835–5126. John Allison, OMB, (202) 395–6880.

Dated: March 15, 1990.

Proposal: Mortgagee Request for Extension of Time Requirements.

Office: Housing.

Description of the need for the information and its proposed use: Form HUD–50012 will be used by mortgagees when requesting an extension for completion of foreclosure and claims actions.

Form number: HUD–50012.

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of submission: On Occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–50012	2,000		2		.20		800

Total estimated burden hours: 800.

Status: New.

Contact: Leslie Bromer, (202) 755–7330. John Allison, OMB, (202) 395–6880.

Date: March 15, 1990.

[FR Doc. 90–6431 Filed 3–20–90; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–90–3043]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

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 description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 12, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Manufactured Home and/or Lot Loan in High Cost Areas.

Office: Housing.

Description of the Need for the Information and its Proposed Use: The rule provides for the public to appeal to the Department to consider other areas than defined in the rule to be designated as high cost areas.

Form Number: None.

Respondents: Individuals or Households, Businesses or Other For-Profit, and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	30		1		5		150

Total Estimated Burden Hours: 150.

Status: Extension.

Contact: Alan Stailey, HUD, (202) 755–6880. John Allison, OMB, (202) 395–6880.

Date: March 12, 1990.

[FR Doc. 90–6432 Filed 3–20–90; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–90–3042]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to:

John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451, 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

The Notice lists the following informattion: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 5, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: HUD Application for Property Appraisal and Commitment, Master Conditional Commitment Procedure.

Office: Housing.

Description of the Need for the Information and its Proposed Use: These forms will be used by HUD-approved mortgagees and property appraisers to request and obtain an appraisal and a commitment for the Department's mortgage insurance programs.

Form Number: HUD–92800, 92800.5B, 92544, and 91322 Series.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden: On Occasion.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Applications without Master Conditional Commitment	132,300		1		⅓		44,100
HUD–91322 Series	2,750		1		3		8,250
HUD–92544	132,300		1		1/60		2,205

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
HUD-92800	1,067,700		1		¼		266,925
HUD-92800.5B	854,160		1		1/12		71,180

Total Estimated Burden Hours: 392,660.

Status: Reinstatement.

Contact: Larrry D. Toler, HUD, (202) 755–6720. John Allison, OMB, (202) 395–6880.

Dated: March 5, 1990.

[FR Doc. 90–6433 Filed 3–20–90; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–90–3041]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to:

John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-fee number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

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 description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extention, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 2, 1990.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Performance Funding System Data Collection Forms.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: These forms are used by Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to calculate the annual operation subsidy eligibility under the Performance Funding System. They are used by the Department to evaluate the PHAs/IHAs' annual operating budget.

Form Number: HUD–52720A, 52720B, 52720C, 52721, 52722A, 52722B, and 52723.

Respondents: State or Local Governments.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Forms	2,700		1		1.58		4,287

Total estimated burden hours: 4,287.

Status: Reinstatement.

Contact: Joan DeWitt, HUD, (202) 426–1872. John Allison, OMB, (202) 395–6880.

Dated: March 2, 1990.

[FR Doc. 90–6434 Filed 3–20–90; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service and OMB, Paperwork Reduction Project (1018–0008), Washington, DC 20503, telephone 202–395–3740.

Title: Bird Banding File Reference Card.

OMB Approval No.: 1018–0008.

Abstract: The Service's Migratory Bird Banding Laboratory (Lab) functions as an administrative center, facilitating the work of persons and institutions who band birds, and is the clearinghouse for reports of banded birds. Finders of banded birds do not always provide the informtion that banders need. The file reference card is sent to band finders who have not included complete information in their initial report to the Lab. Such data is used by the Service to aid in the study of population size, mortality ans survival rates, longevity

and migration patterns of birds. Banding data is also used in the preparation of the annual United States and Canadian Wildlife Service's hunting and shooting regulations.

Service Form number: 3–1861.

Frequency: On occasion.

Description of Respondents: Individuals and households.

Estimated Completion Time: The reporting burden is estimated to be 3 minutes per response.

Annual Responses: 19,000.

Annual Burden Hours: 950.

Service Information Collection Clearance Officer: James E. Pinkerton, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240; telephone 358–1943.

Dated: February 23, 1990.

Rollin D. Sparrows,

Assistant Director—Refuges and Wildlife.

[FR Doc. 90–6354 Filed 3–20–90; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[OR–080–00–6310–12; GPO–150]

Salem District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Salem District Advisory Council will commence at 1:00 P.M. April 19, 1990, at the BLM District Office, 1717 Fabry Road, SE., Salem, Oregon.

Agenda for the meeting will include:

1. Election of officers.
2. A review of District activities.
3. A review of public outreach programs.
4. The development of an advisory council public outreach plan.
5. The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the Salem District Office, 1717 Fabry Road, SE., Salem, Oregon 97306 by April 16, 1990. Written comments will also be received for the council's consideration. Summary minutes will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Van W. Manning, BLM Salem District Office, 1717 Fabry Road, SE., Salem, Oregon 97306, Telephone: 503/399–5646.

Van W. Manning,

District Manager.

[FR Doc. 90–6355 Filed 3–20–90; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

Reopening of Scoping; Proposed Upgrade of Concessioner Housing; Yosemite National Park, California

SUMMARY: By notice in the Federal Register, Vol. 54, No. 37, of February 27, 1989, page 8244, the National Park Service, Yosemite National Park announced its intention to prepare an environmental impact statement to assess the impacts of upgrading concessioner housing in the Yosemite Lodge area of Yosemite National Park. At that time, the scope of the proposed project was directed to housing for concessioner employees only with a limited range of locations and types of housing being considered. The project scope has now been expanded to consider: (1) The housing needs for all employees working in Yosemite Valley (2) a variety of housing types and (3) a variety of locations within the valley, outside the valley and within the park, and outside of the park.

Persons wishing to comment upon or provide input to this expanded scope of the project and associated environmental impact statement should provide such comments to the Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, California 95389, by May 31, 1990. For further information, contact the Superintendent, Yosemite National Park, at the above address or at telephone number (209) 372–0200.

The responsible official remains Stanley Albright, Regional Director, Western Regional Office. The draft environmental impact statement is expected to be completed and available for public review by January, 1991, with the final environmental impact statement and record of decision anticipated by the end of 1991.

Dated: March 12, 1990.

Lewis Albert,

Acting Regional Director, Western Region.

Concurrent Jurisdiction; Madera County, California

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given that, effective March 23, 1989, concurrent criminal jurisdiction was established over federally owned or controlled lands and waters administered by the National Park Service within Devils Postpile National Monument.

Concurrent jurisdiction was conveyed for a 5-year period by the State of California to the National Park Service by the California State Lands Commission pursuant to section 126 of the California Government Code, and accepted by James M. Ridenour, Director of the National Park Service, pursuant to applicable Federal statutory law.

Dated: March 2, 1990.

James M. Ridenour,

Director, National Park Service.

[FR Doc. 6419 Filed 3–20–90; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–301]

Certain Imported Artificial Breast Prostheses and the Manufacturing Processes Therefor; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Almost U, Tru Life, Incorporated and Tru Life Nocton Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. S1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial

determination in this matter was served upon the parties on March 16, 1990.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW. Washington, DC 20436, telephone 202–252–1000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202–252–1805.

By order of the Commission.

Issued: March 15, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–6406 Filed 3–20–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–293]

Certain Crystalline Cefadroxil Monohydrate; Issuance of a Limited Excursion Order and Cease and Desist Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has issued a limited exclusion order and three cease and desist orders in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1087.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), as amended by the Omnibus Trade and Competitiveness Act of 1988, Public Law 100–418 (Aug. 23, 1988), and in §§ 210.56 and 210.58 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.56, 210.58).

On February 1, 1989, Bristol-Myers Company (since renamed Bristol-Myers Squibb Company) ("Bristol") filed a complaint with the Commission alleging violations of section 337 in the importation and sale of certain crystalline cefadroxil monhydrate. The complaint alleged infringement of claim 1 of U.S. Letters Patent 4,504,657 ("the '657 patent") owned by Bristol.

The Commission instituted an investigation into the allegations of Bristol's complaint and published a notice of investigation in the **Federal Register**. 54 FR 10740 (March 15, 1989). The notice named the following respondents: (1) Biocraft Laboratories, Inc. of Elmwood Park, N.J.; (2) Gema, S.A. of Barcelona, Spain; (3) Kalipharma, Inc. of Elizabeth, N.J.; (4) Purepac Pharmaceutical Co. of Elizabeth, N.J.; (5) Istituto Biochimico Italiano Industria Giovanni Lorenzini S.p.A of Milan, Italy; and (6) Institut Biochimique, S.A. of Massagno, Switzerland.

On December 15, 1989, the presiding administrative law judge (ALJ) issued an initial determination (ID) finding no violation of section 337 in this investigation. On January 25, 1990, the Commission issued a notice of a decision to review the ID's findings and conclusions that the '657 patent is invalid for obviousness under 35 U.S.C. 103. The Commission determined not to review the remainder of the ID, except for two sentences that it determined to strike. 55 FR 3282 (Jan. 31, 1990). The ALJ's findings on those issues in the ID that the Commission determined not to review or strike became the determinations of the Commission.

All parties except Gema, S.A. submitted briefs, and later reply briefs, on the issues of remedy, the public interest, and bonding. The Commission additionally received submissions from Zenith Laboratories, Inc. and the Department of Medical Assistance of the State of Georgia.

Having examined the record in this investigation, including the ID, the Commission has concluded that there is a violation of section 337 in the importation, sale for importation, or sale in the United States of the accused crystalline cefadroxil monohydrate.

The Commission has determined that a limited exclusion order and cease and desist orders directed to all U.S. respondents are the appropriate form of relief. The Commission has further determined that the public interest factors enumerated in 19 U.S.C. 1337 (d) and (f) do not preclude the issuance of relief. The Commission has established that respondents' bond under the exclusion order and the cease and desist orders during the Presidential review period shall be in the amount of sixty-eight (68) percent of the entered value of the imported articles.

Copies of the Commission's orders, the opinion issued in connection therewith, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

By order of the Commission.

Issued: March 15, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–6405 Filed 3–20–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 332–288]

Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and notice of determination.

SUMMARY: Section 7 of the Steel Trade Liberalization Program Implementation Act (19 U.S.C. 2253 note), enacted in December 1989, concerns local feedstock requirements for fuel ethyl alcohol imported by the United States from CBI-beneficiary countries. The U.S. International Trade Commission's role as outline in this Act is to determine annually for 2 years the U.S. domestic market for ethyl alcohol during the 12-month period ending on the preceding September 30. The domestic market estimate made by the Commission is to be used to establish the "base quantity" of imports that can be imported with a zero percent local feedstock

requirement. Beyond the base quantity of imports, progressively higher local feedstock requirements are placed on imports of fuel ethyl alcohol and mixtures from the CBI-beneficiary countries.

For purposes of making the determination of the U.S. market for ethyl alcohol as required by section 7 of the Act, the Commission instituted Investigation No. 332–288, Ethyl Alcohol for Fuel Use: Determination of the Base Quantity of Imports. Under this investigation the Commission will make determinations of the fuel ethyl alcohol market for the 12-month period ending September 30, 1990. The Commission will use official statistics of the U.S. Departments of Commerce and Treasury to make these determinations.

For the 12-month period ending September 30, 1989, the Commission has preliminarily determined the level of U.S. consumption of ethyl alcohol to be 807 million gallons. Seven percent of this amount is 56.5 million gallons. Because the law specifies that the base quantity to be used by Customs in the administration of the law is the greater of 60 million gallons or 7 percent of U.S. consumption as determined by the Commission, the base quantity for 1990 should be 60 million gallons. It should be noted that certain of the data required to make the determination is being estimated by the Commission pending finalization of Treasury statistics through September 1989 for alcohol fuel producers. In the event that the finalized data change the base quantity estimate to be used in 1990, the Commission will so notify the Customs Service and issue an amended **Federal Register** notice.

EFFECTIVE DATE: March 9, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. David G. Michels (202–252–1352) or Mr. James A. Emanuel (202–252–1367) in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–252–1091.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252–1810.

Written Submissions: Interested persons are invited to submit written statements concerning the investigation anytime prior to 5 p.m. on September 30, 1990. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

By the order of the Commission.

Issued: March 12, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–6402 Filed 3–20–90; 8:45 am]

BILLING CODE 7020–02–M

[Inv. No. 337–TA–304]

Certain Pressure Transmitters; Commission Decision not to Review an Initial Determination Relating to Domestic Industry

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) (Order No. 4) relating to domestic industry, thereby allowing the ID to become the Commission's determination.

ADDRESSES: Copies of the nonconfidential version of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–252–1000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: On September 15, 1989, Rosemount, Inc. (Rosemount) filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain pressure transmitters covered by claims 1–4 of U.S. Letters Patent 3,800,413, owned by Rosemount. Pressure transmitters are devices used to measure flow rates in industrial processes.

Pursuant to Commission interim rule 210.24(e)(8) (19 CFR 210.24(e)(8)), the Commission provisionally accepted Rosemount's motion for temporary relief at the Commission meeting on October 15, 1989. The Commission also instituted an investigation of Rosemount's complaint. A notice of investigation was published in the **Federal Register** on October 20, 1989. 54 FR 43145. The notice named SMAR Equipment of Sao Paulo, Brazil and SMAR International of Ronkonkoma, New York as respondents.

On January 5, 1990, Rosemount filed a motion for a summary determination that a domestic industry relating to pressure transmitters exists. The motion was supported by the Commission investigative attorney (IA) and opposed by respondents. On February 12, 1990, the ALJ issued an ID finding that a domestic industry existed relating to pressure sensors, which are components of pressure transmitters. Rosemount filed a petition for review of the ID on February 23, 1990. Respondents filed an opposition to the petition on March 2, 1990.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h).

By order of the Commission.

Issued: March 15, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–6403 Filed 3–20–90; 8:45 am]

BILLING CODE 7020–02–M

Certain Pyrethroids and Pyrethroid-Based Insecticides; Investigation

[Investigation No. 337–TA–310]

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on February 12, 1990, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of (1) Roussel-UCLAF, S.A., 35 Boulevard des Invalides, 75007 Paris, France 33–1–40624062, (2) UCLAF, Corporation, 400 Sylvan Avenue, Englewood Cliffs, New Jersey 07632, and (3) Roussel Bio Corporation, 400 Sylvan Avenue, Englewood Cliffs, New Jersey 07632. A supplement to the complaint was filed

on March 9, 1990. The complaint, as supplemented, alleges violations of subsection (a)(1)(B)(ii) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pyrethroids or pyrethroid-based insecticides, made abroad by a process covered by claims 1–3, 5–8, 11, 13–14, and 22–23 of U.S. Letters Patent 4,133,826, and that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after a full investigation, issue a permit exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

FOR FURTHER INFORMATION CONTACT: Daniel Morgan Duty, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1581.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 13, 1990, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(ii) of section 337 in the importance into the United States, the sale for importation, or the sale within the United States after importation of certain pyrethroids or pyrethroid-based insecticides, made abroad by a process allegedly covered by claims 1, 2, 3, 5, 6, 7, 8, 11, 13, 14, 22 or 23 of U.S. Letters Patent 4,133,826, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For purposes of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Roussel-UCLAF, S.A., 35 Boulevard des Invalides, 75007 Paris, france, 33–1–40624062.

UCLAF Corporation, 400 Sylvan Avenue, Englewood Cliffs, New Jersey 07632.

Roussel Bio Corporation, 400 Sylvan Avenue, Englewood Cliffs, New Jersey 07632.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Imperial Chemical Industries, PLC, Millbank, London SW1P 3J, England.

ICI Americas, Inc., New Murphy Road & Concord, Wilmington, Delaware 19897.

ICI Agricultural Products, New Murphy Road & Concord, Wilmington, Delaware 19897.

(c) Daniel Morgan Duty, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401L, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) andf 210.21(a) of the Commission's rules (19 CFR 201.16(d), 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefore is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to consitutte a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without furhter notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: March 13, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–6406 Filed 3–20–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub–No. 327X)]

CSX Transportation, Inc.—Abandonment Exemption—In Genesee County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904, the abandonment by CSX Transportation, Inc., of 3.06 miles of rail line between milepost 33.44, at Kearsley Street, and milepost 36.50, near Hemphill Road, at Flint, in Genesee County, MI, subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on April 20, 1990. Formal expressions of intent to file on offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 2, 1990, petitions to stay must be filed by April 5, 1990, and petitions for reconsideration must be filed by April 16, 1990.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 327X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. and

(2) Petitioner's representative: Patricia Vail, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275–7245. [TDD for hearing imparied: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building,

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275–1721.].

Decided: March 13, 1990.

By the Commission, Chairman Philbin, Vice Chairman Phillips, Commissioners Simmons, Lamboley, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90–6416 Filed 3–20–90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration
Certification of Funeral Expenses
1215–0027; LS–265
On occasion
Businesses or other for profit; Small businesses or organizations
195 respondents; 49 total hours; .25 hr. per response; 1 form

This form is used to report funeral expenses under the Longshore Act and extension.

Reinstatement

Employment and Training Administration
Standard Questionnaire for Manufacturing Firms
1205–0194; ETA 8561 A/B/C
On Occasion
Business or other-for-profit; Small businesses or organizations
700 respondents; 2,975 total hours; 4.25 hrs. per response; 1 form
Data and information needed to prepare Secretary of Labor reports to the President under sections 202 and 224 of the Trade Act of 1974 as amended which are used in determining type(s) of import relief, if any, to be granted to import impacted industries

Signed at Washington, DC this 15th day of March, 1990.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 90–6368 Filed 3–20–90; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-23,734]

Duquesne Slag Products Company, Pittsburgh, Pennsylvania; Negative Determination Regarding Application for Reconsideration

By an application dated February 23, 1990 Local #1242 of the United Slag Workers requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on February 12, 1990 and will soon be published in the Federal Register.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that foreign competition in the steel industry caused worker separations and production declines at Duquesne Slag since their only source of raw materials was directly dependent on the amount of steel produced in their area.

Investigation findings show that Duquesne Slag obtains slag from nearby steel mills. The slag is then pulverized and screened according to size for use in highway construction as a sub-base for concrete or asphalt.

The Department's denial was based on the fact that the contributed importantly test of the Group Eligibility Requirements of the Trade Act was not met. The Department's survey of Duquesne's major customers shows that none of the respondents imported slag or slag products during the relevant time periods.

The lack of availability of a raw material because of foreign competition would not provide a basis for certification. A worker group certification under the worker adjustment assistance program is based on increased imports of articles that are like or directly competitive with those produced at the workers' firm and which contributed importantly to declines in employment and sales or production at the workers' firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of March, 1990.

Mary Ann Wyrsch,

Director, Office of Unemployment Insurance Service, UIS.

[FR Doc. 90-6367 Filed 3-20-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20, 834 Philadelphia, PA TA-W-20, 834A E. 34th St., New York, NY]

Robert Bruce, Inc.; 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 23, 1988 applicable to all workers of Robert Bruce, Incorporated, Philadelphia, Pennsylvania. The notice was published in the **Federal Register** on October 13, 1988 (53 FR 40142).

The Department is amending the certification to include the New York, New York Facility of Robert Bruce which was closed with the Philadelphia, Pennsylvania plant on March 10, 1989. The amended notice applicable to TA-W-20, 834 is hereby issued as follows:

All workers of Robert Bruce, Inc., Philadelphia, Pennsylvania and E. 34th Street, New York, New York who became totally or partially separated from employment on or after July 13, 1987 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 9th day of March 1990.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-6369 Filed 3-20-90; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Planning Guidance and Annual Planning Schedule for Program Years 1990 and 1991

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice. (Instructions for Submission of State Plans Under Titles II and III of the Job Training Partnership Act.)

SUMMARY: The Employment and Training Administration has issued Training and Employment Guidance Letter (TEGL) No. 2-89 (January 12, 1990) providing program guidance and a planning for Title II and Title III for Program Years 1990 and 1991 (July 1, 1990-June 30, 1992). TEGL No. 2-89 provides instructions for submission of Governor's Coordination and Special Services Plan (GCSSP), Statewide Job Training Plan and Economic Dislocation and Worker Adjustment Act (EDWAA) job training plans. This document also provides target dates for several other products and/or issuances (i.e., allotments, performance standards and reporting, etc.). TEGL No. 2-89 is reprinted below for public information.

EFFECTIVE DATE: Training and Employment Guidance Letter No. 2-89 was effective January 12, 1990.

FOR FURTHER INFORMATION CONTACT: Hugh Davies, telephone (202) 535-0580.

Signed at Washington, DC, this 6th day of March 1990.

Dolores Battle,

Administrator, Office of Job Training Programs.

Training and Employment Guidance Letter (TEGL) No. 2-89

From: Roberts T. Jones, Assistant Secretary of Labor

Subject: Planning Guidance and Annual Planning Schedule for Program Year 1990 and 1991 (Instructions for Submission of State Plans Under Titles II and III of the Job Training Partnership Act)

1. *Purpose.* To transmit planning guidance to assistance in preparing for the Job Training Partnership Act (JTPA) 1990 Program Year (PY) which begins July 1, 1990 and PY 1991 which begins July 1, 1991.

2. *Reference.* Public Law 97-300; Public Law 99-570; Public Law 100-418; Public Law 100-485; Training and Employment Guidance Letter No. 6-88, dated March 10, 1989; and Training and Employment Guidance Letter No. 6-87, dated March 14, 1988 and 20 CFR parts 626-631 published in the September 22, 1989 **Federal Register**; and 45 CFR part 250 published in the October 13, 1989, **Federal Register**.

3. *Background.* Pursuant to section 121(a)(1) and section 311(f) of the JTPA and 20 CFR 627.2 and 20 CFR part 631 of the JTPA regulations, this document provides:

(1) Instructions to the States for the submission of Governor's Coordination and Special Services Plan (GCSSP);

(2) Instructions to selected States for the submission of the Single Statewide Service Delivery Area (DA) Job Training Plans;

(3) Instructions to the States for the submission of Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) State Plans;

(4) Instructions to affect States for submission of the EDWAA Plan where there is a Single Substate Grantee; and

(5) The Annual Planning Schedule for PYs 1990 and 1991.

This document consolidates instructions previously providing for the submission of the Plans required by both section 121(a)(1) and section 311(f) of the Act. Time periods for the submittal of the four plans by the Governor to the Secretary are different. However, in an effort to bring some conformity to the overall planning process States are being requested to submit all Plans by the same date (May 1).

This document is divided into five parts.

a. Planning Guidance and Instructions for Submission of the GCSSP;

b. Planning Guidance and Instructions for Submission of Single Statewide DA Job Training Plans;

c. Planning Guidance for the Submission of Economic Dislocation and Worker Adjustment Assistance (EDWAA) State Plans;

d. Planning Guidance for the Submission of Single Substate EDWAA Grantee Plans; and

e. Annual Planning Schedule.

The planning instructions call for the development of a new biennial "GCSSP"; "EDWAA State Plan"; "Statewide SDA Job Training Plan"; and a "Single Substate EDWAA Grantee Plan" (where there is a Single SDA and a Single Substate Grantee); covering PY 1990 and 1991. Also included is guidance on performance standards information which the States should address in both the GCSSP and the EDWAA State Plan: and information on the national ratio of economically disadvantaged adults as required by section 203(b)(2) of JTPA, to enable States and DA's to calculate title IIA youth service levels.

These instructions address the period to be covered, and the submittal dates, and they provide general reference for petitions for disapproval and the appeal process for a disapproval by the Secretary of a Statewide Plan. The format and procedures for submission of the GCSSP; Single Statewide SDA Job Training; EDWAA State Plan and the Single Substate EDWAA Grantee Plan have not been revised. The information requested is the same as for the last biennial program year. EDWAA information is the same as that requested in the one year plan submitted on May 15, 1989.

4. *Burden Hour Estimates.* The National Office estimates that the burden estimate of 30 hours includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

5. *Department of Labor (DOL) Employment and Training Administration Goals for PY 1990 and 1991.* During the last year, the Department developed and introduced proposed amendments to JTPA. The legislative process will likely continue well into the period for the development of plans for PY 1990 and 1991. The direction taken in the proposed amendments offers sound general guidance for plan development, whether or not specific legislative proposals become law, and reflects the "Workforce 2000" message which gives direction to training and employment policy in the Department. Therefore, we recommend the following:

- That programs be designed to serve the more at-risk among the disadvantaged. Scarce resources should be directed to resolve the employment deficiencies of such individuals.
- That program resources include effective basic and vocational skill training which will lead to employment opportunities in the local community.
- That you seek out new productive working arrangements with other institutions and deliverers in your communities, thereby expanding and improving the quality of service to your target population.
- That you examine the administrative arrangements and requirements in your States and those at the service delivery level to ensure the integrity of the JTPA system.

There are two other areas of concern to which we direct your attention:

- During this period, the JOBS program will proceed through full development and implementation. Particular concern should be given to the effective coordination of JTPA and State and local JOBS programs.
- We in the Department are critically concerned with establishing a drug-free workplace. We also know that the JTPA delivery system is well aware of the problems which drugs create in training and placing participants, and that many if not most programs deal with this problem through their own or other community resources. We encourage you to initiate or expand the promotion of drug-awareness and education efforts among JTPA participants.

6. *JTPA Coordination with Other Federal Agencies.*—a. *GCSSP Coordination.* The GCSSP must describe coordination activities among state and local organizations, focusing on the areas of at-risk youth services and adult and literacy programs, specifying agencies working in coordination and elements of the program. The GCSSP must also describe the coordination and consultation activities undertaken by the agencies administering the JTPA and JOBS programs to assure the coordination of job training services and prevent the duplication of services.

b. *EDWAA Coordination.* The State EDWAA Plan must describe coordination activities among State and local organizations focusing on dislocated workers. Programs under EDWAA and Trade Adjustment Assistance must be coordinated or integrated so as to avoid fragmented delivery of services to eligible dislocated workers.

7. *Inquiries.* Direct inquiries to Robert N. Colombo at 202–535–0577.

8. *Attachments.*

Planning Guidance; Governor's Coordination and Special Services Plan

I. Background

In TEGL No. 6–87, dated March 14, 1988, the Department provided the format and procedures for submitting the GCSSP. These instructions covered the biennial program year beginning July 1, 1988 and ending June 30, 1990. While the format for submitting the GCSSP has not been revised, the instructions have been updated for the biennial program year beginning July 1, 1990 and ending June 30, 1992.

II. Plan Submission

The same format and procedures transmitted in TEGL No. 6–87, dated March 14, 1988 (Enclosure Ia) will be used for the new subsmission. Governors should submit the GCSSP no later than May 1, 1990.

Also, a copy of the GCSSP must be sent to the ETA Regional Office.

The GCSSP, while not a "rollup" of SDA Plans, must describe "the planned use of all resources for the next two years provided to the State and SDAs under this Act and must evaluate the experience over the preceding two years." (Section 121(a)(2).)

III. Coordination

A. In item IIB all title III requirements should be deleted and included under the Coordination section of the EDWAA State Plan.

B. Item IIB of Enclosure Ia should include a discussion on the coordination and consultation activities undertaken by the agencies administering the JTPA and JOBS programs to assure the coordination of job training services and prevent the duplication of services. Included in this section should be a description of the coordination activities with agencies providing drug treatment and counseling within the State.

IV. Program Activities

While Enclosue Ia, Item IIIA, references PYs 1986 and 1987, the evaluation of the State's program experience in Program Year 1988 and Program Year 1989 should be submitted. As indicated in Item IIIA of the attached OMB Approved Format and Procedures, the evaluation should include:

(1) A summary of the methods used by the State to track and require corrective action for SDAs' underexpenditure and other performance problems; and

(2) The State's procedues for addressing underexpenditures in each program and title and any decisions made regarding the activities to be funded in this plan. (Section 121(a)(2).)

V. Performance Standards

Section IV of Enclosure Ia requests a description of the adjustments made in the Secretary's Performance Standards and the methods used in making the adjustments. (Section 121(b)(3).)

VI. Plan Review

The Department will check the GCSSP for overall compliance with the provisions of the Act and JTPA regulations and will notify the State of the result of its review. The Department will discuss with the State any inconsistencies with the Act and/or regulations and any action to be taken prior to plan resubmittal. The Department and the State will also agree on a date for plan resubmittal should this be necessary.

VII. Modifications

Modifications to the Plan shall be submitted using the format in Enclosure Ib.

VIII. Signature

Either the Governor or a designee shall affix original signatures to each of the three copies submitted. Where a Governor has delegated the signature authority, the delegation will remain unless rescinded by the sitting Governor.

IX. Ratio of Disadvantaged Youth to Adults

Section 203(b) of JTPA provides that not less than 40 percent of availahble title II–A funds shall be expended on youth, except where the ratio of economically disadvantaged youth to

adults in the SDA differs from the national ratio, as published by the Secretary. Where the ratio differs, the amount to be spent on youth is to be reduced or increased proportionately in accordance with regulations prescribed by the Secretary (see 630.1(b)(2) of the JTPA regulations). In a letter transmitted previously to State liaisons, the Department indicated that: "According to the 1980 Census, the total number of economically disadvantaged youth (ages 16 through 21) for the Nation was 5,417,178. The comparable total for adults, ages 22 and over, was 23,625,720. The ratio of youth to adults is 22.93 percent." Since the Census figures have not been updated, the figure of 22.93 will continue to be the national ratio.

X. Appeals to the Secretary on Job Training Plans

Procedures for appeals to the Secretary on final disapproval by Governors of local job training plans were published in the **Federal Register** on September 12, 1983, and transmitted to States in a letter to State liaisons.

Enclosure Ia—Planning Instructions Format and Procedures for Submitting the Governor's Coordination and Special Services Plan (GCSSP)

OMB Control No. 1205–0203.
Expiration Date: June 30, 1990.

The GCSSP shall contain the following:

I. Identifying Information

A. Name and address of the grantee.
B. Date of submission.
C. Time period covered.

II. Program Planning Information

A. Provide an overview of the goals and objectives for all Titles II and III job training and placement programs within the State. (Section 121(a)(1).)

B. Describe the criteria which have been established for coordinating activities under the Act, including title III (specifically address coordination under section 323 of Carl D. Perkins with title III activities), with: programs and services provided by State and local education and training agencies (including vocational education agencies), public assistance agencies, the employment service, rehabilitation agencies, post secondary institutions, economic development agencies, agencies which provide services to the homeless, and such other agencies as the Governor determines to have direct interest in employment and training and human resource utilization with the State. (Section 121(b)(1).)

III. Program Activities

A. Review and evaluate the State's program experience in Program Year 1986 and Program Year 1987. The evaluation should include: (1) A summary of the methods used by the State to track and require corrective action for SDAs; underexpenditure and other performance problems; and the State's procedures for addressing underexpenditures in each program and title and an explanation of how this experience has contributed to decisions made regarding the activities to be funded in this plan. (Section 121(a)(2).)

B. Describe the projected use of resources, including oversight and support activities, priorities and criteria for State incentive grants and performance goals for State supported programs.

IV. Performance Standards

A. Describe the adjustments made in the Secretary's performance standards and the factors used in making the adjustments. (Section 121(b)(3).)

Include the following:

(1) The adjustment policy to be used to vary the standards;
(2) The data sources to be used; and
(3) The factors to be used in making the adjustments.

B. Describe the State's incentive award policy pursuant to section 202(b) and sanctions policy pursuant to section 106(h).

V. General Administrative Information

A. Compliance with Section 167 of JTPA

Provide a statement indicating that the State has adequate methods of administration to assure compliance with nondiscrimination provisions of the Act. (Section 167.)

B. Signature

The GCSSP should contain the Governor's signature or the signature and title of his/her designee. The name of the signer should be typed below the signature.

C. Mailing Address

States should submit three copies of the GCSSP, each with the original signature of the Governor or his/her designee to:

Administrator,
Office of Job Training Programs,
U.S. Department of Labor,
Employment and Training Administration,
200 Constitution Avenue, NW.,
room N4459,
Washington, DC 20210.

D. Modification to GCSSP

If major changes occur in labor market conditions, funding or other factors during the period covered by the plan, the State shall submit a modification describing these changes. See Enclosure Ib for the procedures to be followed in submitting such modifications. For the purposes of determining if a modification is necessary a major change is defined as a cumulative change of 20 percent of these factors in the plan. (Section 121(b)(4).)

Enclosure Ib—Modification to the GCSSP

Section 121(b)(4) of the JTPA requiries that a modification to the GCSSP be submitted by the Governor to the Secretary if major changes occur in labor market conditions, funding or other factors during the period covered by the Plan. For the purpose of these modifications, a "major change" is defined as a 20 percent cumulative change in any one of these factors. The modification should be prepared as follows:

I. Identifying Information

A. The name and address of the grantee.

B. Date of submission of the modification and the number of the modification (I, II, III, etc.).

C. Time period to be covered by the modification (presumably this will be from the date of submission to the end of the GCSSP's time period).

D. The reason(s) for the modification.

E. The specific changes to be made in the GCSSP as a result of this reason(s). (Describe the specific section of the plan where this information is included).

F. *Signature.* The modification should contain the Governor's signature or the signature and title of his/her designee. The name of the signer should be typed below the signature.

II. Submittal. States should submit three copies of any necessary modifications, each with an original signature of the Governor or that of a designee to:

Administrator,
Office of Job Training Programs,
200 Constitution Avenue, NW.,
room N4459,
Washington, DC 20210.

III. DOL Review. The modification shall be reviewed for compliance with the Act and the State shall be notified within 30 days of the modification's submission of its acceptability or of any problems identified.

Planning Guidance Statewide Service Delivery Area Job Training Plan

I. Background: In Training and Employment Guidance Letter (TEGL) No. 6–87, dated March 14, 1988, the Department provided the format and procedures for submitting the Statewide Service Delivery Area (SDA) Job Training Plan. These instructions covered the biennial program year beginning July 1, 1988 and ending June 30, 1990. While the format for submitting the Single SDA Job Training Plan has not been revised, the instructions have been updated for the biennial program year beginning July 1, 1990 and ending June 30, 1992.

II. Plan Submission: Single Statewide SDA Job Training Plans should be submitted using the OMB approved format contained in Enclosure II.

Governors with Statewide SDAs should submit three dated copies of the job training plan no later than May 1, 1990.

III. Plan Review: The Department will check the plan or modification for overall compliance with the provisions of the Act and JTPA regulations and will notify the State of the result of its review.

IV. Modification: Modifications to the Plan shall be submitted using the same format. The references in the modification section of the Planning Instructions should be § 631.50(b).

V. Petitions for Disapproval: States are reminded of previous guidance provided concerning petitions for modifying or disapproving a Statewide SDA Job Training Plan. This guidance provided that the procedures found in section 105(b)(3) of the Act, which sets forth the conditions under which interested parties can petition the Governor for disapproval of a local job

training plan, apply, in the case of a statewide SDA. The Department recommends that the interested party first petition the Governor for a revision to the Plan. If the Governor's informal resolution of the matter is not satisfactory to the interested party, then that party could submit a petition to the Secretary of Labor at the U.S. Department of Labor, Washington, DC 20210, Attention: ASET.

VI. Appeals: In the event the Secretary disapproves a Statewide SDA Job Training Plan, the Governor may appeal the Secretary's decision to an Administrative Law Judge (ALJ) pursuant to § 629.57 of the JTPA regulations. If the Governor is dissatisfied with the ALJ's decision, then under the authority provided in sections 166(b) and 168 of the Act, the Governor may file exceptions to the decision with the Secretary of Labor and/or petition for review jurisdiction over the State.

Enclosure II—Statewide Service Delivery Area Job Training Plan

OMB Approval No. 1205–0204.
Expiration Date: June 30, 1990.

The Job Training Plan Shall contain:

I. Identifying Information

(A) Identification and address of grant recipient.

(B) Identification and address of entity or entities which will administer the program (see section 104(b)(1) of JTPA), if different from the grant recipient.

(C) Date of submission.

(D) Area covered by SDA (i.e., Entire State of _____).

(E) Time period covered by the Plan.

II. Program Information.

(A) Specific descriptions of each of the required elements found in section 104(b) of the Act, including paragraphs 104(b)(2) through 104(b)(10).

(B) A statement assuring that the State will publish its Plan and make it available for review and comment as specified in section 105(a) of the Act.

(C) A statement assuring that the State will comply with the cost limitations contained in Section 108 of the Act.

III. Signature.

An original signature should be affixed to each of the three copies of the Statewide Plan submitted. The name of the signer (and the signer's title if a designee) should be typed below the signature. The signature should be that of the Governor or a designee who is identified by the Governor.

Planning Guidance Economic Dislocation and Worker Adjustment Assistance Act Plan

I. Background

Section 311(a) of the JTPA and § 631.34 of the JTPA regulations require that in order to receive funds under JTPA section 302(b) the State shall submit to the Secretary of Labor (Secretary), in accordance with instructions issued by the Secretary on a biennial basis, a biennial State Plan describing in detail the program and activities that will be assisted with funds provided under Title III. In Training and Employment Guidance Letter (TEGL) No. 6–88, dated March 10, 1989, the Department provided the format and procedures for submitting the State Plan. The initial biennial State Plan covered a one year transition period (July 1, 1989 to June 30, 1990).

While the format and procedures have not been revised, the instructions have been updated for the biennial program year beginning July 1, 1990 and ending June 30, 1992.

II. Plan Submission

The same format and procedures transmitted in TEGL No. 6–88, dated March 10, 1989, as Attachment I will be used for the new submission. Governors should submit the State Plan no later than May 1, 1990.

III. Coordination

A. The State must describe how EDWAA programs will be coordinated with Unemployment Insurance, Employment Service, Carl Perkins, title II–A, and Veterans programs. This discussion should specify how, or what, coordination will occur during program operations between the Dislocated Worker Unit and these programs. The discussion should also focus on the exchange of information regarding demand occupations for retraining and access to vocational education programs by JTPA participants as well as representation on each others decision or policy boards.

B. Item II.A. This item should include a discussion which indicates whether, and if so, how the unemployment insurance system is utilized to identify potential dislocated workers in need of title III services (e.g. claimants on permanent layoff, claimants most likely to exhaust unemployment benefits, or claimants unemployed 15 weeks or longer). Describe procedures for referring unemployment insurance claimants to the title III system and information exchange mechanisms between the unemployment insurance agency and the title III system.

IV. Program Administration

A. Item II.B.1. The reference in the Planning Instructions should be § 631.34 of the JTPA regulations.

B. Items II.B.1. and 2. In accordance with § 631.70(d), State designation of substate areas and substate grantees, originally made in PY 1989, may be revised for the PYs 1990/91 planning cycle.

C. Item II.B.3. The State Plan must describe the substate allocation methodology, including the data elements and allocation formulas to be used. Section 302(d) of JTPA directs that Governors use the six indicated factors mandated in this section in distributing funds to substate areas. When developing the substate allocation formula, States have a responsibility to use information regarding the location and extent of worker dislocation. This information should be described in the Plan. Therefore, if data do not already exist that reflect the formula needs as specified by the Act, new data must be collected to meet the requirement of the Act.

States have the responsibility to develop an allocation formula that will ensure appropriate funding levels for the substate areas, and those policies and their impact should be described in the Plan. Therefore, decisions regarding the weights to be applied to the various factors in the formula will be left to the States and the public scrutiny afforded during the within-state review process. The reference in the Planning Instructions should be § 631.32(b) of the JTPA regulations)

D. Item II.B.3. Any within-State reallocation procedure should be based on availability, not on the new PY allocation.

E. Item II.B.5. This item should include a description of the State's procedures for responding to local needs after distribution of the 10 percent funds. The reference in the Planning Instructions should be § 631.32(d) of the JTPA regulations.

F. Item II.B.7. This item should include a description of who is responsible for monitoring oversight, and an elaboration on how this will be accomplished.

V. Performance Standards

Item II.C.1. This item should include a description of the methodology used to develop the Entered Employment Rate. Specify whether the Governor chose to set optional Average Wage at Placement Goal. If Average Wage at Placement is set, specify what departure level is used.

VI. State Program Operation Plan

Item III.A.1. Where rapid response is contracted out, this item should include a description of how the State will ensure and oversee the provision of rapid response assistance.

Item III.B. The reference in the Planning Instructions should be § 631.32(c) of the JTPA regulations.

VII. Plan Review

The Department will review the State Plan and any comments submitted by the State Job Training Coordinating Council and will notify the State of any deficiencies in the Plan within 30 days after submission. The Department will discuss with the State any inconsistencies with the Act and/or regulations and any action to be taken prior to Plan resubmittal. Unless a State has been so notified, the Plan will be approved within 45 days after submission.

VIII. Modification

Modifications to the Plan shall be submitted using the same format. The references in the modification section of the Planning Instructions should be § 631.36(d) and (e) of the JTPA regulations.

IX. Signature

Either the Governor or a designee shall affix original signatures to each of the three copies submitted. Where a Governor has delegated the signature authority, the delegation will remain unless rescinded by the sitting Governor.

Attachment I—Planning Instructions; Format and Procedures for Submitting the State Plan for Employment and Training Assistance for Dislocated Workers

OMB Control No. 1205–0273.

Expiration Date: 02/29/92.

I. Identifying Information

A. Name and address of the grantee.

B. Date of submission.

C. Time period covered.

II.

A. Coordination

1. Describe coordination activities among State and local organizations focusing on dislocated workers.

2. Describe how EDWAA programs will be coordinated with the unemployment compensation system within the State. (Section 314(f).)

3. Describe how EDWAA programs will be coordinated with the Federal-State Employment Service.

4. Describe how EDWAA programs will be coordinated with dislocated worker programs under title II of the Carl D. Perkins Vocational Education Act. (Section 311(b)(5) of JTPA and § 631.37(c) of the JTPA regulations.)

5. Describe how EDWAA programs will be coordinated with programs administered by the Veterans Administration, including the Veterans Job Training Partnership Act, and other training, employment and education programs which may have special provisions for veterans.

6. Describe how EDWAA programs will be coordinated with JTPA title II–A programs.

7. Describe how title III services, including intake, referral, assessment, training and placement will be integrated or coordinated with services and payments made available under chapter 2 of title II of the Trade Act of 1974 so as to avoid fragmented delivery of services to eligible dislocated workers. (Section 311(b)(10) of JTPA and § 631.37(a) of the JTPA regulations.) Attach a copy of the interagency agreement developed if title III and the Trade Adjustment Assistance Program are not operated by the same agencies.

B. Program Administration

1. Provide a list of the selected substate areas. (Section 312(a) of JTPA and § 631.35 of the JTPA regulations.)

2. Provide a list of selected substate grantees. (Section 312(b) of the Act and § 631.35 of the JTPA regulations.)

3. Describe the State's substate allocation methodology, including the data elements and allocation formulas to be used, as well as the methodology, if any, for the reallocation of funds among and from the State to substate areas. (Sections 302 and 303 of JTPA and § 632.32(b) of the JTPA regulations.)

4. Describe the State's procedures to identify funds required to be reallocated pursuant to section 303(b) of the Act and how such procedures will ensure equitable recapture of such funds. (Section 303(b) of JTPA and § 631.33 of the JTPA regulations.)

5. Describe the method to be used to assess the level of need and use of the ten percent of the State's allocation to substate grantees on the basis of need. (Section 302(c)(2) of JTPA and § 631.32(c) of the JTPA regulations.)

6. If the Governor has determined that services will be provided to displaced homemakers, indicate the basis for this decision. (Section 311(b)(4).)

7. Describe the manner in which the State will conduct monitoring and oversight of all State and substate activities. (Section 631.31 of the JTPA regulations.)

C. Performance Standards

1. Describe the State's methodology for setting performance standards for each substate grantee and any other method for assessing performance including State developed standards which are not inconsistent with the Secretary's standards. (Section 106(g).)

2. If the Governor decides to provide incentives, including incentives for training of greater duration, consistent with JTPA section 106(g), with Governor's reserve funds (section 302(c)(1)), specify the amount allocated for such incentive awards.

3. Describe the sanctions policy for substate areas failing to meet performance standards pursuant to section 106(h).

III. State Program Operation Plan

A. Dislocated Worker Unit/Rapid Response

1. Describe the State dislocated worker unit (DWU) or office, including a description of the organization, functions and staffing of this unit; also describe the DWU's capacity to provide "rapid response" assistance to permanent closure and substantial layoffs through the State. (Section 311(b)(2) of JTPA and §631.30 of the JTPA regulations.)

2. Describe how the DWU will arrange for the provision of retraining and basic readjustment services to eligible dislocated workers through substate grantees and other appropriate organizations. (Section 311(b)(3)(A) of the Act and § 631.30(a)(1) of the JTPA regulations.)

3. Describe how the DWU will work with employers and labor organizations to establish labor-management committees if appropriate to achieve the goals of the program. (Section 311(b)(3)(B) of JTPA and § 631.30(a)(2) of the JTPA regulations.)

4. Describe the DWU's monitoring, reporting, and management systems. (Section 311(b)(3)(C) of JTPA regulations.)

5. Describe how the DWU will provide technical assistance and advice to substate grantees. (Section 311(3)(D) of JTPA and § 631.30(a)(4) of the JTPA regulations.)

6. Described how the DWU will exchange information and coordinate programs with the appropriate economic development agency and State education, training and social services programs. Include in this description a discussion of how this coordination will be assured. Indicate which staff in the DWU have special responsibilities for coordination. (Section 311(b)(5) of JTPA and § 631.30(a)(5) of the JTPA regulations.)

7. Describe how the DWU will coordinate the delivery of services, and provide for exchange of information and coordinate with all other programs available to assist dislocated workers including the State unemployment insurance system, TAA and Federal-State employment service system. (Section 631.30(a)(6) of the JTPA regulations.)

8. Describe how EDWAA programs will be coordinated with programs administered by the Veterans Administration, including the Veterans Job Training Partnership Act, and other training, employment and education programs which may have special provisions for veterans.

9. Describe the procedures for the receipt of advance notice of plant closings and mass layoffs as provided at section 3(a)(2) of the Worker Adjustment and Retraining Notification (WARN) Act Public Law 100–379, 102 Stat. 898; and the procedures for notification of appropriate substate grantees. (Section 631.30(a) (7) and (8) of the JTPA regulations.)

10. Describe how the State will use these notices in planning rapid response. (Section 631.30(a) (7) and (8) of the JTPA regulations.)

11. Describe how the State DWU will disseminate information throughout the State on the availability of services and activities for dislocated workers. (Section 311(b)(6) of the Act and § 631.30(a)(10).)

B. Describe other activities undertaken by the State with 40 percent funds authorized under section 314(d) of

the Act and § 631.31(a) of the JTPA regulations including the following:

1. Retraining services, including (but not limited to) those in section 314(d) of the Act when undertaken in Statewide, industry and Regional programs;

2. Coordination with the unemployment compensation system, in accordance with § 631.37(b) of the JTPA regulations;

3. Discretionary allocation for basic readjustment and retraining services to provide additional assistance to areas that experience substantial increases in the number of dislocated workers, to be expended in accordance with the substate plan or modification therefor;

4. Incentives to provide training of greater duration for those who require it; and

5. Needs-related payments in accordance with section 315(b) of the Act.

6. Describe the process for providing appropriate organizations with an opportunity to comment on training programs as required by section 143(c)(2) and section 311(b)(7) of JTPA.

IV. Assurances

The following assurances must be included in the State Plan:

A. The State will comply with the statutory and regulatory requirements of EDWAA.

B. That services will be provided to eligible dislocated workers. (Section 311(b)(1) (B) and (C) of the Act.)

C. Services will not be denied on the basis of State of residence to eligible dislocated workers displaced by a permanent closure or substantial layoff within the State of residence of such workers; (section 311(b)(1)(C)).

D. That services to displaced homemakers will not adversely affect the delivery of services to eligible dislocated workers and that services are provided in conjunction with ongoing programs for all dislocated workers.

E. That any program under this title serving a substantial number of members of a labor organization will be established only after full consultation with such labor organization. (Section 311(b)(7) of JTPA.)

F. That the State will not prescribe any Title III performance standards which are inconsistent with the parameters set annually by the Secretary pursuant to section 106(e) and will apply the standards in accordance with section 311(a) with regards to incentives.

V. General Administrative Information

A. Signature

The State plan must contain the governors signature or the signature, name and title of his/her designee.

The plan must also include a statement indicating that the SJTCC has reviewed the plan and concurs with it, whether or not the SJTCC has made written comments. If written comments have been provided, a copy of these comments shall be attached to the Plan.

B. Mailing Address

States are to submit three copies of the State Plan, each with an original signature of the Governor or his/her designee to:

Administrator, Office of Job Training Programs, U.S. Department of Labor, Employment and Training Administration, Room N–4459, 200 Constitution Avenue NW., Washington, DC 20210.

Also, a copy of the State Plan must be sent to the ETA Regional Office.

C. Modification to State Plan

Any plan submitted under section 311(a) of JTPA, as amended, may be modified to describe changes in or additions to the programs and activities set forth the Plan, except that no such modification shall be effective unless reviewed and approved pursuant to § 631.56 (c), (d), and (e) of the JTPA regulations.

Planning Guidance Economic Dislocation and Worker Adjustment Assistance Single Substate Grantee Plan

I. Background

Section 311(f) of the JTPA and § 631.50(h) of the JTPA regulations require that when the substate areas is the State, the Subtate Plan and any Plan modification(s) shall be submitted by the Governor to the Secretary, in accordance with instructions issued by the Secretary. In Training and Employment Guidance Letter No. 6–88, dated March 10, 1989, the Department provided the format and procedures for submitting the Single Substate Grantee Plan. The initial Single Substate Grantee Plan covered a one year transition period (July 1, 1989 to June 30, 1990).

While the format and procedures have not been revised, the instructions have been updated for the biennial program year beginning July 1, 1990 and ending June 30, 1992.

II. Plan Submission

The same format and procedures transmitted in Training and Employment Guidance Letter (TEGL) No. 6–88, dated March 10, 1989, as Attachment II will be used for the new submission. Governors should submit the State Plan no later than than May 1, 1990.

III. Plan Review

The Department will review the Plan in accordance with the provisions of §§ 628.6 and 631.50(h) of the JTPA regulations for overall compliance with the provisions of the Act and JTPA regulations. States will be notified of the results of the review within the same time frames as specified for the review of the State Plan.

IV. Modification

Modifications to the Single Substate Grantee Plan shall be submitted using the same OMB-approved format contained in Attachment II.

V. Signature

Either the Governor or a designee shall affix original signatures to each of the three copies submitted. Where a Governor has delegated the signature authority, the delegation will remain unless rescinded by the sitting Governor.

Attachment II—Planning Instructions; Format and Procedures for Submitting the Single Substate Grantee Plan Employment and Training Assistance for Dislocated Workers

OMB Control No. 1205–0273.
Expiration Date: 02/29/92.

The Single Substate Grantee Plan shall contain:

I. Identifying Information

A. Identification and address of the grant recipient.

B. Identification and address of the entity or entities that will administer the program, if different from the grant recipient.

C. Date of submission.

D. Area covered by substate grantee (i.e. entire State of _____).

E. Time period covered by plan.

II. Program Information

A. The State's plan shall contain a description of:

(1) The means for delivering services in Section 314 to eligible dislocated workers;

(2) The means to be used to identify, select, and verify the eligibility of program participants;

(3) The means for involving labor organizations in the development and implementation of services;

(4) The means for involving labor organizations in the development and implementation of services;

(5) The performances goals to be achieved consistent with the performance goals contained in the State plan pursuant to section 311(b)(8);

(6) Procedures, consistent with section 107, for selecting service providers which take into account past performance in job training

or related activities, fiscal accountability, and ability to meet performance standards;

(7) A description of the methods by which the substate grantee will respond expeditiously to worker dislocation where the rapid response assistance required by section 314(b) is inappropriate, including worker dislocation in sparsely populated areas, which methods may include (but are not limited to):

(a) Development and delivery of widespread outreach mechanisms;

(b) Provision of financial evaluation and counseling (where appropriate) to assist in determining eligibility for services and the type of services needed;

(c) Initial assessment and referral for further basic adjustment and training services; and

(d) Establishment of regional centers for the purpose of providing such outreach, assessment, and early readjustment assistance;

(8) A description of the methods by which the other parties to the agreement described in section 312(b) may be involved in activities of the substate grantee;

(9) A description of training services to be provided, including—(a) Procedures to assess participants current education skill levels and occupational abilities;

(b) Procedures to assess participants' needs including educational, training, employment, and social services;

(c) Methods for allocating resources to provide the services recommended by rapid response team for eligible dislocated workers within the substate area; and

(d) A description of services and activities to be provided in the substate area;

(10) The means whereby coordination with other appropriate programs, services, and systems will be effected, particularly where such coordination is intended to provide access to the services of such other systems for program participants at no cost to the worker readjustment program; and

(11) A detailed budget showing the planned expenditure of funds for the one year transition period by cost category and activity.

B. Describe the manner in which the single substate grantee will coordinate with the State dislocated worker unit in the implementation of the single substate grantee program in particular the rapid response activity. (Section 311(b)(2).)

C. Include a statement that the State will comply with the cost limitation contained in section 315 of the Act, including those limitations which apply to needs-related payments (25 percent) and retraining services (50 percent). Indicate whether the State will request a waiver of the 50 percent limitation for retraining. (Section 315 of the Act and § 631.34(a) ((4) and (5) of the JTPA regulations.)

D. Include the current and/or written comments of the SJTCC. If written comments have been provided, a copy of these comments shall be attached to the plan. (Section 313(a).)

III. Signature

States shall submit three copies of the Single substate grantee plan, each with original signature of the Governor or his/her designee to:

Administrator,
Office of Job Training Programs,
U.S. Department of Labor,
Employment and Training Administration (ETA),
200 Constitution Avenue NW.,
room N4459,
Washington, DC 20210.

Also, a copy of the plan must be sent to the ETA Regional Office.

IV. Modification

Any plan submitted under section 313(a) of title III of JTPA as amended may be modified to describe changes in or additions to the programs and activities set forth in the plan, except that no such modification shall be effective unless reviewed and approved pursuant to § 631.46(c), (d) and (e) of the JTPA regulations.

Part I—Planning Dates by Subject Area

The planning schedule assumes continuation of existing programs. Should legislation outlined in the Department's initiative be passed by the Congress, further instructions will be provided.

Note: Allotments for Title II–A and III cover PYs 1990 and 1991. For Title II–B, the Summer Youth Employment and Training Program (SYETP), the allotments are for Calendar Years 1990 and 1991.

(NOO); Substate Allocations	PY 1990	PY 1991
A. Allotments: Notices of Obligation		
• Using the most recent available data, ETA issues final State formula allotments for JTPA Titles II–A, II–B, and III. (JTPA section 201; 20 CFR 625.6).	01/05/90	12/30/90
• ETA issues Wagner-Peyser preliminary planning estimates	01/13/90	01/11/91
• Governors provide substate planning levels to SDAs	In accordance with State schedules.	
• ETA issues final allotments for Wagner-Peyser, using most recent calendar year data	03/10/90	03/07/91
• ETA issues NOOs for Title II–B	04/01/90	04/01/91
• ETA issues NOOs for Title II–A and III	07/01/90	07/01/91
• ETA issues first quarter NOOs for Wagner-Peyser activities	07/01/90	07/01/91
• Governors provide funds to SDAs	Not later than 30 days after the date funds are made available to the States, or 7 days after the Plan is approved, whichever is later. (JTPA section 162(e).)	
B. Data for Operations and Planning		
• ETA issues requests to States to obtain area of substantial unemployment (ASU) designations to be used in Title II allotments. (JTPA section (4)(3).)	08/10/90	08/09/91
• ETA issues the national ratio of economically disadvantaged youth to economically disadvantaged adults. (JTPA section 203(b)(2).)	12/30/89	
• ETA transmits revised poverty level income guidelines	03/16/90	03/15/91
C. JTPA Appeals		
NOTE: There are five types of appeals under JTPA that may be filed with the Secretary. The following is a list of those various appeals and where they fall chronologically in the upcoming planning schedule.		
• SDA Appeals—ETA provides to the States a copy of previously issued procedures for appeals to the Secretary on denials of requests for SDA designation. (JTPA section 101(a)(4)(c); 20 CFR 628.1(c).)	01/20/90	
• SDA Reorganization Plan Appeals—ETA provides to the States a copy of previously issued procedures for appeals of the Governor's decisions pursuant to any reorganization plan imposed for failure to meet performance standards. (JTPA section 106(h)(3).)	01/20/90	
• Local Job Training Plan or Modification Appeals—ETA provides to the States a copy of previously issued procedures for appeals of the Governor's final disapproval of local job training plans or modifications. (JTPA section 105(b)(2); 20 CFR 628.5(b).)	01/20/90	
• Plan Revocation Appeals—ETA provides to the States a copy of previously issued procedures for appeals of the Governor's notice of intent to revoke all or part of a local job training plan. Such appeals are subject to the same terms and conditions as the disapproval of local job training plan appeals. (JTPA sections 164(b)(1), 105(b)(2); 20 CFR 628.5(b).)	01/20/90	

(NOO); Substate Allocations	PY 1990	PY 1991
D. Employment Service Planning Activities		
NOTE: "Section" Reference cites the Wagner-Peyser Act, as amended by JTPA.		
· State Plan reviewed by Governor and submitted to Regional Office (Section 8(b); 20 CFR 652.7.)	05/25/90	05/25/91
· State Plans approved, Wagner-Peyser obligational authority provided to States. (Section 8(b); 20 CFR 652.7.)	07/01/90	07/01/91
· Program year begins, State Employment Service Plans in effect	07/01/90	07/01/91
E. Designation of Service Delivery Areas (SDAs) and Appeals to the Secretary on Denials of Requests for SDA Designation		
· ETA provides to the States a copy of previously issued procedures for submittal of appeals to the Governor's denial of SDA designation	01/20/90	
· State Job Training Coordination Council (SJTCC) proposed designation of SDA for the State (sections 101(a) (1) and (2).)	In accordance with State schedule.	
· Governor publishes proposed SDA designation. (JTPA section 101(a)(2).)	In accordance with State schedule.	
· Units of general local government, business and other affected persons or organizations given an opportunity to comment on and request revisions of proposed SDA designations. (JTPA section 101(a)(3).)	In accordance with State schedule.	
· Governor makes final SDA designation within the State after reviewing any comments on the SJTCC's proposal. (JTPA section 101(b).)	No more frequently than every 2 years State and no later than 4 months before the beginning of a program year. (JTPA section 101(c)(1).)	
· Entities described in Section 101(a)(4)(A) may appeal to the Governor's denial of SDA designation to the Secretary. (20 CFR 628.1(c).)	No later than 30 days after receipt of written notification of the denial from the Governor. (20 CFR 628.1(C)(2.)	
· Governor submits comments on the appeal to the Secretary. (20 CFR 628.1(c)(4).)	As quickly as possible.	
· Secretary makes final decision on the appeal. (JTPA section 101(a)(4)(C).)	Within 30 days after the appeal is received.	
F. Statewide SDA Plan*		
· ETA issues guidance for submission and modification of statewide SDA job training plans	01/20/90	
· ETA provides to the State a copy of previously issued procedures for appeals of the Secretary's disapproval of a statewide SDA Job Training Plan or modification	01/20/90	
· Governor publishes biennial statewide plan proposal or summary for review and comment not less than 120 days before beginning of program year. (JTPA section 105(a)(1).)	03/14/90	
· Governor publishes final plans, summaries or modifications of statewide SDA Job Training Plans. (JTPA section 105(a)(2).)	For final plans, no later than 80 days before the first of the two program years. For modifications, no later than 80 days before it becomes effective.	
· Governor submits final plan or modification to Secretary not less than 60 days before beginning of program year. (JTPA section 105(d); 20 CFR 628.6(a).)		
* States with single statewide SDA may submit both the Job Training Plan and GCSSP, or modifications, simultaneously or may combine the two as one submission.		
· Interested parties may submit petitions for disapproval of statewide SDA Job Training Plans or modifications. (JTPA section 105(b)(3).)		
· The State's Plan or modification shall be considered approved unless the Secretary notifies the Governor in writing of discrepancies between the submission and specific provisions of the Act. (20 CFR 628.6(b).)	Within 15 days of the days of receipt by the Administrator, Office of Job Training Programs, of the Plan modification. Within 30 days of the days of submission, which is defined as date of receipt by the Administrator, Office of Job Training Programs.	
· The State may appeal the Secretary's disapproval of the Plan or modification by requesting a hearing with an Administrative Law Judge as outlined in 20 CFR 629.57(c)	Within 21 days of receipt of the disapproval.	
Approved unless the Secretary notifies the Governor in writing of discrepancies between the submission and specific provisions of the Act. (20 CFR 628.6(b))	Defined as date of receipt by the Administrator, Office of Job Training Programs.	
· The State may appeal the Secretary's disapproval of the Plan or modification by requesting a hearing with an Administrative Law Judge as outlined in 20 CFR 629.57(c)	Within 21 days of receipt of the disapproval.	
G. Local Job Training Plan Modification, Review and Approval		
· Governors issues planning instructions and schedules to SDAs, including SYETP planning instructions.	In accordance with State schedule.	
· SDAs publish biennial Plan proposal or summary for review and comment (JTPA section 105(a)(1).)	No less than 120 days before the beginning of the first of the two program years covered by the Plan.	
· SDAs publish final plans or summaries and submit them to Governors. (JTPA section 105(a)(2).)	No later than 80 days before the first of the two program years.	
· SDAs publish any modification to approved local Job Training Plans (JTPA sections 104(c) and 105(a)(2))	Not later than 80 days Plans before the modification is to become effective.	

(NOO); Substate Allocations	PY 1990	PY 1991
· Governors approve or disapprove Plans or modifications. (JTPA section 105(b)(2).)	Within 30 days of submission (may be extended another 15 days, if petition for disapproval is filed. (JTPA section 105(b)(2)). Approval is filed). (JTPA section 105(b)(2))	
· Program operations begin for the two program years.		
H. Disapproval of Local Job Training Plans or Modifications and Appeals of Dispprovals		
· ETA provides to the States a copy of previously issued procedures for appeals of the Governor's final disapproval of local Job Training Plans or Modifications	01/20/90	
· Interested parties may submit petitions to the Governor recommending disapproval of SDA Job Training Plans or modifications (JTPA section 105(b) (2) and (3)(A).)	Within 15 days of the of Plan submission.	
· Governor notifies Private Industry Council and appropriate chief-elected officials in writing of initial SDA Job Training Plan or modification disapproval. (JTPA section 105(b)(2); 20 CFR 628.5(a)(1).)	Within 30 days after Plan modification submission (may be extended to 45 days if there is a petition for disapproval).	
· SDAs submit correction of deficiencies in Plans or modifications. (20 CFR 628.5(a)(2).)	Within 20 days of initial approval.	
· Governors approve or notify SDA of final disapproval of Plans or modifications that were initially disapproved. (20 CFR 628.5(a)(2).)	Within 15 days of (20 628.5(a)(2)	
· SDA submits appeal of final Plan or modification disapproval to the Secretary, with copy to Governor simultaneously. (20 CFR 628.5(b)(2).)	No later than 30 days of disapproval (20 CFR 628.5(B)(2).)	
· Governor submits comments on appeal to the Secretary	As quickly as possible.	
· Secretary makes final decision and provides written notice to appellant and the Governor. (JTPA section 105(b)(3).)	With 45 days of receipt of appeal (20 CFR 682.5(b)(3).)	
I. Governor's Coordination and Special Services Plan (GCSSP)*		
· ETA issues instructions on the PY 1988/1989 GCSSP and modifications to the GCSSP. (20 CFR 627.2(a).)		
· Governors submit GCSSP or required annual update (modification) describing adjustments made to performance standards to ETA for review. (20 CFR 627.2(a).)		
· The GCSSP or annual update shall be considered approved unless the Governor is notified in writing of discrepancies between the submission and specific provisions of the Act so that the Governor may modify the Plan (or modification) to bring it into compliance with the Act. (20 CFR 627.2(b).)	Within 30 days of submission, which is defined as the date receipt by the the Administrator, Office of Job Training.	
J. Performance Standards and Appeals of Governor's Decisions and Reorganization Plan Due to Failure to Meet Performance Standards.		
· ETA publishes worksheets for optional DOL adjustment model	02/15/90	02/15/01
· ETA issues procedures for appeals of Governor's decisions pursuant to any reorganization plan imposed due to failure to meet performance standards. (JTPA section 106(h)(4); 20 CFR 629.46(d).)	02/15/90	
· ETA publishes performance standards package for JTPA programs. (JTPA section 106(d)(1).)	02/15/90	
· ETA issues technical assistance guide (TAG) on JTPA performance standards	03/30/90	03/30/91
· ETA issues TAG on PY 1989 Employment Service performance standards	No plans to revise at this time.	
· Governors submit the GCSSP or required annual update (modification) that describes the adjustments made for JTPA programs (see section I). (JTPA section 121(b)(3).)	05/01/90	
· Governor reviews performance and provides incentives to SDAs exceeding performance standards or technical assistance to SDAs that do not meet performance standards. (JTPA section 121(b)(3).)	In accordance with the State schedule.	
· Governor imposes reorganization plans on SDAs that failed to meet performance standards for a second program year. (JTPA sections 106(h)(1) and 181(j)(3).)	In accordance with the State schedule.	
· Governor offers opportunity for a hearing before a hearing officer to SDAs upon which a reorganization plan is imposed. (JTPA Section 106(h)(3).)	In accordance with the State schedule.	
· SDAs appealing the Governor's decision submit their appeals Secretary	Within 30 days of receipt of written to the notification from the Governor. (JTPA section 106(h)(4); 20 CFR 629.46(d)(4).)	
· Secretary issues final decision on appeals submitted by Governor's decisions regarding reorganization plans. (20 CFR 629.46(d)(6).)	Within 60 days of receipt written SDAs of notification from the Governor. (JTPA section 106(h)(4); 20 CFR.	
K. Title III EDWAA		
· ETA issues final allotments for State formula allotments for Title II-A, II-B, and Title III of JTPA	01/05/90	12/30/90
· ETA issues planning instructions	01/20/90	
· Governors should give direction for substate planning. (Statute requires by 3/1)	02/10/90	
· ETA issues Title III reporting instructions	02/28/90	
· ETA issues Title III performance standards instructions	02/28/90	
· Governor's State Plan submitted to the Secretary, who advises of problems within 30 days or approves within 45 days. Single substate grantee Plans due to the Secretary	05/01/90	
· Program Operations begin	07/01/90	

* States with a single statewide SDA may submit both the Job Training Plan and GCSSP, or modification, simultaneously or may combine the two as one submission.

[FR Doc. 90-6376 Filed 3-20-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-33-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, P.O. Box 11430, Lexington, Kentucky 40575 had filed a petition to modify the application of 30 CFR 75.309(a) (return air; tests and adjustments) to its Virginia Pocahontas No. 3 Mine (I.D. No. 44-01520) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that tests for methane be made at 4-hour intervals during each shift by a qualified person designated by the operator of the mine.

2. As an alternate method, petitioner proposes to install a methane sensor in each split of air returning from a working section. The methane sensor would be incorporated into an atmospheric monitoring system (AMS).

3. In support of this request, petitioner states that—

(a) The AMS would be monitored from a surface location that would be continually attended by a responsible person who would respond to any alarms or malfunctions;

(b) The methane sensor would be operative whenever mining operations are underway in the workings ventilated by the air split. If the sensor should fail, a certified person would continually monitor the air split for methane whenever mining operations are underway in the workings ventilated by the air split; and

(c) At least once each coal-producing day, a certified person would test for methane using a methane detector approved by the Secretary in the air split at the methane sensor and the methane sensor would be calibrated by a qualified person using a known mixture of methane at least once each week. A record of the methane test made each coal-producing day and the calibration by a qualified person would be maintained on the surface and would be available for review by interested persons.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 20, 1990. Copies of the petition are available for inspection at that address.

Dated: March 12, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-6263 Filed 3-20-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-35-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, 407 Brown Road, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Ohio No. 11 Mine (I.D. No. 15-03178) located in Union County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. As an alternate method, petitioner proposes to use belt air to ventilate the working faces and to remove restrictions on the velocity of air in the belt entries.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (CO) detection system in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake aircourses. The monitoring devices would be capable of giving warning of a fire for four hours should the power fail; a visual alert signal would be activated when the CO level is 10 part per million (ppm) above ambient air and an audible signal would sound at 15 ppm above ambient air. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal would be activated at an attended surface location where there is two-way communication. The CO system would be capable of identifying any activated sensor, monitoring electrical continuity and detecting electrical malfunctions.

4. The CO system would be visually examined at least once each coal-producing shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor would continue to operate and qualified persons would patrol and monitor the belt conveyor using handheld CO detecting devices.

6. The details for the fire detection system and the permanent stopping separating the conveyor belt entries from the intake escapeway would be included as part of the ventilation system, methane and dust control plan.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 20, 1990. Copies of the petition are available for inspection at that address.

Dated: March 12, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-6364 Filed 3-20-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-34-C]

VP-5 Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

VP-5 Mining Company, P.O. Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.309(a) (return air; tests and adjustments) to its Virginia Pocahontas No. 5 Mine (I.D. No. 44-03795) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that tests for methane be

made at 4–hour intervals during each shift by a qualified person designated by the operator of the mine.

2. As an alternate method, petitioner proposes to install a methane sensor in each split of air returning from a working section. The methane sensor would be incorporated into an atmospheric monitoring system (AMS).

3. In support of this request, petitioner states that—

(a) The AMS would be monitored from a surface location that would be continually attended by a responsible person who would respond to any alarms or malfunctions;

(b) The methane sensor would be operative whenever mining operations are underway in the workings ventilated by the air split. If the sensor should fail, a certified person would continually monitor the air split for methane whenever mining operations are underway in the workings ventilated by the air split; and

(c) At least once each coal-producing day, a certified person would test for methane using a methane detector approved by the Secretary in the air split at the methane sensor and the methane sensor would be calibrated by a qualified person using a known mixture of methane at least once each week. A record of the methane test made each coal-producing day and the calibration by a qualified person would be maintained on the surface and would be available for review by interested persons.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 20, 1990. Copies of the petition are available for inspection at that address.

Dated: March 12, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90–6365 Filed 3–20–90; 8:45 am]

BILLING CODE 4510–43–M

Occupational Safety and Health Administration

Minnesota State Standards; Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On June 8, 1973, notice was published in the **Federal Register** (38 FR 15076) of the approval of the Minnesota plan and the adoption of subpart N of part 1952 containing the decision.

The Minnesota plan provides for the adoption of Federal standards as State standards by reference after an opportunity for public comment and/or requests for public hearings. OSHA regulations (29 CFR 1953.22 and 23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register**, and within 30 days for emergency temporary standards. Although adopted Federal standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in part 1953, they are enforceable by the State prior to Federal review and approval. By notices published on February 1 and May 30, 1988, in the Minnesota State Register (cited as 12 S.R. 1618 and 2338) and incorporated as part of the plan, Minnesota has adopted State standards comparable to:

1. A new standard, 29 CFR 1910.1048 and 29 CFR 1926.55, Occupational Exposure to Formaldehyde: Final Rule, published in the **Federal Register**, Volume 52, No. 233, dated December 4, 1987, and the amendment, Occupational Exposure to Formaldehyde; Approval of Information Collection Requirements, Technical Amendments, published in the **Federal Register**, Volume 53, No. 141, dated March 2, 1988.

2. A new standard, 29 CFR 1910.272, Grain Handling Facilities: Final Rule, published in the **Federal Register**, Volume 52, No. 251, dated December 31, 1987, and 29 CFR 1917.72 (removed): Final Rule, published in the **Federal Register**, Volume 52, No. 251, dated December 31, 1987.

3. The amendment, 29 CFR 1910.21, 1910.217, Presence Sensing Device Initiation of Mechanical Power Presses: Final Rule, published in the **Federal Register**, Volume 53, No. 49, dated March 14, 1988.

4. New standard, 29 CFR 1910.1028, Occupational Exposure to Benzene: Final Rule, published in the **Federal Register**, Vol. 52, No. 176, dated September 11, 1987.

5. New standard, 29 CFR 1917.44, Servicing of Single Piece and Multi-Piece Rim Wheels at Maritime Terminals: Final Rule, published in the **Federal Register**, Vol. 52, No. 186, dated September 25, 1987.

6. Revision, 29 CFR 1926.550, 1926.552, and 1926.903, Revision of Construction Industry Test and Inspection Records: Final Rule, published in the **Federal Register**, Vol. 52, No. 187, dated September 28, 1987.

7. Revision, 29 CFR 1910.268, Revision of Telecommunications Training Records: Final Rule, published in the **Federal Register**, Vol. 52, No. 187, dated September 28, 1987.

These standards, which are contained in the Minnesota Occupational Safety and Health Codes and Rules, were promulgated after notice was published offering an opportunity for public comments and/or requests for public hearings. No written comments or requests for hearing on objections were received concerning the proposed standards. The order of adoption was published in the State Register (12 S.R. 1618 and 2338) on February 1 and May 30, 1988, pursuant to Minnesota Statute 182.655(1974).

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards and amendments are identical to the Federal standards, and accordingly are approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 230 South Dearborn Street, Room 3244, Chicago, Illinois 60604; State of Minnesota, Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota 55101; and the Office of the Directorate of Federal Compliance and State Programs, Room N3608, 200 Constitution Avenue NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process, or for other good cause which may be consistent and with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Minnesota State Plan as a proposed

change, and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective March 21, 1990.

Authority: Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667.

Signed at Chicago, Illinois, this 4th day of April, 1989.

Michael G. Connors,

Regional Administrator.

Editorial Note: This document was received in the Office of the Federal Register on March 15, 1990.

[FR Doc. 90–6371 Filed 3–20–90; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90–22)]

Intent To Supplement the Final Advanced Solid Rocket Motor (ASRM) Environmental Impact Statement (EIS)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare a supplement to the final EIS on the ASRM Program containing updated information on environmental impacts at Stennis Space Center (SSC).

SUMMARY: The draft and final EIS's for the Space Shuttle ASRM Program were issued on December 23, 1988, and March 17, 1989, respectively. In March 1989, by Federal administrative action, the delineation of wetlands subject to the U.S. Army Corps of Engineers (COE) (jurisdiction was significantly expanded. At that time, four Federal agencies adopted a unified methodology for identifying wetlands. At the recommendation of the COE and the U.S. Environmental Protection Agency (EPA), a jurisdictional determination of wetlands was conducted at SSC. NASA determined that approximately 200 acres of SSC would be affected. This determination procedure was documented in the final EIS and the Record of Decision issued April 17, 1989. As project designs have progressed, NASA has since relocated the test stand site to further reduce wetlands impacts.

In support of the goals of the National Environmental Policy Act, the supplement to the final EIS will provide updated, site specific information addressing facility definition and layout to minimize physical and functional loss of wetlands at SSC, mitigation plans, and secondary impacts from exhaust products. During preparation of environmental permits necessary to implement the decision to static test ASRM's, NASA has been alert to public concerns about procedures to evaluate and develop mitigation plans to protect human health and the environment. The supplement will include information relevant to these concerns.

NASA anticipates that the supplement will be available by June 1990. Notice of Availability will be published in the **Federal Register** and advertised in local newspapers around SSC. The supplement will be distributed to local libraries, Government officials, and local organizations. Letters of review will be received during a 45–day period following release of the document and answered on an individual basis.

Correspondence concerning this issue should be addressed to: NASA Environmental Officer, Code GAOO, Stennis Space Center, MS 39529–6000.

Dated: March 14, 1990.

C. Howard Robins, Jr.,

Associate Administrator for Management.

[FR Doc. 90–6427 Filed 3–20–90; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comment

AGENCY: National Archives and Records Administrtion, Office of Records Administration.

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). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) Propose the destruction of records not previously autorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATES: Requests for copies must be received in writing on or before May 7, 1990. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immeditely after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1–AFU–90–30). Routine equipment management records.

2. Department of Defense, Office of the Secretary of Defense (N1–330–90–2). Files

relating to erroneous overpayments to DOD dependent school employees.

3. Department of Energy (N1–434–89–8). Research and Development Project Files.

4. Department of Health and Human Services, Data Processing Unit (N1–235–90–1). Marginally described and unreadable data processing tapes.

5. Department of the Interior, U.S. Geological Survey (N1–57–90–1). Audiovisual working files used to plan overflights of areas to be mapped.

6. National Security Council (N1–273–90–1). Routine and facilitative files of the National Security Council, 1947–1989 (policy and program files to be retained permanently).

7. Department of State, Office of Supply, Transportation, and Procurement (N1–59–90–13). Facilitative records relating to the shipment of goods and materials.

8. Tennessee Valley Authority, Power (N1–142–90–3). Power engineering and construction estimating files.

9. Tennessee Valley Autority, Human Resources (N1–142–89–19). Contractor History Record and the Contractor Information System.

Dated: March 15, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90–6428 Filed 3–20–90; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 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 February 26, 1990 through March 9, 1990. The last biweekly notice was published on March 7, 1990 (55 FR 8214).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR 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 amendments 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. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 20, 1990 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 petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of 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 fifteen (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 fifteen (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 amendments 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 involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

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 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.

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, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. 50-456 and 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: August 14, 1989

Description of amendments request: The amendments would revise the Technical Specifications to reduce the composition of the Onsite Nuclear Safety Group (ONSG) from four members to three members. This change does not modify the mission of the ONSG, but allows the licensee to be more efficient in performing its audit, surveillance, and information gathering functions. Commonwealth Edison plans to transfer one Braidwood engineer to one of its other station's ONSG to meet personnel needs. This amendment request is the same as that granted for Byron Station on July 1, 1988, and at LaSalle Station on January 31, 1989.

Basis for proposed no significant hazards consideration determination: The staff has evaluated this proposed amendment and has determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards consideration if 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 licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because it will not involve any physical change in the plant or operating procedures. The proposed change reduces the composition of the Onsite Nuclear Safety Group (ONSG) from four members to three members. The proposed amendment may have some effect on the probability of an accident previously evaluated since there will be fewer people performing the independent safety assessment function within the ONSG. However, any increase in this probability will not be significant and will be compensated for by the activities of several corporate level groups that are independent of the immediate management chain for power production. These groups perform independent assessments of operating characteristics and safety issues that are often redundant to the technical specification responsibilities of the ONSG. This proposed amendment does not change ONSG areas of review as described in the Technical Specifications. The ONSG retains responsibility for review of those items listed in the Technical Specification 6.2.3.1, but will make additional use of the independent review work done by the above noted corporate level groups.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not include any physical changes or modifications to the facility or in the way the plant is operated. As such, the changes do not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in the margin of safety because the change will not involve any physical change in the plant or change in operation of the plant. There may be some effect on the margin of safety in terms of the amount

of review of operating characteristics and safety issues, but this change will not be significant due to the independent assessment activities of corporate level groups. These groups have responsibilities that often overlap the technical specification responsibilities of the ONSG. When performing their on-site reviews, the ONSG will increase their use of corporate level independent review work performed by new departments.

Therefore, based upon the previous analysis, the staff proposes to conclude that the proposed amendments to the Technical Specifications do not involve significant hazards consideration.

Local Public Document Room location: Wilmington Township Public Library, 210 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney to licensee: Michael Miller, Esq., Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: John W. Craig

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois; Docket Nos. 50-254 and 50-265, Quad Cities Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: October 10, 1989

Description of amendments request: The proposed amendments revise the pressure-temperature operating limits to reflect the requirements of Regulatory Guide 1.99, Revision 2.

Basis for proposed no significant hazards consideration determination: Commonwealth Edison has evaluated these proposed amendment and determined that the change does not involve a significant hazards consideration. In accordance with 10 CFR 50.92(c):

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

a. Neither the probability nor the consequence of a previously evaluated accident is increased due to the updated pressure-temperature operating limits. The adjusted reference temperature of the limiting beltline material was used to correct the beltline pressure-temperature curves to account for irradiation effects. Thus, the operating limits are adjusted to incorporate the initial fracture toughness conservatism present when the reactor vessel was new. The adjusted reference temperature calculations were performed utilizing the guidance contained in Regulatory Guide 1.99, Revision 2. The updated curves provide assurance that brittle fracture of the reactor vessel is prevented.

b. The result of removing reactor vessel Specimen 18 in 1981 has no effect on the probability or consequence of an accident previously evaluated. The reactor vessel specimens are analyzed to determine the radiation induced changes in the mechanical properties of the material and the neutron fluence rate at the vessel wall. Early withdrawal of the specimen simply provided irradiation effects on the vessel material at a lower fluence level. There remains sufficient reactor vessel specimens to support the surveillance requirements of Appendix H through the end of reactor vessel life. (Quad Cities Only)

2. The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

a. The updated pressure-temperature operating limits will not create the possibility of a new or different kind of accident than previously evaluated. The revised operating limits are merely an update of the old limits by taking into account the effects of irradiation embrittlement, utilizing criteria defined in Regulatory Guide 1.99, Revision 2. The updated pressure-temperature curves are conservatively adjusted to account for the effects of irradiation on the limiting reactor vessel material. No physical changes to the plant are being made, therefore, no new modes of operation are provided.

b. No new or different kind of accidents are created as a result of removing the reactor vessel Specimen 18 in 1981. The vessel specimen was subjected to a low neutron fluence level but provides information on the irradiation effects of the reactor vessel material early in the reactor vessel life. There are sufficient vessel specimens remaining to support the surveillance requirements of Appendix H through the end of reactor vessel life.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

a. The revised pressure-temperature operating limits are designed to provide a margin of safety. The required margin is specified in ASME Boiler and Pressure Vessel Code, Section III, Appendix G and 10 CFR 50 Appendix G. The revised curves are based on the latest NRC guidelines along with actual neutron flux/fluence data for the units. The new limits retain the margin of safety to a level similar to that margin devised for the new vessel when the fracture toughness was slightly greater. The new operating limits account for irradiation embrittlement effects, thereby maintaining a conservative margin of safety.

b. The margin of safety is not reduced by the early removal of the reactor vessel Specimen 18. The analysis of the specimen was used to determine the effects of the irradiation induced changes in the mechanical properties of the vessel material. The specimen provided irradiation induced changes at a slightly lower neutron fluence level. There remains sufficient reactor vessel specimens to support the surveillance requirements of Appendix H through the end of the reactor vessel life.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the NRC staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450 (Dresden), and Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021 (Quad Cities).

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690.

NRC Project Director: John W. Craig

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 20, 1986 as modified April 30, 1987

Description of amendment request: The proposed amendment would change the Palisades Plant Technical Specification (TS) by correcting an erroneous statement with regards to the amount of cooling water flow to the Containment Air Coolers (CACs). Specifically, the proposed amendment would change TS Section 5.2.3a to indicate that three CACs (required to be operable per TS Section 3.4.1a) are provided with 1700 gpm each at an inlet temperature of 80° F for a heat removal rate of 229 million Btu per hour. TS section 5.2.3a currently identifies four CACs each with a flow of 4875 gpm at an inlet temperature of 75° F for a heat removal rate of 299 million Btu per hour.

Other changes proposed by the October 20, 1986, application were incorporated into the TS by Amendment 104 issued March 24, 1987.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92(c), this means that the 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; (3) Involve a significant reduction in a margin of safety.

The Commission has evaluated the proposed change against the above standards as required by 10 CFR 50.91(a) and has concluded that:

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because

the proposed change merely corrects the description of design features provided for containment cooling in the event of a design basis accident (DBA).

B. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because the equipment described is consistent with the assumptions used in the DBA analysis, and it does not affect the manner by which the facility is operated.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed change does not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility or engineered safeguards equipment.

Therefore, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John O. Thoma, Acting.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: August 2, 1989

Description of amendment request: The proposed amendment would revise the Palisades Plant Technical Specifications (TS) to delete the requirement for a hydrostatic test, at 150% of design pressure, on the critical service water system headers every five years. Specifically, Table 4.4.2, Minimun Frequencies for Equipment Tests, would be modified through deletion of Item 10, Critical Headers Service Water System. The effect of this change would be to reduce the hydrostatic test pressure requirement from 150% of design pressure to 125%, and to reduce the hydrostatic test frequency from once each five years to once each ten years.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92(c), this means that the 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 Commission has evaluated the proposed change against the above standards as required by 10 CFR 50.91(a) and has concluded that:

A. The change does not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed change merely decreases the test pressure and test frequency. No changes to plant equipment or operating procedures would be involved. The critical headers would still be inspected in accordance with the ASME Code each 3-1/2 years, and one of these inspections in a 10 year period would be done at 125% of design pressure.

B. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because it does not affect the manner by which the facility is operated and no changes to plant equipment are involved.

C. The change does not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed change does not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility.

Therefore, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John O. Thoma, Acting

Consumers Power Company, Docket No. 50-255 , Palisade Plant, Van Buren County, Michigan

Date of amendments request: November 13, 1989

Description of amendments request: The proposed amendment would modify the Palisades Plant Technical Specification (TS) requirements for operability of electrical power supplies, and would modify the required amount of diesel fuel oil to be stored in the underground tank. Specifically, the proposed amendment would modify the requirements of TS Sections 3.7.1 and 3.7.2 to accommodate and account for improvements which were made to the electrical systems to increase the reliability of the off-site power supply, and to increase the required amount of stored diesel fuel to account for increased loading of the emergency diesel-generators from the original design. The facility modifications make available a third source of off-site power and, therefore, provide for two immediately available and one delayed-access off-site power source compared to one immediately available and one delayed access to off-site power sources in the previous design.

Basis for proposed no significant hazards consideration determination: The Commission has made a proposed determination that the amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92(c), this means that the 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 Commission has evaluated the proposed changes against the above standards as required by 10 CFR 50.91(a) and has concluded that:

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes allow for the incorporation of the new off-site power supply into the TS, and assure that there will be at least a seven day supply of fuel for the emergency diesel-generators. The changes provide additional assurance that off-site power will be available in the event of an accident. Incorporating additional and more stringent requirements on minimum equipment and fuel oil required does not increase the probability or consequences of any accident previously evaluated.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not affect the manner by which the facility is operated. The proposed changes merely provide additional assurance that off-site power will be available in the event of an accident.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not involve equipment or features which affect the operational characteristics of the facility

other than to improve the availability of power sources.

Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John O. Thoma, Acting.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: February 20, 1990

Description of amendment request: The proposed amendments would modify the McGuire Technical Specifications (TSs) to grant, on a one-time basis, relief from the schedular requirement for the third Type A Containment Integrated Leak Rate Test (CILRT) to be conducted for McGuire Unit 1. The surveillance requirement of TS 4.6.1.2a specifies that three CILRTs are to be conducted at 40 27 10-month intervals during shutdown during each 10-year inservice inspection (ISI) period; the third test of each ISI set is required to be conducted during the shutdown for the 10-year ISI. The proposed amendments would add a footnote to TS 4.6.1.2a, stating that "The Type A test on Unit 1 which is scheduled for the 10-year ISI outage (end of fuel Cycle 7, 1991) will be performed instead during the end of fuel Cycle 6 outage (1990). The 40 27 10-month interval will be maintained. This constitutes an exemption to 10 CFR 50, Appendix J, Paragraph III.D.1.(a)." Although the change is applicable to McGuire Unit 1 only, Unit 2 is included administratively because the TSs are combined in one document for both units.

Basis for proposed no significant hazards consideration determination: The first CILRT for McGuire Unit 1 was based upon its preoperational testing schedule rather than its commercial operation schedule and was conducted in August 1979. Consistent with the 40 27 10-month requirement, the next two tests occurred in April 1983 and August 1986, and a third test is scheduled in May 1990 during the end of fuel cycle (EOC) 6 outage. This third test schedule, however, does not meet the TS (and Appendix J) requirement that the third CILRT be performed during the 10-year ISI outage which would be EOC 7. Moreover, because of the date of the initial CILRT, the requirement to perform the third CILRT during the 10-year ISI outage is outside the tolerance of the required 40 27 10-month interval. The proposed TS change would resolve this conflict in requirements by maintaining the 40 27 10-month interval and permitting the third CILRT for Unit 1 to be performed during the outage preceding the 10-year ISI outage. Subsequent tests have been scheduled consistent with both requirements. The proposed license amendments, if granted, would also be the subject of a related exemption to 10 CFR Part 50, Appendix J.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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 licensee has addressed each of these standards and reached the following conclusions:

(1) The proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The containment serves to mitigate the consequences of an accident and serves no role in accident initiation. The consequences of an accident would be unchanged as containment integrity is maintained and verified by periodic testing within the specified interval (40 27 10 months). The proposed change would allow McGuire to stay on the proper interval by exempting a specific outage requirement from the Technical Specifications and 10 CFR 50, Appendix J.

(2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would affect only the interval, on a one time basis, of a test that is presently performed. The test method is unchanged and the proposed changes would not cause any hardware changes, therefore the change could not create any new accident scenarios.

(3) The proposed change would not involve a significant reduction in a margin of safety.

Containment integrity will continue to be assured by periodic testing. The allowed containment leakage rates would remain unchanged and the test interval is maintained, thus no reduction in a margin of safety can occur.

The Commission's staff agrees with the licensee's position and conclusions. Accordingly, the Commission proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: February 7, 1990

Description of amendment request: The proposed license amendments would delete the specific composition list for the Company Nuclear Review Board (CNRB) and replace it with a more general statement defining the composition of the CNRB and specifying the requisite level of technical, operational, and nuclear management expertise for CNRB membership.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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 licensee provided the following discussion regarding the above three criteria:

Criterion 1

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature and do not affect assumptions contained in the safety analyses nor do they affect Technical Specifications that preserve safety analysis assumptions. Additionally, these changes do not modify the physical design and/or operation of the plant. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

Criterion 2

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed are administrative in nature and will not lead to material procedural changes or to physical modifications to the facility. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

Criterion 3

Use of the modified specification would not involve a significant reduction in a margin of safety.

The changes being proposed are administrative in nature and do not relate to or modify the safety margins defined in or required and maintained by the Technical Specifications. The deletion of the list of Company Nuclear Review Board (CNRB) members, and replacement with qualification requirements guidelines will not decrease the effectiveness of this organization's independent review scope nor will there be a reduction in the collective talents of the CNRB.

Based on the above, [Florida Power & Light Company has] determined that the proposed amendment does not (1) involve significant increase in the probability [or] consequences of an accident previously evaluated, (2) create the probability of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety; and therefore, does not involve a significant hazard consideration.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Ogelthorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: January, 15, 1990

Description of amendment request: the proposed amendments would revise a surveillance requirement in Technical Specification (TS) 4.0.2 by deleting the requirement that the combined time interval for any three consecutive surveillance intervals is not to exceed 3.25 times the specific surveillance interval. The revised TS 4.0.2 would continue to require that "Each Surveillance Requirement shall be performed within the specified time interval with a maximum allowable extension not to exceed 25% of the surveillance interval." Associated Bases 4.0.2 would be revised accordingly.

Basis for proposed no significant hazards consideration determination: On August 21, 1989, the NRC issued General Letter (GL) 89-14, "Line-Item Improvements in Technical Specifications-Removal of the 3.25 Limit on Extending Surveillance Intervals." The GL provided guidance to licensees and applicants for the preparation of a license amendment request to implement a line-item improvement in TSs to remove the 3.25 limit on extending surveillance intervals. The GL provided an alternative to the requirements of TS 4.0.2 to remove an unnecessary restriction on extending surveillance requirements and to provide a benefit to safety when plant conditions are not conducive to the safe conduct of surveillance requirements. By letter of January 15, 1990, Georgia Power Company responded to GL 89-14 and requested license amendments consistent with the GL guidance.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Commission's review of the proposed amendments indicates that:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Experience shows that the extension of surveillance intervals enhances safety by removing the need to perform a surveillance during plant conditions unsuitable to its performance, such as during transient plant conditions or when safety systems are out of service because of ongoing surveillance or maintenance activities. Limiting the maximum combined interval to 3.25 times the interval for three consecutive intervals does not increase safety because extending surveillance 25% presents a small risk in contrast to the alternative of a forced shutdown or performance during unsuitable plant conditions. This position on the safety impact of removing the 3.25 limit is supported by industry experience and documented in GL 89-14. Since the risk posed by this change is less than the risk associated with the existing limit, operating in accordance with the proposed change does not involve a significant increase in the probability or consequences of any accident previously analyzed.

(2) Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Removing the 3.25 limit on increasing surveillance intervals 25% reduces the possibility of a surveillance interval forcing a shutdown, or forcing the performance of a surveillance during unsuitable plant conditions. Its removal thereby reduces the risk associated with either alternative. It does not change plant equipment configuration or operation and is administrative in nature. Hence, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Use of the modified specification would not involve a significant reduction in a margin of safety.

Removing the 3.25 limit on increasing surveillance intervals 25% has been shown by industry experience, as documented in GL 89-14, to decrease risk when contrasted with the alternative actions potentially compelled by allowing it to remain in effect. Because risk is reduced by this proposed change, it does not involve a significant reduction in the margin of safety.

Accordingly, the Commission proposed to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: February 20, 1990

Description of amendment request: The amendment request proposes to change the surveillance requirements of the Station Batteries. Specifically, it is proposed that Technical Specification 4.7.b be changed to include a battery service test every refueling outage and, in addition, the frequency of the existing battery performance test be modified.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a) GPU Nuclear Corporation has determined that operation of the Oyster Creek Nuclear Generating Station in accordance with the proposed technical specifications does not involve a significant hazard. The changes do not:

1. Involve a significant increase in the probability or the consequence of an accident previously evaluated. The proposed surveillance requirements do not involve any changes to the plant configuration, availability of safety systems or the manner in which they respond to initiating events, and as such, will not increase the probability of an accident previously evaluated. The surveillance requirements will not alter the battery's response to an accident and, therefore will not increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated. Revising the battery refueling outage surveillance requirements does not involve any change to the plant configuration, nor does it change the availability of the batteries or the manner in which they respond to initiating events. As such, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Involve a significant reduction in a margin of safety. The weekly, monthly and refueling outage battery surveillance requirements verify the availability and capability of these components and, therefore, do not represent a reduction in the margin of safety.

The staff has reviewed the proposed amendment and agrees with the licensee's determination that it does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: February 23, 1990

Description of amendment request: The proposed change is requested to modify the Oyster Creek Nuclear Generating Station Technical Specification (TS) to remove the 3.25 limit on extending surveillance intervals and to add the bases for the existing allowance, in accordance with the guidance contained in NRC Generic Letter 89-14, dated August 21, 1989.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a) GPU Nuclear Corporation has determined that operation of the Oyster Creek Nuclear Generating Station in accordance with the proposed technical specifications does not involve a significant hazards consideration as defined by NRC in 10 CFR 50.92.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment removes the 3.25 limit on extending surveillance intervals and adds the Bases statements for the existing 25% allowance, in accordance with the guidance contained in NRC Generic Letter 89-14. Removal of the 3.25 limit on extending surveillance intervals provides a safety benefit by allowing a surveillance interval to be extended at a time that conditions are not suitable for performing the surveillance (e.g. transient plant operating conditions or other ongoing surveillance or maintenance activities). The safety benefit of allowing the use of the 25% allowance to extend a surveillance interval in such cases outweighs any benefit derived by limiting three consecutive surveillance intervals to the 3.25 limit. This change does not involve any change to the actual surveillance requirements. The reliability ensured through surveillance activities is not significantly degraded beyond that obtained from the specified surveillance interval. Therefore, this change does not increase this probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. This change does not involve any change to the actual surveillance requirements and allows a surveillance interval to be extended at a time that conditions are not suitable for performing the surveillance. Therefore, this change has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin or safety. Removal of the 3.25 limit on extending surveillance intervals provides a positive effect on safety by allowing a surveillance interval to be extended at a time that conditions are not suitable for performing the surveillance. This safety benefit of allowing the use of the 25% allowance to extend a surveillance interval in such cases outweighs any benefit derived by limiting three consecutive surveillance intervals to the 3.25 limit. This change does not involve any change to the actual surveillance requirements. The reliability ensured through surveillance activities is not significantly degraded beyond that obtained from the specified surveillance interval. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The staff has reviewed the proposed amendment and agrees with the licensee's determination that it does not involve a significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: January 18, 1990

Description of amendment request: This change request is required to make several administrative changes to the TMI-1 Technical Specifications and Bases statements to correct existing errors and to improve clarity without changing the context of the existing document. This amendment would also delete License Condition 2.c.6, "Inservice Testing," as it is contained in Technical Specification 4.2 and duplicates NRC requirements under 10 CFR 50.55a(g).

Basis for proposed no significant hazards consideration determination: GPU Nuclear Corporation has determined that this Technical Specification Change Request poses no significant hazards consideration as defined in 10 CFR 50.92 in that operation of TMI-1 in accordance with the proposed changes will not:

1. Involve a significant increase in the probability or consequences of any accident previously evaluated. The changes do not involve any change to actual surveillance requirements, LCO's, or action requirements. The probability of occurrence or the consequences of previously evaluated accidents are not affected by these changes because the majority of the changes are administrative in nature, or serves to conform to existing regulations which do not affect the plant configuration or operation.

2. Operation of the facility in accordance with the proposed Technical Specification changes would not create the possibility of a new or different kind of accident from any

previously evaluated. The changes do not involve any changes to the format of or restraints on plant operations. As stated above, these changes are administrative in nature, conform to existing regulations.

3. Operation of the facility in accordance with the proposed changes would not involve a significant reduction in the margin of safety. The administrative changes do not reduce the margin of safety because of the nature of such changes which serve to provide additional clarity or enhanced understanding of existing Technical Specification and bases statements.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: February 2, 1990

Description of amendment request: The amendment would modify the requirement to perform a simulated loss of offsite power test of the diesel generators (DGs) within five minutes of performing a 24 hour run. Technical Specification (TS) 4.8.1.1.2 would be revised to separate the requirement for the loss of offsite power test from the 24 hours run requirement. A requirement for stabilization of full load DG operating temperatures prior to initiating the loss of offsite power test would be added as a surveillance requirement (proposed TS 4.8.1.1.2.f.4.c) to replace the current requirement of TS 4.8.1.1.2.f.8 to perform this test within five minutes of completing the 24 hour run. In addition, an editorial change would delete a footnote that allowed specific surveillances to be delayed to coincide with the completion of the first refueling outage. This refueling outage has been complete so there is no longer a purpose for this footnote.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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 licensee provided an analysis that addressed the above three standards in the amendment application.

1. No significant increase in the probability or consequences of an accident previously evaluated results from this proposed change because:

As stated in Regulatory Guide 1.108, the LOP [loss of offsite power] test required by Technical Specification 4.8.1.1.2.f.8 demonstrates that the DG can start and accept the required loads in the prescribed time when the DG is at its full load operating temperature. This provides assurance that the DG is capable of responding to a loss of offsite power as assumed in the accident analysis. Because the purpose of performing the LOP test immediately following the 24 hour run is to demonstrate the functional capability of the DG at full load temperature conditions, establishing full load temperature conditions with other than a 24 hour run provides the necessary initial conditions for the LOP test in order to satisfy the intent of Regulatory Guide 1.108 Position C.2.a(5). The proposed method of establishing full load temperature conditions has been previously reviewed by the NRC and found to be an acceptable alternative to the 24 hour run. Additionally, DG design and function remain as previously analyzed. Therefore, the DG's proposed response during accident conditions is not affected due to this change.

The proposed change to deleted footnote is editorial only. This footnote was applicable to a refueling outage which has been completed. Hence, this footnote serves no current or future purpose.

Therefore, no significant increase in the consequences of an accident previously evaluated results from these proposed changes.

2. This proposed change would not create the possibility of a new or different kind of accident from any previously evaluated because:

This request does not involve a physical change in any system's configuration and now new modes of operation are introduced. This change will not result in reduced testing and will not affect DG reliability. Additionally, the LOP test initial conditions contained in the proposed change are consistent with those currently allowed. The proposed change to delete footnote is editorial only. This footnote was applicable to a refueling outage which has been completed. Hence, this footnote serves no current or future purpose.

Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. This proposed change would not involve a significant reduction in the margin of safety because:

Allowing the DG to reach full load temperature conditions by means other than the 24 hour run required by Surveillance Requirement 4.8.1.1.2.f.8 has previously been found acceptable by the NRC staff for satisfying the intent of this surveillance requirement. This proposed change will not result in reduced testing and will not affect DG reliability. The proposed change will adequately demonstrate the DG's functional capability at full load temperature conditions, thus ensuring the designed margin of safety in the DG's ability to start and accept the required loads within the required time limits. The proposed change to delete footnote is editorial only. This footnote was applicable to a refueling outage which has been completed. Hence, this footnote serves no current or future purpose.

Therefore, these proposed changes will not involve reduction in the margin of safety.

The proposed change as discussed above, has not changed the system design, function or operation as discussed in the USAR [updated safety analysis report] and therefore, will not increase the probability or the consequences of a previously evaluated accident and will not create a new or different accident. Adequate assurance of DG availability is maintained by establishing the required initial conditions of the LOP test by means other than the 24 hour run. Also, the results of the change are within acceptable criteria with respect to system components and design requirements. As a result, the ability to perform as described in the USAR is maintained and therefore, the proposed change does not result in a significant reduction in the margin of safety. Therefore, GSU [Gulf States Utilities] concludes that no significant hazards are involved.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Frederick J. Hebdon

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 1, 1990

Description of amendment request: The licensee has proposed changing the allowed outage times (AOTs) and/or surveillance test intervals (STIs) for 22 technical specifications (TSs). The changes were proposed as a result of a probabilistic risk assessment (PRA) conducted by the licensee. The proposed changes are as follows: (1) Change the AOT for TS 3.1.2.4 (Chemical and Volume Control) from 3 days to 10 days; (2) Change the STI for TS 4.3.1 (Reactor Protection) from 62 days to 92 days; (3) Change the STI for TS 4.3.2 (Engineered Safeguard Features Actuation) from 62 days to 92 days; (4) Change the AOT for TS 3.4.2.2 (Pressurizer Safety Valves) from 15 minutes to 1 hour; (5) Change the AOT for TS 3.4.4 (Pressurizer PORV's) from 1 hour to 6 hours; (6) Change the AOT for TS 3.5.1 (Accumulators) from 1 hour to 12 hours; (7) Change the AOT for TS 3.5.2 (Emergency Core Cooling) from 3 days to 10 days; (8) Change the AOT for TS 3/4.5.6 (Residual Heat Removal) from 3 days to 10 days and the STI from 92 days to 184 days; (9) Change STI for TS 4.6.17 (Containment Ventilation) from 31 days to 92 days; (10) Change the AOT for TS 3/4.6.2.1 (Containment Spray) from 3 days to 10 days and the STI from 92 days to 184 days; (11) Change the AOT for TS 3.6.2.2 (Containment Spray Additive) from 3 days to 10 days; (12) Change the AOT for TS 3/4.6.2.3 (Reactor Containment Fan Coolers) from 3 days to 10 days and the STI from 31 days to 92 days; (13) Change the AOT for TS 3.6.3 (Containment Isolation) from 4 hours to 24 hours; (14) Change the AOT for TS 3.7.1.1 (Steam Generator Safety Relief Valves) from 4 hours to 24 hours; (15) Change the AOT for TS 3/4.7.1.2 (Auxiliary Feedwater) from 3 days to 10 days and the STI from 31 days to 92 days; (16) Change the AOT for TS 3.7.3 (Component Cooling Water) from 3 days to 10 days; (17) Change the AOT for TS 3.7.4 (Essential Cooling Water) from 3 days to 10 days; (18) Change the AOT for TS 3.7.7 (Control Room heating, ventilation, and air conditioning (HVAC)) for the first inoperable train of control room HVAC from 7 days to 10 days, and the AOT for the second train of three from 24 hours to 72 hours including changing the STI for TS 4.7.7 from 31 days to 92 days; (19) Change the STI for TS 4.7.13 (Electrical Auxiliary Building HVAC) from 12 hours to 24 hours; (20) Change the AOT for TS 3.7.14 (Essential Chilled Water) from 3 days to 10 days; (21) Change the AOT for TS 3.8.1.1 (Diesel Generators) for the first inoperable diesel generator from 72 hours to 10 days, and the AOT for the second diesel generator form 2 hours to 12 hours; and (22) Change the AOT for TS 3.8.2 (DC Electrical Sources) for channels I and IV battery chargers from 24 hours to 72 hours for any battery charger, and the AOT for any battery and channels II and III chargers from 2 hours to 24 hours for any battery.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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 licensee provided an analysis that addressed the above three standards in the amendment application.

The proposed changes would result in small calculated changes in the core damage frequency (CDF), increases of 30% or less each out of an estimated CDF of $1.63X10^{-4}$. The calculated changes are small when considered in comparison to the overall uncertainty in the calculated CDF. The overall calculated uncertainty in the CDF is in excess of a factor of 10. Therefore, the proposed changes would not significantly increase the probability or consequences of an accident perviously evaluated.

The proposed changes affect only the AOT and STI of the systems identified. The proposed changes do not involve the alteration of any equipment nor do they allow modes of operation beyond those currently allowed. Therefore, implementation of these proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The licensing basis of the plant assumes a minimum set of equipment which is unaffected by the proposed changes. The proposed changes would not affect analysis assumptions regarding the functioning of required equipment designed to prevent or mitigate the consequences of accidents. In addition the severity of postulated accidents and any resulting radiological effluents are not impacted by the proposed changes. As noted earlier, the effects of the proposed changes are not significant since the impact on CDF is small compared to the uncertainty in CDF results and since the calculated CDF is already at a low absolute value. Consequently there would be no significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussions, the staff proposed to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Rooms Location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488 and Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Frederick J. Hebdon

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: November 29, 1988

Description of amendment request: The amendment would raise the trip set points and increase the span of allowable values for the 4 KV Bus Loss of Voltage and 4 KV Bus Degraded Voltage actuation relays.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

Criterion 1

This change involves changing the trip setpoints and allowable values for the 4 KV Bus Loss of Voltage and 4 KV Bus Degraded Voltage engineered safety features. The proposed ranges of allowable trip setpoints are consistent with our analyses for loss of voltage and degraded grid voltage events and have been selected to preclude damage to safety related electric motors operating under degraded voltage conditions. These analyses have been approved by the NRC and meet the NRC positions on the adequacy of station electric distribution system voltages. We therefore conclude that this proposed change does not involve a significant increase in the

probability or consequences of an accident previously analyzed.

Criterion 2

This change does not propose to revise the configuration of plant systems. Rather, we propose changing the allowable trip setpoints of engineered safety features designed to respond to degraded grid voltage events. This change in allowable trip setpoints does not significantly affect the function of these engineered safety features, and therefore does not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

Criterion 3

The allowable trip setpoints proposed by this change remain consistent with our analyses for loss of voltage and degraded grid voltage events. These analyses formed the bases for the original Technical Specification allowable trip setpoints. Since the proposed setpoints remain consistent with these bases, there can be no significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determined that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John O. Thoma, Acting.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: April 7, 1989

Description of amendment request: The amendment would change TS reporting requirements associated with the specific activity of the primary coolant in accordance with Generic Letter 85-19, "Reporting Requirements on Primary Coolant Iodine Spikes." Generic Letter 85-19 states that the reporting requirements for iodine spiking can be reduced from a short term report (Special Report on Licensee Event Report) to an item which is to be included in the Annual Operating Report.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

Criterion 1

The proposed changes are consistent with those endorsed by the NRC in Generic Letter 85-19. For the reasons stated in Generic Letter 85-19, we believe the deleted requirements are unnecessary restrictions. The proposed changes would not affect the accident analysis and the limits for the reactor coolant remain the same. The T/S requirement to shut down the plant if the coolant iodine activity limits are exceeded for more than 10% of the unit's annual operating time is an operating restriction that is no longer necessary based on a demonstration of successful operating experience as indicated in Generic Letter 85-19. Based on the above information, we believe that deletion of these requirements would not significantly increase the probability or consequences of a previously analyzed accident.

Criterion 2

The proposed changes are consistent with the changes endorsed by Generic Letter 85-19 and will not require physical alteration of the plant or changes in parameters governing normal plant operation. We therefore believe these changes would not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

Criterion 3

The proposed changes are consistent with the changes endorsed by Generic Letter 85-19 and would not modify the present gross activity limit or dose equivalent I-131 limits. We therefore believe the proposed change would not significantly reduce a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determined that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John O. Thoma, Acting.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: December 8, 1989 as supplemented by letter dated March 6, 1990.

Description of amendment request: The proposed amendment would modify Technical Specifications (TS) so that Westinghouse fuel assemblies with enrichments of up to 4.95 weight percent U-235 may be received. A new Technical Specification, (TS 3/4.9.15) would be added for both units to require a minimum boron concentration in the fuel storage pool whenever fuel assemblies with enrichment greater than 3.95 weight percent U-235 and with burnup less than 5,550 MWD/MTU are in the fuel storage pool. Existing TS 5.6.1.2, 5.6.2 and 5.3.1 (for Unit 2 only) would be modified to reflect the increased allowable fuel enrichment. In addition, the license for both units would be modified to reflect a maximum enrichment of 4.95 weight percent U-235 for fuel stored in the spent fuel pool.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

Criterion 1

Westinghouse has performed analyses that demonstrate the acceptability of the proposed changes with regard to criticality. The analyses demonstrate that fuel stored in both the new fuel storage vault and the spent fuel pool will remain subcritical under design basis conditions. However, accidents or incidents can take place which would increase reactivity such as dropping a fuel assembly between the rack and pool wall or inadvertently placing a fuel assembly in a rack location that should be vacant. For those conditions, the double contingency principle of ANSI N16.1-1975 can be applied. That principle states that one is not required to assume two unlikely, independent concurrent events to ensure protection against criticality. Thus, the presence of greater than or equal to 2400 ppm of soluble boron in the spent fuel pool can be assumed as a realistic initial condition, since not assuming it would be a second unlikely event. The reactivity of the fuel stored in the spent fuel pool would be decreased by about 0.25 delta-K, with approximately 2000 ppm of boron; that is, for an accident or an incident resulting in an increase of reactivity, K_{eff} would remain less than or equal to 0.95 due to the effect of the dissolved boron. In addition, paragraph 2.3 of the SER related to Amendments 118 and 104 for Cook Nuclear Plant Units 1 and 2, respectively, states that "the reactivity reduction due to the required pool boration of 2400 ppm of boron more than offsets the

potential reactivity increases from postulated fuel mishandling accidents." It is concluded that the proposed license conditions and T/S changes do not involve a significant increase in the probability or consequences of a previously analyzed accident.

Criterion 2

The Westinghouse analyses demonstrate continued acceptability of the spent fuel pool and the new fuel storage vault regarding criticality. The proposed license conditions and T/S changes will not result in physical changes to the plant (other than to the fuel assemblies, which were the subject of the Westinghouse analyses). Therefore, the proposed license conditions and T/S changes will not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3

As stated under Criterion 1, Westinghouse has performed analyses that demonstrate the acceptability of the proposed changes with regard to criticality. The analyses demonstrate that fuel stored in both the new fuel storage vault and the spent fuel pool will remain subcritical under design basis conditions. The new fuel storage rack design is sufficient to maintain the array in a subcritical condition with K_{eff} less than 0.95, even if it is assumed that the racks are flooded with pure water and fully loaded with new fuel assemblies with a maximum nominal enrichment of 4.55 weight percent U-235.

Similarly, K_{eff} would remain less than or equal to 0.95 in the spent fuel pool, even following an incident such as dropping a fuel assembly between the rack and pool wall or inadvertently placing a fuel assembly in a rack location that should be vacant. It is concluded that the proposed license condition and T/S changes do not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John O. Thoma, Acting.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: December 29, 1989

Description of amendment request: The amendment would modify TS 3/4.6.5.1 (Ice Condenser Ice Bed) and TS 3/4.6.5.3 (Ice Condenser Doors). The TS would be changed to allow certain ice condenser surveillances to be performed on an eighteen month interval instead of a nine month interval as currently specified in TS.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

Criterion 1

The ice condenser is a passive system that performs a mitigative function to reduce containment pressurization following a [loss-of- coolant-accident] (LOCA) or [high energy line break] (HELB). Therefore, the proposed change in the surveillance frequency for inspection of frost and ice accumulation on the lower inlet plenum support structure and turning vanes would not increase the probability of an accident previously evaluated.

The main impact of flow passage blockages is on the short-term containment subcompartment pressures following a LOCA. Blockages result in reduced flow areas in the ice condenser and hence higher upstream pressure during the blowdown phase of the accident. As stated earlier in this attachment, during surveillance inspections of the ice condenser turning vanes and lower inlet plenum support structure flow paths, no evidence has been found that frost/ice accumulation has exceeded the T/S requirement. In addition, the consequences of flow passage blockage in the ice condenser have already been evaluated. For example, our letter AEP:NRC:1067 dated October 14, 1988, and supplemented by our letter AEP:NRC:1067C dated March 14, 1989, transmitted the results of subcompartment analyses to support operation of Unit 1 for the reduced temperature and pressure program. In these analyses a 15% flow blockage in the ice condenser was assumed. These analyses were approved in a safety evaluation report attached to your letter dated June 9, 1989 (TAC No. 71062). Similar evaluations have been performed by Westinghouse for a 20% flow blockage for Unit 2 operating conditions. In summary, the proposed T/S change will not increase the consequences of a previously analyzed accident because flow blockage has been accounted for in the accident analyses and operating experience indicates that this particular area of the ice condenser is not very susceptible to frost/ice accumulation.

Criterion 2

The surveillance interval increase to 18 months will not result in a change in plant configuration or operation. Further, as indicated above, the ice condenser is a passive system that only performs a mitigative function following certain accidents. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated.

Criterion 3

The ice condenser performs the mitigative function of limiting containment pressure buildup following a LOCA or HELB. To ensure that the ice condenser will fulfill its function, buildup of frost and ice in the flow passage area must be limited. However, there are allowances for frost/ice buildup assumed in the safety analysis as indicated above. The requested change increases the surveillance interval for an area within the ice condenser that, based on operating experience, is not very susceptible to frost/ice buildup. Futher, surveillance inspections of the flow passages in the ice bed will continue to be performed every nine months for the area of the ice condenser that is most susceptible to frost/ice buildup. Therefore, it is apparent that the proposed T/S change will not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determined that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John O. Thoma, Acting.

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan

Date of amendment request: February 6, 1990

Description of amendment request: The amendment would revise Technical Specifications (TS) by implementing a Core Operating Limits Report (COLR) in accordance with Generic Letter 88-16, "Removal of Cycle-Specific Parameter Limits from Technical Specifications." Generic Letter 88-16 allows cycle-specific parameters, such as moderator temperature coefficient and the heat flux hot channel factor, to be removed from the TS and maintained in a COLR. NRC would be informed of changes to the operating limits. Changes to the operating limits would be made using NRC approved methodologies for the D.C. Cook Nuclear Plant.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed

amendment will not involve a significant hazards consideration if the proposed amendment does not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

Criterion 1

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The moderator temperature coefficient limit, rod drop time rod insertion limit, shutdown rod insertion limit, control rod insertion limit, axial flux difference operational limits, heat flux hot channel factor limit, and nuclear enthalpy rise hot channel factor limit are cycle-specific parameters. The removal of the cycle-specific parameters from the T/Ss has no influence or impact on the probability or consequences of a previously evaluated accident. The cycle-specific parameter limits, although not in the T/Ss, will be maintained in the [Core Operating Limit Report] COLR and referenced in the Cook Nuclear Plant T/Ss. The proposed amendment still requires the same action be taken if limits are exceeded as is required by current T/Ss. Future reloads will be evaluated using NRC-approved methodologies and will be examined per the requirements of 10 CFR 50.59. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

There is no physical alteration to any plant system, nor is there a change in the method by which any safety related system performs its function. As stated above, the proposed change is administrative in nature. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3

Does the change involve a significant reduction in a margin of safety?

The margin of safety is not affected by the removal of cycle-specific parameter limits from the T/Ss. The proposed amendment still requires operation within the core limits as determined from the NRC-approved reload design methodologies. Appropriate actions will continue to be taken if limits are violated. The development of the limits for future reloads will continue to conform to those methods described in NRC-approved documentation. In addition, each future reload will involve a 10 CFR 50.59 review. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no signfiant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a signficant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John O. Thoma, Acting.

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: February 7, 1990

Description of amendment request: The amendment would modify Technical Specification 4.0.2 in accordance with the guidance in Generic Letter 89-14, "Line Item Improvement in Technical Specifications - Removal of the 3.25 Limit on Extending Surveillance Intervals." Technical Specification 4.0.2 currently permits surveillance intervals to be extended up to 25 percent of the specified interval. However, the Technical Specification limits extending surveillance intervals so that the combined time intervals for any three consecutive surveillances do not exceed 3.25 times the specified intervals. The proposed change would delete the 3.25 extension limitation. The surveillance interval will still be constrained by the 25 percent interval extension criteria of T/S 4.0.2.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

Criterion 1

Deletion of the 3.25 extension limitation will not significantly affect equipment reliability and does not affect the probability or consequences of accidents previously evaluated in the FSAR Update. The surveillance interval will still be constrained by the 25 percent interval extension criteria of T/S 4.0.2. The risk involved with the alternative to perform 18-month surveillances during plant operation is greater than the risk involved with exceeding the 3.25 limit. When plant conditions are not conducive for the safe conduct of surveillances due to safety systems being out-of-service for maintenance or due to other ongoing surveillance activities, safety is enhanced by the use of the allowance that permits a surveillance interval to be extended.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

The proposed revision to the T/S will not result in any physical alteration to any plant system, nor would there be a change in the method by which any safety-related system performs its function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

Deletion of the requirement that any three consecutive surveillance intervals shall not exceed 3.25 times the interval will not significantly affect equipment reliability, rather it will reduce the potential to interrupt normal plant operations due to surveillance scheduling. This proposed exemption will allow all surveillance intervals to be constrained by the maximum allowable extension of 25 percent of the specified surveillance interval, which may enhance safety when used during plant operation.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. Therefore, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John O. Thoma, Acting.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: February 26, 1990

Description of amendment request: This request supplements an earlier application dated November 3, 1989, in which Iowa Electric Light and Power Company (IELP) proposed revisions to the Duane Arnold Energy Center (DAEC) Technical Specifications (TSs), Section 6.0, Administrative Controls. These additional requested revisions are

needed to fully reflect the licensee's planned organizational changes. Specifically, certain department supervisor titles will be changed to reflect their functional responsibilities more precisely, lines of responsibility will be strengthened and clarified, and positions will be eliminated to improve communication channels and management involvement.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

In reviewing this proposed request for additional TS changes, IELP has concluded that:

(1) The proposed changes to the organizational structure will not directly affect the physical design and or operation of the plant, do not conflict with assumptions made in the plant safety analysis, and do not reduce any previous commitments regarding organizational structure, technical support of plant operations or training and experience of personnel. Thus, the proposed changes will not involve a significant increase in the probability or consequence[s] of an accident previously evaluated.

(2) The proposed changes to the organizational structure will not directly affect the physical design and/or operation of the plant or reduce our commitment to providing the necessary level of management control, allocation of resources and technical support for the safe operation of the facility. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from those previously evaluated.

(3) The proposed changes to the organizational structure have been evaluated against the requirements of [NRC Standard Review Plan] Chapter 13.1, 10 CFR Part 50.36, 10 CFR Part 50, Appendix B and [NRC] Generic Letter 88-06 and found to meet these requirements for ensuring adequate management and administrative control over the operation of the facility. Thus, the proposed changes will not significantly reduce the margin of safety previously established.

The staff has reviewed the licensee's evaluation of the proposed changes and agrees with the licensee's conclusions. Therefore, the staff proposes to determine that the requested changes do not involve a significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorneys for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Unit 1, Suffolk County, New York

Date of amendment request: January 5, 1990

Description of amendment request: The proposed amendment would change the Physical Security Plan.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a 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. A discussion of these standards as they relate to the amendment request follow:

(1) Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluate?

The proposed Security Plan change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change allows results in the reclassification of certain portions of the plant currently designated as "Vital Areas" or "Vital Equipment." These changes would also eliminate or modify certain other safeguards commitments that reflect this reclassification. One of the modifications is to reduce security force consistent with the objectives of the revised Security program. Based upon the fact that the proposed change recognizes that the level of protection is still adequate to meet a test of "Radiological Sabotage: as defined in 10 CFR 73.2 (a)."

(2) Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not result in any physical changes to the facility affecting a safety system. Therefore, a new or different kind of accident from any previously evaluated cannot be created. Therefore, the proposed change will not create the possibility of a new or different kind of accident previously evaluated.

(3) Do the proposed changes involve a significant reduction in a margin of safety?

The proposed changes do not involve a reduction in any margin of safety. The plan will continue to save a level of protection that is adequate to meet a test of "Radiological Sabotage: as referred in 10 CFR 73.2 (a)."

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697

Attorney for licensee: W. Taylor Reveley, III, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212

NRC Project Director: Walter R. Butler

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Unit 1, Suffolk County, New York

Date of amendment request: February 20, 1990

Description of amendment request: Proposed amendment makes changes to Administrative Controls section (Section 6) of the Technical Specifications; moves existing procedural details involving radioactive effluent monitoring instrumentation, equipment requirements and control of liquid and gaseous effluents, and radiological monitoring and reporting details from the Technical Specifications to the Offsite Dose Calculation Manual (ODCM); moves the definition of solidification and existing procedural details from the Technical Specifications to the Process Control Program (PCP); adds record retention requirements for changes to the ODCM and PCP, and updates the definitions of the ODCM and PCP consistent with these changes; simplifies reporting requirements and administrative controls for changes to the ODCM and PCP.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if 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; (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.

Operation of the facility in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated, because relocating the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM) or the Process Control Program (PCP) is strictly an administrative change that does not reduce or modify any existing safety requirement or procedure; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated, because no new accident scenario is created and no previously evaluated accident scenario is changed by relocating procedural requirements from one controlled document to another; or

(3) Involve a significant reduction in a margin of safety because no modification of any plant structure, system, component or operating procedure is associated with this administrative change, so all safety margins remain unchanged.

Based on the above discussion of the proposed changes, the staff proposes to determine that the proposed amendment involves a no significant hazards consideration.

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9697

Attorney for licensee: W. Taylor Reveley, III, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212

NRC Project Director: Walter R. Butler

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: December 8, 1989

Description of amendment request: The proposed amendment would revise Technical Specification Section 3.1.1 and associated Bases so that oxygen concentration in the inerted drywell atmosphere would be expressed in percent by volume rather than percent by weight. The current Technical Specification requirement of expressing oxygen concentration on a by weight basis rather than a by volume basis is an error. The proposed amendment would also delete a reference to the startup test program which no longer applies.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a 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 licensee has provided the following analysis:

1. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change to express the required oxygen content in the inerted containment while the reactor is in a power operating condition to volume percent rather than weight percent is correcting an error in the Technical Specification. The original analysis discussed in Reference 1 was based on maintaining oxygen concentration to less than 5 percent by volume and the Technical Specification limit should have been set at 4 percent by volume.

Therefore, the proposed change is administrative in nature and will not create the possibility of a new or different kind of accident from any accident previously evaluated.

2. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is a correction to the Technical Specifications and is an administrative change. It will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed change is administrative in nature and has no impact on a margin of safety. The same margin of safety will be maintained in that the Technical Specification limit will be percent by volume and the analysis demonstrated that percent by volume was acceptable.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Additionally, the licensee proposes to delete in Section 3.3.1a. the following:

"After completion of the startup test program and demonstration of plant electrical output,..."

The startup test program and demonstration of plant electrical output have been completed. As a result the quoted reference no longer applies and its deletion does not change the safety analysis, plant procedures or hardware and accordingly does 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.

Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of amendment request: December 8, 1989

Description of amendment request: The proposed Technical Specification change would revise Section 2.1, Safety Limits, the associated Bases, and Section 3/4 4.l, Recirculation System. This change increases the Safety Limit Minimum Critical Power Ratio (MCPR) to be consistent with that approved by the Commission as applicable to General Electric initial core fuel bundles reused in cycle 2. The new Safety Limit MCPR is also applicable to the GE 8X8NB fuel that will be used in the first reload (cycle 2) at Nine Mile Point Unit 2.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a 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 licensee has provided the following analysis:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change in the Safety Limit MCPR maintains the original design margins for transient events during fuel cycle 2 as for the initial core. The reload fuel design using GE 8X8NB fuel type was reviewed and approved by the NRC staff with a requirement to increase the Safety Limit MCPR so that 99.9 percent of the fuel rods would not be expected to experience transition boiling for any analyzed transient. The increase in the Safety Limit MCPR for GE 8X8NB fuel is consistent with the limit that would be proposed for the initial core fuel bundles that will be reused in cycle 2.

Since the change maintains the margins available in the original analysis, there is no increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes assure that fuel cycle 2 will have the same safety margins as the initial core. In addition the design of the new reload fuel (GE 8X8NB) has been reviewed and approved for use in Boiling Water Reactors by the NRC. Consequently, the use of the new type fuel in cycle 2 does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed revision to the Technical Specifications maintains the original fuel design safety margins for operational excursions resulting from transient events. Since the original margins are conservative and are being maintained, there is no reduction in a margin of safety resulting from the use of GE 8X8NB type fuel.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark Wetterhahn, Esq., Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Oswego County, New York

Date of amendment request: January 8, 1990

Description of amendment request: The proposed amendment would revise Technical Specifications, Section 6.2.2f., Unit Staff, and Table 6.2.2-1, Minimum Shift Crew Composition. The proposed amendment would allow a Licensed Senior Operator Limited to Fuel Handling to supervise fuel handling activities. In addition, the amendment would allow the fuel handling equipment to be manipulated by qualified non-licensed personnel. The current requirements of Nine Mile Point Unit 2 Technical Specifications on Administrative Controls are more restrictive than the Standard Technical Specifications or Technical Specifications of operating Boiling Water Reactors with similar fuel handling equipment. The proposed amendment would correct this discrepancy. Additionally, a typographical error in note (b) on Table 6.2.2-1 would be corrected by this amendment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a 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 licensee has provided the following analysis:

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

USAR Sections 15.4.7 (Misplaced Bundle Accident), 15.7.4 (Fuel Handling Accident), and 15.7.5 (Spent Fuel Cask Drop Accident) provide the probability, identification of causes, and consequences for accidents which can be caused by improper operation of fuel handling equipment. The proposed change does not affect the potential causes and sequence of events postulated in the USAR. Therefore, even though the fuel handling equipment will be operated by non-licensed operators, the probability of occurrence of anyone of these three accidents is not increased since only skilled technicians, trained on operation of Nine Mile Point Unit 2 equipment, will be allowed to operate the fuel handling equipment. The skills necessary for the safe handling of fuel are not unique to Licensed Senior Operators. Administrative Controls will be in place to ensure that equipment operators involved in the movement of fuel have the requisite skills and training for handling of fuel. The presence of a Licensed Senior Operator and monitoring by a member of the reactor analyst group will minimize the potential for misplaced bundles and the dropping of fuel bundles and/or a spent fuel cask.

Licensed Senior Operators Limited to Fuel Handling are licensed in accordance with 10CFR55 and possess the training and skills necessary to oversee fuel handling and core operations. In summary, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the design bases, capabilities, or reliability of any of the fuel handling components. The safety features which are already incorporated in the design of the equipment combined with training and supervision by qualified and licensed personnel will assure correct equipment operation and fuel movements. In summary, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed change will not cause any change in the Technical Specification Section 3/4.9 operational limits nor will it cause any performance criteria to be changed or exceeded. The proposed change is consistent with operational procedures approved at BWRs similar in design and equipment to Nine Mile Point Unit 2. Therefore, the proposed change does not result in a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis.

Additionally, the correction of a typographical error which deletes the extraneous word "to" in paragraph (b) on page 6-6 does not change the safety analyses, plant procedures or hardware and accordingly does 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.

Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Project Director: Robert A. Capra

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: February 28, 1990 (Reference LAR 90-03)

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 by adding TS 3/4.7.1.6 and the associated Bases to assure operability of the steam generator (SG) 10 percent atmospheric dump valves (ADVs) for mitigation of a steam generator tube rupture (SGTR) accident. The proposed limiting condition for operation would require all four SG ADVs to be operable in Modes 1, 2, and 3. Proposed action statements would limit plant operation to 7 days with one ADV inoperable and 72 hours with two ADVs inoperable. Proposed surveillance requirements would verify that backup air supply for the valves is available, that the SG ADV block valves are open, and that the SG ADVs are capable of being opened and closed using remote manual controls and backup air bottles. Design changes associated with the TS change include addition of an independent vital control power source for the backup air bottle controls for each valve, and the addition of manual selection capability for the backup air supplies. The design changes and the proposed TS would be implemented during the fourth refueling outage for each unit (February 1991 for Unit 1 and September 1991 for Unit 2).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment will not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its submittal of December 20, 1989, evaluated the proposed change against the significant hazards criteria of 10 CFR 50.92 and against the Commission guidance concerning application of this standard. Based on the evaluation given below, the licensee has concluded that the proposed change does not involve a significant hazards consideration. The licensee's evaluation is as follows:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change creates additional limitations and controls not presently included in the technical specifications to assure that the SG ADVs are operable for mitigation of an SGTR event. Design changes associated with the revised TS enhance the reliability of the backup air supply for the SG ADVs.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change will be adding additional technical specification requirements for existing components. No new mode of operation is introduced by this change, nor is there a change in the method by which any safety related system performs its function. The design changes associated with the revised TS are enhancements that increase the reliability of the SG ADVs.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed change will add technical specification restrictions to existing equipment to ensure equipment operability for mitigation of an SGTR event. The design changes associated with the revised TS are enhancements that increase the reliability of the SG ADVs. The proposed technical specification requirements and design changes do not alter the margins of safety established in previous accident and transient analysis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the proposed changes and the licensee's no significant hazards consideration determination and finds them acceptable. Therefore, the staff proposes to determine that these changes do not involve significant hazards consideration.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for licensee: Richard R. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: Charles M. Trammell, Acting

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: February 23, 1990

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to remove cycle specific parameter limits in accordance with NRC Generic Letter (GL) 88-16, "Removal of Cycle Specific Parameter Limits from Technical Specifications" issued October 4, 1988. The proposed changes would replace the values of cycle-specific parameter limits with a reference to the Core Operating Limits Report, which contains the values of those limits. In addition, the Core Operating Limits Report has been included in the Definitions Section of the TSs to note that it is the unit-specific document that provides these limits for the current operating reload cycle. Furthermore, the definition notes that the values of these cycle-specific parameter limits are to be determined in accordance with the Specification 6.9.1. This Specification requires that the Core Operating Limits be determined for each reload cycle in accordance with the referenced NRC-approved methodology for these limits and consistent with the applicable limits of the safety analysis. Finally, this report and any mid-cycle revisions shall be provided to the NRC upon issuance. Generic Letter 88-16, dated October 4, 1988, from the NRC provided guidance to licensees on requests for removal of the values of cycle-specific parameter limits from TS. The licensee's proposed amendment is in response to this Generic Letter.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if 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 proposed revision to the TSs is in accordance with the guidance provided in Generic Letter 88-16 for licensees requesting removal of the values of cycle-specific parameter limits from TS. The establishment of these limits in accordance to an NRC-approved methodology and the incorporation of these limits into the Core Operating Limits Report will ensure that proper steps have been taken to establish the values of these limits. Furthermore, the submittal of the Core Operating Limits Report will allow the staff to continue to trend the values of these limits without the need for prior staff approval of these limits and without introduction of an unreviewed safety question. The revised specifications with the removal of the values of cycle-specific parameter limits and the addition of the referenced report for these limits does not create the possibility of a new or different kind of accident for those previously evaluated. They also do not involve a significant reduction in the margin of safety since the change does not alter the methods used to establish these limits.

Consequently, the proposed change on the removal of the values of cycle-specific limits do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Because the values of cycle-specific parameter limits will continue to be determined in accordance with an NRC-approved methodology and consistent with the applicable limits of the safety analysis, these changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

The proposed amendment does not alter the requirement that the plant be operated within the limits for cycle-specific parameters nor the required remedial actions that must be taken when these limits are not met. While it is recognized that such requirements are essential to plant safety, the values of limits can be determined in accordance with NRC-approved methods without affecting nuclear safety. With the removal of the values of these limits from the Technical Specifications, they have been incorporated into the Core Operating Limits Report that is submitted to the Commission. Hence, appropriate measures exist to control the values of these limits. These changes are administrative in nature and do not impact the operation of the facility in a manner that involves significant hazards considerations.

Based on the preceding assessment, the staff proposes to determine that proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: February 12, 1990

Description of amendment request: The licensee has provided in part, the following description.

Using the guidance provided in Generic Letter 89-14, the licensee proposes a change to the Indian Point 3 (IP3) Technical Specifications surveillance intervals. The proposed change would remove the statement which limits the allowable extension for three (3) consecutive surveillance intervals to 3.25 times the specified surveillance interval. This change to the Technical Specifications removes unnecessary restrictions on extending surveillance requirements and can result in a benefit to safety when plant conditions are not conducive to the safe conduct of surveillance requirements. The Bases in Section 4.1 of the Technical Specifications have been revised to include the basis of Definition 1.12.

This submittal also proposes to remove the statement in Definition 1.12 which excludes shift and daily surveillances from the 25 percent allowance to extend surveillance intervals. Removal of this statement would make Definition 1.12 of the IP3 Technical Specifications consistent with Specification 4.0.2 of the Westinghouse Standard Technical Specifications (W STS) and would allow the extension of shift and daily surveillances in cases when plant conditions are not conductive to the safe conduct of surveillance requirements.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a 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 licensee has provided the following evaluation:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to the Technical Specifications allow greater flexibility in the performance of surveillance tests/inspections. This flexibility can allow a surveillance to be performed when the plant is in a condition which is conducive to the safe performance of the surveillance. The technical specification changes reduce the need to shut down the plant in order to perform a surveillance. The 25 percent limit described in Definition 1.12 will remain in place to ensure the timely performance of surveillance tests/inspections. Therefore, the proposed changes do not involve an increase in the probability of consequences of a previously-analyzed accident.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed technical specification changes do not require any physical plant modifications, or any alteration to the method of plant operation. Surveillance tests/inspections will be performed at the frequency currently specified in the IP3 Technical Specifications with a 25 percent limit on extending the surveillance interval. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The 25 percent limit described in Definition 1.12 is restrictive enough to ensure timely performance of required surveillances without being overly restrictive in cases when plant conditions are not suitable for performance of the surveillance. Therefore, removal of the 3.25 limit and removal of the statement which excludes shift and daily surveillances from the 25 percent allowance will not significantly reduce a margin of safety.

Based on the above, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: January 16, 1990

Description of amendment request: The proposed amendment would revise the surveillance requirements concerning primary containment leak rate testing to reflect current regulations contained in Appendix J to 10 CFR Part 50, eliminate unnecessary and redundant specifications, and make the technical specifications (TS) consistent with the FSAR analysis. Specifically, the proposed changes affect TS 4.7.A.2 on pages 166 through 175 and the associated Bases on pages 193 and 194.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a 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 licensee has evaluated the proposed amendment against the standards provided above and has supplied the following information.

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as stated in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed specifications do not involve changes to plant equipment or the plant's ability to prevent or mitigate accidents. The changes are administrative in nature, since all of the requirements being removed from the Technical Specifications will continue to be in effect by their presence in 10 CFR 50 Appendix J. The proposed changes remove the redundancy of having multiple sources of identical test requirements. The overall purpose of the specifications under revision is to assure that the containment system is tested on a routine basis to verify and assure its leak tight integrity. No change is being made which can affect this purpose. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes concern the surveillance test requirements for the plant containment systems. This testing program cannot initiate any type of accident. The containment testing program is designed to assure that the assumptions of the Final Safety Analysis Report (FSAR) accident analysis with regard to containment performance are met.

3. Involve a significant reduction in a margin of safety. The proposed changes are purely administrative in nature and remove unnecessary redundancy between the Technical Specifications and the requirements of 10 CFR 50 Appendix J. Referencing Appendix J directly allows implementation of changes to the regulations without either having to amend the Technical Specifications or having to comply with multiple requirements. The only change to the containment testing program concerns the scheduling of Type A, B and C leakage rate tests. These changes allow for increased flexibility in the scheduling of the tests. No change is made to the testing program which can affect any margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: February 14, 1990 (TS 90-06)

Description of amendment requests: The Tennessee Valley Authority (TVA) proposed to modify Section 3/4.7.11, Fire Suppression Systems, of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, Technical Specifications (TSs). The proposed changes are to revise Table 3.7-5 in TS 3/4.7.11.4 for each unit by adding Fire Hose Rack 0-26-2337, in the diesel generator building, to the table. Additionally, a typographical error in Surveillance Requirement 4.7.11.4 for Unit 1 is being changed to correctly reference Table 3.7-5.

Basis for proposed no significant hazards consideration determination: The follow information was provided by TVA in its submittal to support the proposed change to the TSs:

In TVA's SQN fire protection program reevaluation, which was transmitted to NRC on January 24, 1977, TVA indicated that a single impairment in the fire protection system or direct support system would not impair both primary and backup fire protection capability. As identified in a November 17, 1987, letter to NRC, both the automatic sprinkler system for the corridor and the corridor fire hose station in the diesel generator building were supplied by a single and common line from the fire protection yard water main. Also, both systems were controlled by a common post indicator valve. To correct this deficiency, TVA has installed a second supply line to the diesel generator building and an independent fire hose station on Elevation 722. The fire hose station, Hose Rack 0-26-2337, is being added to the appropriate portion of the TSs.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

TVA has evaluated the proposed TS change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed addition of Fire Hose Rack 0-26-2337 is a conservative change to the SQN TSs. The installation of the second supply line to the diesel generator building and an independent fire hose station [in the diesel generator building] provides redundancy for the fire protection capabilities at the diesel generator building. The correction of the typographical error is an administrative change and has no effect on hardware. The changes therefore do not significantly increase the probability or consequences of a previously evaluated accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed addition of Fire Hose Rack 0-26-2337 is an appropriate change to the SQN TSs. The modifications, which are a net safety enhancement to SQN and meet the guidelines of [NRC] Branch Technical Position CMEB 9.5-1, "Guidelines for Fire Protection for Nuclear Power plants," are completed. The addition to the TSs meets TVA's criteria of TS inclusion for fire protection systems that protect equipment required for safe shutdown. The correction of the typographical error is an administrative change and has no effect on hardware. The changes therefore do not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in a margin of safety.

The proposed addition of Fire Hose Rack 0-26-2337 reflects the installation of a second supply line to the diesel generator building

and an independent fire hose station [in the diesel generator building]. These modifications provide redundancy for the fire protection capabilities at the diesel generator building and are therefore a net safety improvement. The correction of the typographical error is an administrative change and has no effect [on] hardware. The change therefore does not significantly reduce margins of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. The additional supply line and fire hose rack increase TVA's capability to fight a fire in the diesel generator building. This equipment does not initiate accidents in the nuclear plant. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: February 28, 1990

Description of amendment request: The proposed amendment would add hafnium as an optional absorber material in the control blades. This would allow the control blades in the reactor to contain either B_4C powder or hafnium, or a combination of the two, as a control material.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

(1) The proposed change will not involve any significant increase in the probability or consequences of an accident because the substitution of hafnium for the B_4C powder does not significantly alter the neutronic, mechanical, or other functional characteristics of a control blade. Utilization of hafnium significantly increases the useful life of control blades. This will actually reduce the probability and/or consequences of some accidents involving the handling, on-site storage, and shipping of irradiated blades and blade parts.

(2) The proposed change will not create the possibility of a new or different kind of accident because the substitution of other materials for the B_4C powder does not significantly alter the neutronic, mechanical, or other functional characteristics of a control blade. The facility is not being altered, only the restriction that all control material in the control blades must be B_4C powder.

(3) The proposed change will not involve a significant reduction in safety margin because the substitution of hafnium for the B_4C powder does not significantly alter the neutronic, mechanical, or other functional characteristics of a control blade. The margin of safety provided by all the LCOs defined above remains unchanged.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposed to make a no significant hazards consideration determination.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: R. K. Gad, III, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110

NRC Project Director: Richard H. Wessman

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: March 2, 1990

Description of amendment request: The proposed amendment would delete Figure 6.1.1, "Offsite Support Organization," and Figure 6.1.2, "Plant Operating Organization," from the Technical Specifications.

Basis for proposed no signficant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the three standards, the licensee provided the following analysis.

This Technical Specification proposed change is considered an administrative change and does not involve significant hazards considerations, as stated below.

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts, and position titles from the Technical Specifications does not affect plant operation. As in the past, the NRC will continue to be informed of organizational changes through other controls.

Appendix B to 10 CFR Part 50 and 10 CFR 50.54(a)(3) govern changes to the Quality Assurance Program, including organizational changes. Some of these organizational changes may require prior NRC approval. Also, it is Vermont Yankee's practice to inform the NRC of organizational changes affecting the nuclear facilities prior to implementation.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident than previously evaluated because the proposed change is administrative in nature, and no physical alterations of plant configuration or changes to setpoints or operating parameters are proposed.

3) Involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in a margin of safety because Vermont Yankee, through its Quality Assurance Program, is committed to maintaining the qualified personnel in positions of responsibility. Therefore, removal of the organization charts from the Technical Specifications will not affect the margin of safety.

Based on the above, we have concluded that this change does not constitute a significant hazards consideration, as defined in 50.92(c), since this change is administrative in nature. This change is in full compliance with current federal regulations.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the amendment satisfies the three criteria listed in 10 CFR 50.92. Based on that conclusion the staff proposed to make a no significant hazards consideration determination.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: R. K. Gad, III, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110

NRC Project Director: Richard H. Wessman

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: December 29, 1989

Description of amendment requests: The proposed change would modify the Emergency Power System Periodic Testing Section of the Technical Specifications (TS) by adding a requirement to perform testing which demonstrates that proper load shedding and load sequencing onto the emergency diesel generators (EDGs) is initiated following a simulated loss-of-offsite power (LOOP) event, subsequent to a simulated engineered safety features (ESF) signal. For the current TS, it was assumed that the design basis nuclear accident would be the worst-case loading condition for the EDGs. Therefore, a consequence limiting safeguards hi-hi signal with a simultaneous LOOP was used as the design basis for the EDGs. Recent analysis has shown, however, that the Surry Power Station was subject to the loss of both EDGs in the accident unit due to a single event if the LOOP occurs subsequent to a LOCA. Under this circumstance, both EDGs could be lost because the potential to overload them simultaneously by exceeding the maximum EDG load limits was created. Based on this analysis, load sequencing modifications were performed on the logic schemes for the emergency buses so that loads were made to shed and restart sequentially when a LOOP occurs. To ensure operability of the load sequencing modifications, the requirement to test the system is now being proposed as an amendment to TS 4.6.A.1.b of the Surry TS.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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 licensee provided the following evaluation:

Significant Hazards Consideration

Virginia Electric and Power Company has performed a 10 CFR 50.92 evaluation to examine the impact of the addition of an EDG load sequencing scheme during a transient which has a subsequent LOOP. This modification has improved the ability of the emergency diesel generator to provide the necessary power following a LOOP by sequencing the loads onto the emergency buses in acceptable loading blocks. Previously there was no EDG load sequencing for a LOOP condition occurring after the transient began. The Technical Specification change adds the appropriate refueling surveillance requirements to determine operability. The results of the evaluation are:

a) The implementation of this modification does not significantly increase the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety and previously evaluated in the Final Safety Analysis.

The addition of an emergency diesel generator load sequencing scheme to each unit, which interfaces with safety-related equipment and safety-related systems, was installed while each unit (1 and 2) was in cold shutdown or refueling mode. The design change modified the operation of the auxiliary feedwater pumps, recirculating spray pumps (inside and outside), emergency bus pressurizer heaters, and the filter exhaust fans. It provides sequencing of these loads onto the EDGs to ensure that the maximum EDG load capabilities will not be exceeded under the worst case load applications, and ensure the availability of the systems necessary to mitigate the consequences of a design basis event. With the most limiting restart equipment delays, the results of the applicable accident analyses will still meet their acceptance criteria.

The probability of an accident occurrence is not increased by this modification. Providing EDG load sequencing to address a subsequent LOOP during a [design basis accident] event does not increase the probability of either event. Likewise, the consequences of this accident are not increased by the modification. In fact, the change addresses an accident scenario not previously identified and thereby limits accident consequences to within existing assumptions used in the accident analysis. As identified previously, offsite dose consequences remain unchanged.

b) The implementation of this modification does not create a possibility for an accident or a malfunction of a different type than any evaluated previously in the Final Safety Analysis Report.

This design change does not produce any new accident precursors nor the possibility for a malfunction of a different type than those previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The operation of safety-related equipment or systems, or the availability of safety-related power sources, are not adversely affected. This modification ensures the ability of the emergency diesel generators to provide the necessary power following a LOOP subsequent to a design basis accident, by sequencing the loads onto the emergency buses in acceptable loading blocks. Performing the refueling surveillance establishes operability.

c) The implementation of this modification does not reduce the margin of safety as defined in the [bases] for any Technical Specification.

The addition of an emergency diesel generator load sequencing scheme ensures the availability of the EDGs to mitigate the consequences of a LOOP subsequent to a design basis event. As such, the modification ensures that the containment design assumptions are maintained (i.e., 45 psig peak pressure and containment depressurization to subatmospheric within 3600 seconds). Therefore, no margin of safety or Technical Specification [bases] is reduced by this modification. The results of the design basis accident analyses are not impacted. Therefore, there are no significant reductions in safety margins.

Based on the staff's review of the licensee's evaluation, the staff agrees with the licensee's conclusions as stated above. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment requests: February 1, 1990

Description of amendment requests: The proposed changes would revise the Surry Power Station, Units No. 1 and No. 2 (SPS-1&2) Technical Specifications (TS). The changes would replace the Independent/Operational Event Review Group (IOERG) with a Management Safety Review Committee (MSRC) as the organization responsible for the offsite review function. In addition, the audits required by the TS that were the responsibility of the Quality Assurance Department (QAD) would now be performed under the cognizance of the MSRC. The changes would put the licensee's review and audit process in line with Standard Technical Specifications (STS); remove the responsibility for the overall review of station activities from staff personnel; and increase the licensee's senior management's involvement in the

review and assessment of the nuclear plant activities. Also, the IOERG would not be dissolved and will be utilized by the MSRC to perform reviews and assessments of plant activities.

The proposed TS changes would eliminate Sections 6.1.C.2 - Independent Operational Event Review Group, and 6.1.C.3 - Quality Assurance Audits in the present SPS-1&2 TS. These sections would be replaced with the appropriate STS requirements for the offsite safety review and audit function (i.e., STS Section 6.5.2 - Company Nuclear Review and Audit Group). The following differences exist between the present SPS-1&2 TS and the proposed SPS-1&2 TS. The offsite review function would be the responsibility of the MSRC. The majority of the reviews would be performed by a subcommittee of qualified staff specialists and the results reported to the committee. Section 6.1.C.2.a, Function - The list of areas and activities to be reviewed by the MSRC would be updated to more closely parallel plant and engineering activities. Section 6.1.C.2.g, Reviews - The existing TS contain a requirement for the IOER staff to review the quality assurance (QA) audit program once per 12 months. This requirement was incorporated into the present TS because the QA Department is responsible for the TS-required audits, and this requirement provided the necessary interface for the two groups. These same TS-required audits would now be performed under the cognizance of the MSRC which will provide the required interface with the group performing the audit (the QA Department). Section 6.1.C.2.h, Quality Assurance Department - The Quality Assurance Department is currently responsible for the TS-required audits. In the proposed TS change the MSRC is required to have the audits performed under their cognizance. The MSRC will have an input to the audit schedule, the program attributes and activities audited. These audits will normally be performed by the Quality Assurance Department and the results reported to MSRC. However, three audits in the existing TS are not included in the STS list of required audits. These three audits are (1) the radiological environmental monitoring program, (2) the offsite dose calculation manual, and (3) the process control program and radwaste procedures. These audits would remain in the SPS-1&2 TS to meet previous commitments by the licensee to the NRC. Section 6.1.C.2.j 1, Records - The requirement to prepare, approve, and forward MSRC minutes to the Senior Vice President - Nuclear within 14 days of each meeting would be revised to require the minutes to be prepared, approved and forwarded to the Senior Vice President - Nuclear prior to the next regularly scheduled meeting. Safety significant findings are reported to the Senior Vice President - Nuclear within 14 days as required by Section 6.1.C.2.j.2. Finally, in order to clarify that the Vice-Chairman can act as a voting member when the Chairman is presiding over a Station Nuclear Safety Oversight Committee (SNSOC) meeting, Section 6.1.C.1.b, Composition of SNSOC, would be modified to include the Vice-Chairman as a member.

In addition to the above, the proposed TS change deletes or modifies titles, as necessary, to reflect a recent reorganization, in which certain responsibilities have changed. The changes are as follows: The title for the Senior Vice President - Power has changed to Senior Vice President - Nuclear. This change is in Sections 6.1 and 6.2. The title for the Vice President - Nuclear has changed to Vice President - Nuclear Operations. This change is throughout Sections 6.1, 6.2 and 6.3. The Superintendent - Technical Services position had been eliminated. These functions have been charged to the Superintendent of Maintenance and Superintendent of Engineering. Therefore, that position is being eliminated from the membership of SNSOC (Section 6.1.C.1.b). The title for the Superintendent - Health Physics has changed to Superintendent - Radiological Protection (Section 6.1.C.1.b). The Safety Evaluation and Control Staff (SEC) has been eliminated. Therefore the SEC has been eliminated in Section 6.1.B.3 and replaced with the operating experience program. Training is now the functional responsibility of the Manager - Nuclear Training and would be changed to reflect that in Section 6.1.B.3.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if 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.

Virginia Electric and Power Company has reviewed the proposed changes against the criteria of 10 CFR 50.92 and has concluded that the changes as proposed do not pose a significant hazards consideration. Specifically, the proposed Technical Specifications change[s] only [replace] the offsite staff review with a management review committee bringing the Surry Technical Specification[s] in line with the Standard Technical Specifications. Thus, operation of the Surry Power Station in accordance with the proposed changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of any accident or malfunction of equipment which is important to safety and which has been evaluated in the [Updated Final Safety Analysis Report]. This modification is of an organizational nature and has no impact on plant design or operation. No plant equipment or operation procedures are being modified.

2. Create the possibility of a new or different type of accident from those previously evaluated in the safety analysis report. The organizational and plant activities review changes have no impact on plant design or operation and in no way impact the accidents previously analyzed in the safety analysis report. Therefore, no new or different kind of accident is created.

3. Involve a significant reduction in the margin of safety. No physical plant modifications, changes in plant operations, or changes in accident analysis assumptions are being made. Therefore, the accident analysis assumptions remain bounding and safety margins remain unchanged.

Based on the staff's review of the licensee's evaluation, the staff agrees with the licensee's conclusions as stated above. Therefore, the staff proposes to determine that the proposed amendments do not involve significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington

Date of amendment request: February 5, 1990

Description of amendment request: The proposed amendment would revise Technical Specification Section 3/4.8.1.1, "A.C. Sources," by revising surveillance requirements applicable to the emergency diesel generators. Specifically, Table 4.8.1.1.2-1, "Diesel Generator Test Schedule," which sets forth the frequency for performing the surveillances for each diesel generator as specified in surveillance requirement

4.8.1.1.2, would be revised. Under the revision, a diesel would be tested once per 7 days if it failed 2 or more times in the last 20 valid tests or 5 or more times in the last 100 valid tests. Otherwise, a diesel would be tested once every 31 days. A footnote is added to the table to show that once a 7 day testing frequency is required, it shall be maintained until 7 consecutive failure free valid tests have been performed and the number of failures in the last 20 demands has been reduced to one.

The footnote on Table 4.8.1.1.2-1 is revised to declare that the failure rate which determines the testing frequency is the rate for each diesel instead of the rate for the nuclear unit. Also, surveillance requirement 4.8.1.1.1.3, "Reports," would be revised to show that the factor triggering reporting requirements would be the failure rate for each diesel generator rather than the failure rate for the nuclear unit.

Basis for Proposed No Significant Hazards Consideration Determination: On July 2, 1984, the NRC issued Generic Letter 84-15 (Proposed Staff Action to Improve and Maintain Diesel Generator Reliability). This Generic Letter presented the conclusion that the frequency of diesel generator start surveillance tests should be reduced to prevent premature diesel engine degradation, and encouraged licensees to submit changes to their Technical Specifications to accomplish a reduction in the number of DG surveillance tests. The staff provided an example surveillance testing frequency in proposed Table 4.8.1 - Diesel Generator Test Schedule, attached to the Generic Letter. The Supply System has stated that they are requesting the diesel generator (DG) test schedule of Table 4.8.1.1.2-1 be revised consistent with that recommended in Generic Letter (GL) 84-15.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety

The Supply System has evaluated this amendment request per 10 CFR 50.92 and determined that it does not represent an unreviewed safety question or a significant hazard because it does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The DGs are not assumed to be involved in the initiation of any accident previously analyzed. The requirements for DG operability, their mode of operation and design, remain unchanged by this amendment request such that the assumptions made in accident analyses for the DG response are maintained. Therefore this change, which affects only the frequency of routine testing of the DGs, can not involve an increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the DGs design, intended function and mode of operation remain unchanged, this request cannot create the possibility of a new and different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The NRC concluded in GL 84-15 that excessive testing results in degradation of DGs. Any potential adverse affect of reduced testing at a time when a DG failure may occur is judged to be offset by the improvement in reliability gained from reduced testing, and consistent with the GL 84-15 recommendation conclusions, these changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and based on that review it appears that the three criteria are satisfied. Therefore the staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Attorneys for licensees: Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

NRC Project Director: Charles M. Trammell, Acting

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: February 19, 1990

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) 3.3.d.2, 3.3.e.2 and the applicable basis section to eliminate the action statements requiring cold shutdown following a long-term loss of one train of the Component Cooling Water (CCW) or Service Water (SW) systems. The action statements would be replaced with new action statements stating: "Achieve and maintain the reactor coolant system T_{avg} less than 350° F by use of alternate heat removal methods within an additional 36 hours." This change would prevent having to place the plant in a mode requiring the maximum support of the Auxiliary Cooling systems.

The proposed amendment would also eliminate possible conflicting requirements of the TS in the Reactor Coolant System (RCS) leak testing and weld examination requirements. Currently, these requirements are provided in redundant specifications which conflict on some of the specific requirements. To eliminate the possible conflict, TS 4.3 would be removed.

Also included in the proposed amendment are miscellaneous revisions that would clarify existing specifications and increase the consistency within the TS (TS 1.1, 3.2, 3.5, 4.2, 4.4, and 4.5).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has addressed these standards as provided in the following discussion.

(1) The amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated, since:

The proposed change of TS 3.3 would not decrease the reliability or availability of the CCW or SW systems. Rather, the change is a precautionary measure that will reduce the likelihood of losing all auxiliary cooling when reactor coolant system (RCS) temperatures are less than 350° F.

The proposed change to delete TS 4.3 will still require implementation of an in-service inspection program endorsed by the NRC in 10 CFR 50.55a and in the NRC's standard technical specifications for Westinghouse plants.

(2) The amendment would not create the possibility of a new or different kind

of accident from any accident previously evaluated, since:

The proposed change of TS 3.3 would not allow the plant to operate outside of its design basis. Rather, the Limiting Conditions for Operation action statements are revised to ensure that redundant means of heat removal are available prior to achieving cold shutdown.

The proposed change to delete TS 4.3 would not involve a change in the assumptions specified in the Updated Safety Analysis Report.

(3) The amendment would not involve a significant reduction in a margin of safety, since:

The proposed change of TS 3.3 allows the plant to remain in a condition where diverse methods of decay heat removal are available while reducing the stored energy in the RCS.

The proposed change in deleting TS 4.3 incurs minor changes in leak testing requirements as specified. However, the changes are consistent with Section XI of the 1980-81 ASME boiler and pressure vessel code.

The amendment includes other miscellaneous proposed revisions which involve no safety implications.

Based on the previous discussions, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; does not create the possibility of a new or different kind of accident from any accident previously evaluated; and does not involve a reduction in the required margin of safety.

The Commission's staff has reviewed the licensee's submittal and agrees with the licensee's conclusions for the three standards. Accordingly, the Commission has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P.O. Box 2193, Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

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 and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

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 amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of application for amendments: March 20, and September 25, 1989

Description of amendments: The amendments change the TS to incorporate minor administrative and editorial changes in six general areas. The changes include the following:

1. The wording of TS 4.2.2.2.f.3 is clarified to more accurately and correctly define the grid plane regions of the core where Fxy limits are not applicable.

2. Figure 3.3-1, Time Delay Curves, is deleted to correct an error (curves not used) and Table 3.3-4 is revised to delete the footnote reference to Figure 3.3-1.

3. A typographical error is corrected in Table 3.3-3 for spelling of automatic.

4. Table 4.3-4 is changed to correct the locations of seismic instrumentation and to correct two typographical errors in the Table.

5. The addressee for reporting information to the NRC per 10 CFR 50.4 is revised in TS 3.11.4, 6.9.1, 6.9.1.10, 6.9.1.11, and 6.9.2 as editorial changes.

6. TS 3.6.4.1. Action a. is modified to add an alternate hydrogen sampling capability when one hydrogen analyzer is inoperable. A proposed change to add a statement that the provisions of TS 3.0.4 are not applicable was not made with licensee agreement.

Date of issuance: March 7, 1990

Effective date: March 7, 1990

Amendment Nos.: 82 and 74

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 12, 1989 (54 FR 29398). The September 25, 1989 letter provided clarifying information that did not change the initial determination from a no significant hazards consideration as published in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, P.O. Box 1369, Dothan, Alabama 36302

Baltimore Gas and Electric Company, Docket No. 50-317, Calvert Cliffs Nuclear Power Plant, Unit No. 1 , Calvert County, Maryland

Date of application for amendment: December 20, 1989, as supplemented on January 23, 1990 and February 2 and 14, 1990.

Brief description of amendment: This amendment modifies the Unit 1 Technical Specifications to ensure adequate low temperature overpressure (LTOP) protection. The changes require the operable high pressure safety injection (HPSI) pump not to receive an automatic start signal when LTOP protection is required and the unit's safety injection tanks (SITS) to remain operable throughout mode 3, hot standby, operation.

Date of issuance: March 6, 1990

Effective date: March 6, 1990

Amendment No.: 140

Facility Operating License No. DPR-53. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 8, 1990 (55 FR 673). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: May 26, 1989

Brief description of amendment: The amendment revises Technical Specification 3.3 and its associated Bases to provide additional operational flexibility by decreasing the refueling water storage tank low level alarm setpoint and by increasing the minimum required concentration of sodium hydroxide in the spray additive tank.

Date of issuance: February 16, 1990

Effective date: February 16, 1990

Amendment No.: 147

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 28, 1989 (54 FR 27226). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Dockets Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: November 7, 1988, as supplemented December 1, 1988, and May 19, 1989

Brief description of amendments: The amendments revise the requirements for inoperable containment hydrogen monitors for consistency with Technical Specification 3.6.4.1.

Date of issuance: February 20, 1990

Effective date: February 20, 1990

Amendment Nos.: 27, 8

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 26, 1989 (54 FR 31107). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 20, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Illinois Power Company, Docket No. 50-461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: May 18, 1988

Description of amendment request: The proposed change will revise the action required if one or more of the Drywell/Containment Hydrogen and Oxygen Concentration Analyses/ Monitors are inoperable.

Date of issuance: February 8, 1990

Effective date: February 8, 1990

Amendment No.: 31

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 14, 1988 (53 FR 50329). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 8, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 20, 1989 as supplemented June 6, 1989

Brief description of amendment: The amendment changed the Technical Specification (TS) by deleting Figure 6.1-1, NPPD Nuclear Power Group Organization Chart and Figure 6.1-2, NPPD Cooper Nuclear Station Organization Chart, and replaced them with a narrative description of the offsite and onsite organizations functional requirements in TS 6.1.2 and unit staff qualifications in 6.1.4.

Date of issuance: February 27, 1990

Effective date: February 27, 1990

Amendment No.: 131

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 17, 1989 (54 FR 21309) and January 24, 1990 (55 FR 2436). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 27, 1990.

No siginificant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: October 20, 1989

Brief description of amendment: The amendment modifies Technical Specification (TS) Table 4.4-5, "Reactor Vessel Material Surveillance Program - Withdrawal Schedule" to provide a revised in-vessel material capsule withdrawal program and revised capsule lead factors.

Date of issuance: March 6, 1990

Effective date: March 6, 1990

Amendment No.: 48

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 1990 (55 FR 2439). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: November 2 and December 1, 1989

Brief description of amendment: The amendment modifies Technical Specification (TS) 3.6.4.1, "Hydrogen Monitors," and TS 3.3.3.6, "Accident Monitoring Instrumentation," to eliminate inconsistencies concerning Limiting Conditions for Operations (LCOs) associated with hydrogen monitors. The amendment also modifies TS 4.6.4.2b.4, "Electric Hydrogen Recombiners," to provide variable acceptance criteria for flow testing.

Date of issuance: March 2, 1990

Effective date: March 2, 1990

Amendment No.: 47

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 1990 (55 FR 2440 and 55 FR 2441). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: May 15, July 3, September 15, and November 30, 1989 (Reference LAR 89-06).

Brief description of amendments: The amendments revised the Technical Specifications to allow the removal of the Boron Injection Tank (BIT) from each unit.

Date of issuance: February 26, 1990

Effective date: February 26, 1990

Amendment Nos.: 51 and 50

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 1990 (55 FR 2441). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 20, 1989, as supplemented by letter dated January 30, 1990 (Reference LAR 89-15).

Brief description of amendments: The amendments revised the Technical Specifications to increase the alarm/trip setpoint of the spent fuel pool (SFP) storage area radiation monitor (RM-58). Specifically, the amendments revise TS Table 3.3-6, "Radiation Monitoring Instrumentation for Plant Operations," to increase the alarm/trip setpoint of RM-58 from 15 to 75 mR/hr.

Date of issuance: February 26, 1990

Effective date: February 26, 1990

Amendment Nos.: 50 and 49

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 1990 (55 FR 2442). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: October 13, 1987; clarified March 31, 1989

Brief description of amendment: The amendment eliminates the requirement to manually scram the reactor from a control rod configuration of less than or equal to 50 percent rod density once per operating cycle.

Date of issuance: February 15, 1990

Effective date: February 15, 1990

Amendment No.: 152

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** April 19, 1989 (54 FR 15834). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 15, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: January 17, 1989 and amplified October 25, 1989

Brief description of amendment: The amendment establishes controls for the valves in the Standby Gas Treatment System (SGTS) which are used for inerting and deinerting the primary containment, establishes a surveillance requirement so that the integrity and operability of the SGTS is assured if a design basis loss of coolant accident should occur while inerting or deinerting the primary containment, specifies the actions required when a containment isolation valve becomes inoperable, restricts the maximum opening angle at the vent and purge valves, and addresses new containment isolation valves which have been installed in the Reactor Building Closed Loop Cooling Water System.

Date of issuance: March 5, 1990

Effective date: March 5, 1990

Amendment No.: 154

Facility Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in **Federal Register:** April 5, 1989 (54 FR 13769). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: December 8, 1988

Brief description of amendment: The amendment revises the Technical Specifications related to the auxiliary feedwater pumps to more closely reflect the applicable Limiting Conditions for Operation provided by the Westinghouse Standard Technical Specifications.

Date of issuance: February 16, 1990

Effective date: February 16, 1990

Amendment No.: 92

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 1, 1989 (54 FR 5173). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 16, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: July 21, 1989, as supplemented December 11 and December 18, 1989.

Brief description of amendment: This amendment revises Technical Specification 3/4.5.2, Emergency Core Cooling System, to delete the requirement to verify isolation of the residual heat removal system by ensuring that: (1) the interlocks prevent the valves from being opened on a simulated or real reactor coolant system pressure signal greater than or equal to 425 psig, and (2) that the interlocks will cause the valves to automatically close

on a simulated or real reactor coolant system pressure signal less than or equal to 750 psig.

Date of issuance: March 6, 1990

Effective date: March 6, 1990

Amendment No.: 89

Facility Operating License No. NPF-12. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** October 18, 1989 (54 FR 42865). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: September 19, 1989, as supplemented October 19, 1989 and December 11, 1989.

Brief description of amendment: The change to the Technical Specifications deletes the values of the cycle specific parameters and adds a reference to the Core Operating Limits Report for the value of those parameters.

Date of issuance: March 6, 1990

Effective date: March 6, 1990

Amendment No.: 88

Facility Operating License No. NPF-12: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 27, 1989 (54 FR 53211). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: December 1, 1989

Brief description of amendments: The licensee revised Technical Specification 3/4.3.2, "Engineered Safety Feature Actuation System Instrumentation," and Technical Specification 3/4.3.3.1, "Radiation Monitoring Instrumentation," surveillance requirements for the containment airborne radiation monitors. The requested changes to both specifications would modify the surveillance requirements regarding channel calibration and channel functional test for the containment airborne radiation monitors as specified in Table 4.3-2, "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements.' This revision would revise the frequency of channel calibration surveillances from an 18 month interval to an interval at least once per refueling interval, which is defined as at least once per 24 months.

Date of issuance: February 26, 1990

Effective date: February 26, 1990

Amendment Nos.: 84 and 74

Facility Operating License Nos. NPF-10 and NPF-15: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 1990 (55 FR 2445). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Southern California Edison Company, et al., Docket No. 50-361 San Onofre Nuclear Generating Station, Unit 2 San Diego County, California

Date of application for amendments: January 3, 1990

Brief description of amendments: The amendment revised Technical Specification 3/4.7.6, "Snubbers". The proposed change would, on a one time basis, defer reduced snubbers visual inspection interval (124 days 27 25 percent), and extend the maximum inspection period for inaccessible snubbers from 18 months 27 25 percent to 20 months 27 25 percent.

Date of issuance: March 5, 1990

Effective date: March 5, 1990

Amendment No.: 85

Facility Operating License Nos. NPF-10 and NPF-15: Amendments changed the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 1990 (55 FR 2415). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 5, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

System Energy Resources, Inc., et al., Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne, County, Mississippi

Date of application for amendment: September 11, 1989

Brief description of amendment: The amendment changes three positions to reflect planned organization changes: (1) the duties of the Chemistry/Radiation Control Superintendent are divided between the two new positions - Superintendent, Plant Chemistry and Superintendent, Radiation Control; (2) the position of Training Superintendent is changed to Manager, Nuclear Training, and (3) the position of Site Director, GGNS is eliminated.

Date of issuance: March 5, 1990

Effective date: March 5, 1990

Amendment No.: 66

Facility Operating License No. NPF-29. This amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 29, 1989 (54 FR 49138). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 1990.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: March 1, 1989, as supplemented December 22, 1989

Brief description of amendments: The amendments add a new license condition to the NA-1&2 Facility Operating Licenses NPF-4 and NPF-7 which states: "The limiting dose to the control room operators shall be revised in accordance with the licensee's submittals dated March 1, 1989 (Serial No. 89-022) and December 22, 1989 (Serial No. 89-022A)." Also, license condition 2.I for Facility Operating License NPF-7, which concerns the expiration date of the license, has been renumbered as 2.J. The above license condition has been added as 2.I.

Date of issuance: February 28, 1990

Effective date: February 28, 1990

Amendment Nos.: 126 & 110

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Licenses.

Date of initial notice in **Federal Register:** August 9, 1989 (54 FR 32720).

The December 22, 1989 letter provided additional information which did not alter in any way the staff's initial determination of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 1990

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 19, 1987

Brief description of amendment: The amendment modified Technical Specification 3/4.10.4 by replacing references to the Reactor Protection System P-7 Interlock Setpoint (turbine impulse pressure or reactor power greater than 10%) with references to the P-10 Interlock Setpoint (reactor power greater than 10%) during startup and physics tests.

Date of Issuance: March 5, 1990

Effective date: March 5, 1990

Amendment No.: 36

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 15, 1987 (52 FR 26605). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 5, 1990

No significant hazards consideration comments received: No.

Local Public Document Room Location: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: January 5, 1990

Brief description of amendment: The amendment incorporates into the Technical Specifications modifications to allow Yankee to utilize a new Neutron FLux Instrumentation System, including its ability for enhanced testing at power, and modifications to clarify Specifications.

Date of issuance: March 6, 1990

Effective date: August 1, 1990

Amendment No.: 130

Facility Operating License No. DPR-28: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 24, 1990 (55 FR 2450). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 1990.

No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By April 20, 1990, 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 petition for leave to intervene. Requests for a hearing and petitions 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. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made 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 fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the particular facility involved.

Not later than fifteen (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 amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: February 20, 1990

Description of amendment request: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant (DCPP) Unit Nos. 1 and 2 to allow operation with one of the three pressurizer safety valves inoperable and disabled such that it cannot open. The revision is only applicable to Unit 2 safety valve 8010B, and is effective on a one-time basis, until Unit 2 is shut down for the next refueling outage, which is scheduled to begin on March 4, 1990.

Date of issuance: February 21, 1990

Effective date: February 21, 1990

Amendment Nos.: 49 and 48

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a safety evaluation dated February 21, 1990.

Attorneys for licensee: Richard K. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120 and Bruce Norton, Esq., c/o Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

NRC Project Director: Charles M. Trammell, Acting.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket No. 50-277, Peach Bottom Atomic Power Station, Unit No. 2, York County, Pennsylvania

Date of Application for amendment: February 14, 1990 and supplemental letter dated February 16, 1990.

Brief description of amendment: The amendment changed the Technical Specifications (TS) to provide for a one time extension of the seven day limiting condition for operation of TS 3.5.E.2 for continued operation with one inoperable Automatic Depressurization System valve. The allowed outage time was extended to 11:59 p.m. on March 3, 1990.

Date of Issuance: February 23, 1990

Effective Date: February 23, 1990

Amendment No.: 152

Facility Operating License No. DPR-44: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendments, consultation with the Commonwealth of Pennsylvania and final no significant hazards consideration determination are contained in a Safety Evaluation dated February 23, 1990.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20036

Local Public Document Room Location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

NRC Project Director: Walter R. Butler

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: February 8, 1990, as modified February 21, 1990.

Description of amendment request: This amendment extends the allowable out-of-service time for one Low Pressure Coolant Injection Subsystem and the corresponding Containment Cooling Subsystem from the present seven days to fourteen days and reduces the Residual Heat Removal (RHR) pump flow rate surveillance acceptance criteria from the present 9900 gpm to 8910 gpm. The changes are applicable to the A and C RHR Pumps only and expire when the 1990 Refueling Outage starts.

Date of issuance: February 28, 1990

Effective date: February 28, 1990 and ends upon start of the 1990 refueling outage.

Amendment No.: 153

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated February 28, 1990.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2 Benton County, Washington

Date of amendment request: March 2, 1990

Brief description of amendment: This amendment revises Technical Specifications 3.3.7.5, "Accident Monitoring Instrumentation," and 3.4.2, "Safety/Relief Valves." Specifically the amendment revises the surveillance requirements for the two specifications by providing that the acoustic monitors for the safety/relief valves may be inoperable until the fifth refueling outage, currently scheduled to begin on or about April 13, 1990. It also modifies the footnote on Table 4.3.7.5-1, "Accident Monitoring Instrumentation Surveillance Requirements", specifying that additional surveillances of tailpipe temperatures will be performed on the valves. Prior to the amendment request, the specifications required that the monitors be returned to operability within seven days or that the plant be shut down.

Date of issuance: March 7, 1990

Effective date: March 7, 1990

Amendment No.: 78

Facility Operating License No. NPF-21: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated March 7, 1990.

Attorneys for licensee: Nicholas Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW., Washington, DC 20005-3502 and G. E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352.

Local Public Document Room location: Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

NRC Project Director: Charles M. Trammell, Acting

Dated at Rockville, Maryland, this 14th day of March, 1990.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Acting Director, Division of Reactor Projects - III, IV, V and Special Projects Office of Nuclear Reactor Regulation

[Doc. 90-6333 Filed 3-20-90; 8:45 am]

BILLING CODE 7590-01-D

Advisory Committee on Reactor Safeguards, Subcommittees on Containment Systems and Structural Engineering; Meeting

The ACRS Subcommittees on Containment Systems and Structural Engineering will hold a joint meeting on April 4, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, April 4, 1990—8:30 a.m. until the conclusion of business.

The Subcommittees will discuss the development of a position or recommendations regarding new containment design criteria for future plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittees Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittees, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittees, along with any of their consultants who may be present, may

exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairmen's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 301/492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: March 14, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90–6421 Filed 3–20–90; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, and of the ACNW, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published February 23, 1990 (55 FR 6567). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings and when ACRS Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the April 1990 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Severe Accidents, March 20 and 21, 1990, Bethesda, MD. The Subcommittee will discuss the staff's Severe Accident Research Plan (SARP).

Advanced Pressurized Water Reactors, March 22, 1990—Postponed.

Decay Heat Removal Systems, March 23, 1990—Postponed.

Regulatory Policies and Practices, March 26, 1990, Bethesda, MD. The Subcommittee will review the NRC staff's Draft Rule for license renewal.

Joint Extreme External Phenomena and Severe Accidents, March 27, 1990, Bethesda, MD. The Subcommittees will review the Individual Plant Examination for External Events (IPEEE) Program, and the NRC staff's position on fire protection features for Evolutionary Light-Water Reactors listed in SECY–90–016.

Advanced Pressurized Water Reactors, April 3, 1990, Bethesda, MD. The Subcommittee will review the licensing review basis document developed by Combustion Engineering for the System 80+ standard design.

Joint Containment Systems and Structural Engineering, April 4, 1990, Bethesda, MD. The Subcommittees will discuss the development of a position or recommendations regarding new containment design criteria for future plants.

Joint Severe Accidents and Probabilistic Risk Assessment, April 18, 1990, Bethesda, MD. The Subcommittees will continue their discussion of NUREG–1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants."

Occupational and Environmental Protection Systems, April 25, 1990, Bethesda, MD. The Subcommittee will review the Advance Notice of Proposed Rulemaking on hot particles.

Joint Advanced Pressurized Water Reactors and Advanced Boiling Water Reactors, April 26, 1990, Bethesda, MD. The Subcommittees will discuss the licensing review basis documents for CE System 80+ and GE ABWR designs.

Joint Thermal Hydraulic Phenomena and Core Performance, April 27, 1990, Bethesda, MD. The Subcommittees will continue their review of boiling water reactor core power stability pursuant to the core power oscillation event at LaSalle County Station, Unit 2.

Materials and Metallurgy, May 1, 1990—Postponed.

Advanced Reactor Designs, May 2, 1990, Bethesda, MD. The Subcommittee will review the key policy issues related to advanced reactors.

Improved Light-Water Reactors, May 9, 1990, Bethesda, MD. The Subcommittee will review the "passive plant" designs of Westinghouse, Combustion Engineering and General Electric.

Materials and Metallurgy, May 24, 1990, West Palm Beach, FL. The Subcommittee will review low Charpy upper self energy matters relating to the integrity of reactor pressure vessels.

Quality and Quality Assurance in Design and Construction, date to be determined (April) (tentative), Bethesda, MD. The Subcommittee will discuss the performance-based concept of quality, what it means, its implementation, and preliminary results.

Improved Light-Water Reactors, date to be determined (April), Bethesda, MD. The Subcommittee will review the draft SER for chapter 5 of the EPRI ALWR Requirements Document.

Decay Heat Removal Systems, date to be determined (May), Bethesda, MD. The Subcommittee will continue its review of the proposed resolution of Generic Issue 23, "RCP Seal Failures."

Joint Severe Accidents and Probabilistic Risk Assessment, date to be determined (May/June), Bethesda, MD. The Subcommittees will continue their review of NUREG–1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants."

Materials and Metallurgy, date to be determined, Bethesda, MD. The Subcommittee will review the proposed resolution of Generic Issue 29, "Bolting Degradation or Failure in Nuclear Power Plants."

Thermal Hydraulic Phenomena, date to be determined, Idaho Falls, ID. The Subcommittee will review the details of the modifications made to the RELAP–5 MOD–2 code as specified in the MOD–3 version.

Decay Heat Removal Systems, date to be determined, Bethesda, MD. The Subcommittee will explore the use of feed and bleed for decay heat removal in PWRs.

Decay Heat Removal Systems, date to be determined, Bethesda, MD. The Subcommittee will review the NRC staff's proposed resolution of Generic Issue 84, "CE PORVs."

Auxiliary and Secondary Systems, date to be determined, Bethesda, MD. The Subcommittees will discuss: (1) Criteria being used by utilities to design Chilled Water Systems, (2) regulatory

requirements for Chilled Water Systems design, and (3) criteria being used by the NRC staff to review the Chilled Water Systems design.

Reliability Assurance, date to be determined, Bethesda, MD. The Subcommittee will discuss the status of implementation of the resolution of USI A-46, "Seismic Qualification of Equipment in Operating Plants," and other related matters.

Joint Regulatory Activities and Containment Systems, date to be determined, Bethesda, MD. The Subcommittees will review the proposed final revision to appendix J to 10 CFR part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors."

ACRS Full Committee Meetings

360TH ACRS Meeting, April 5–7, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. *Evolutionary Light-Water Reactor Certification Issues (Open)*—Continue discussion of the proposed ACRS comments and recommendations regarding Evolutionary Light-Water Reactor Certification Issues and their relationships to current regulations. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

*B. *Nuclear Power Plant License Renewal (Open)*—Review and comment on the proposed NRC rule regarding renewal of operating licenses for nuclear power plants. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

*C. *IPE for External Events (Open)*—Review and comment on the proposed NRC generic letter and supporting documentation regarding Individual Plant Examinations for External Events. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

*D. *Severe Accident Research Plan (Open)*—Briefing and discussion of the status of work in the NRC Severe Accident Research Program. Representatives of the NRC staff and their contractors will participate, as appropriate.

*E. *NRC Safety Research Program (Open)*—Discuss proposed ACRS report on the budgeting of the NRC safety research program.

*F. *Future ACRS Activities (Open)*—Discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

*G. *ACRS Subcommittee Activities (Open)*—Hear and discuss the status of assigned subcommittee activities including containment performance criteria and ACRS consideration of operating nuclear power plants.

*H. *Appointment of ACRS Members (Open/Closed)*—Discuss the status of appointment of ACRS members, and qualifications of candidates proposed for consideration as ACRS members.

361st ACRS Meeting, May 10–12, 1990—Agenda to be announced.

362nd ACRS Meeting, June 7–9, 1990—Agenda to be announced.

ACNW Full Committee Meetings

19th ACNW Meeting, April 26–27, 1990, Bethesda, MD. Items are tentatively scheduled.

*A. Review and comment on Characterization of the Yucca Quaternary Regional Hydrology Study Plan.

*B. Review results of the waste confidence review group's final review report which includes the disposition of public comments.

*C. Briefing on recent BEIR V report regarding, "Health Effects of Exposure to Low Levels of Ionizing Radiation."

*D. Briefing by N.E. Todreas, Chairman of the NRC's Nuclear Safety Research Review Committee on the NRC's radwaste research program.

*E. Continue ACNW considerations of EPA's High-Level Radioactive Waste Standards, as appropriate.

*F. Committee Activities—The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters, as appropriate.

20th ACNW Meeting, May 23–25, 1990—Agenda to be announced.

21st ACNW Meeting, June 28–29, 1990—Agenda to be announced.

Dated: March 15, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-6422 Filed 3-20-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 5–7, 1990, in Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on February 23, 1990.

Thursday, April 5, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will comment on items of current interest.

8:45 a.m.–12 Noon: Evolutionary Light Water Reactor Certification Issues (Open)—The Committee will hear briefings regarding selected certification issues such as equipment survivability and ABWR containment vent design. Also, the Committee will continue its discussion of a proposed report to the Commission on this matter. Members of the NRC staff will participate, as appropriate.

1 p.m.–5 p.m.: Individual Plant Examination for External Events (Open)—The Committee will hear a briefing and discuss a proposed NRC generic letter regarding Individual Plant Examination for External Events. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

5 p.m.–6 p.m.: NRC Safety Research Program (Open)—The Committee will discuss a proposed ACRS report on the impact of budgeting on the NRC safety research program.

Friday, April 6, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

8:30 a.m.–10:45 a.m.: NRC Severe Accident Research Program Plan (Open)—The Committee will hear a briefing and discuss the status of work in the NRC Severe Accident Research Program. Representatives of the NRC staff and its contractors will participate, as appropriate.

11 a.m.–12 Noon and 1 p.m.–2 p.m.: Nuclear Power Plant License Renewal (Open)—The Committee will hear a briefing and discuss a proposed NRC rule for renewal of nuclear power plant operating licenses. Representatives of the NRC staff will participate, as appropriate.

2 p.m.–2:45 p.m.: Future ACRS Activities (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

3 p.m.–3:30 p.m.: ACRS Subcommittee Activities (Open)—The committee will hear and discuss reports of ACRS subcommittees regarding the status of designated activities, including containment design criteria for future plants and ACRS consideration of operating nuclear facilities.

3:30 p.m.–3:45 p.m.: Appointment of ACRS Members (Open/Closed)—The Committee will discuss the status of appointment of ACRS members and qualifications of candidates proposed for consideration for ACRS membership.

Portions of this session will be closed as necessary to discuss information the release of which would represent a

clearly unwarranted invasion of personal privacy.

3:45 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports to the NRC regarding topics considered during this meeting, including the evolutionary light water reactor certification issues, IPE for external events, and the NRC safety research program budget.

Saturday, April 7, 1990, Room P–110, 7920 Norfolk Avenue, Bethesda, MD

8:30 a.m.–12 Noon and 1 p.m.–3 p.m.: Preparation of ACRS Reports (Open)—The committee will discuss proposed ACRS reports to the NRC regarding topics considered during this meeting, including license renewal for nuclear power plants, the severe accident research program plan, evolutionary LWR certification issues, and the NRC safety research program budget.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 27, 1989 (54 FR 39594). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d), Public Law 92–463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 7:45 a.m. and 4:30 p.m.

Dated: March 15, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90–6423 Filed 3–20–90; 8:45 am]

BILLING CODE 7590–01–M

Eight Auxiliary Local Public Document Rooms for Nuclear Power Reactors Closed

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of closing of eight auxiliary local public document rooms for nuclear power reactors.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has closed eight auxiliary local public document rooms (LPDRs) for nuclear power reactors that had been maintained for selective documents. A complete, full-service LPDR continues to be maintained for each of these facilities.

These partial LPDRs were located in the following libraries: Miami-Dade Public Library, Homestead, FL (Turkey Point Plant); University of Illinois Library, Champaign, IL (Clinton Power Station); Founders Library, Northern Illinois University, DeKalb (Byron Station); Free Library of Philadelphia, Philadelphia, PA (Limerick Generating Station); Pattee Library, Pennsylvania State University, University Park, PA (Susquehanna Steam Electric Station and Beaver Valley Power Station); South Carolina State Library, Columbia, SC (Catawba Nuclear Station); Austin Public Library, Austin, TX (South Texas Project); and San Antonio Public Library, San Antonio, TX (South Texas Project).

DATE: These partial LPDRs were closed effective February 23, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa D. Linton, Information Services Librarian, Freedom of Information Act/ Local Public Document Room Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–492–7143, or Toll-Free 800–638–8081.

SUPPLEMENTARY INFORMATION: Each of these partial LPDRs was established to meet a specific need for a limited time. Some were established at the request of the Atomic Safety and Licensing Board or the former Office of the Executive Legal Director for intervenors in licensing proceedings. A recent review of these LPDRs found that the collections were no longer being used by the public. The closings were approved by the Agency's Atomic Safety and Licensing Appeals Board, Office of Nuclear Reactor Regulation, and Office of the General Counsel. The LPDR libraries have been given the option of storing or discarding the records. The locations and hours of operation of the full-service LPDRs maintained for each of these facilities can be obtained by contacting the NRC Local Public Document Room staff at 800–638–8081, Toll-Free.

Dated at Bethesda, Maryland, this 14th of March, 1990.

For the Nuclear Regulatory Commission.

John D. Philips,

Deputy Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 90–6414 Filed 3–20–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–245, 50–336; and 50–423]

Northeast Nuclear Energy Co., Millstone Nuclear Power Station; Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has relocated the local public document room (LPDR) for the Millstone Nuclear Power Station from the Waterford Public Library, Waterford, Connecticut, to the Learning Resources Center, Thames Valley State Technical College, Norwich, Connecticut. The relocation was at the request of the Waterford Public Library, which was no longer able to maintain the voluminous collection. Members of the public may now inspect and copy documents and correspondence related to the operation of the Millstone Nuclear Power Station at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. The Library is open on the following schedule: Monday through Thursday 8 am to 8:30 pm; and Friday 8 am to 4:30 pm.

For further information, interested parties in the Norwich area may contact the LPDR directly through Dr. Paul Price, telephone number (203) 886–0177. Parties outside the service area of the LPDR may address their requests for records to the NRC's Public Document Room,

2120 L Street, NW., Lower Lobby, Washington, DC 20555, telephone number (202) 634–3273.

Questions concerning the NRC's local public document room program or the availability of documents at the Millstone LPDR should be addressed to Ms. Jona L. Souder, LPDR Program Manager, Freedom of Information Act/ Local Public Document Room Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Bethesda, Maryland, this 14th of March, 1990.

For the Nuclear Regulatory Commission.

John D. Philips,

Deputy Director, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 90–6415 Filed 3–20–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–12145, License No. 29–14150–01, EA 89–079]

Certified Testing Laboratory, Inc. Bordentown, New Jersey; Order To Show Cause Why License Should Not Be Modified

I

Certified Testing Laboratory, Bordentown, New Jersey (Licensee) is the holder of Byproduct Material License No. 29–14150–01 (license) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 34. The license authorizes the use of byproduct material for the conduct of industrial radiography and related activities. The license originally issued on January 10, 1973, was last renewed on February 5, 1987, and is due to expire on April 30, 1990.

II

On April 22, 1988, an NRC inspection was conducted at the Licensee's facilities in Bordentown, New Jersey. In addition to the inspection activities that identified the violations noted at that time, the NRC inspectors also reviewed the Licensee's field audit reports of radiographer's activities. The inspectors noted that there was a radiographer's field inspection audit report issued for July 21, 1987, which was signed by Mr. Joseph Cuozzo, the Licensee's Vice President and Radiation Safety Officer (VP/RSO) for the Bordentown facility; however, there was no corresponding source utilization log showing that the radiographic device had been logged out on July 21, 1987, nor was there a corresponding radiation survey report documenting that radiography had been performed. Further, the Licensee's payroll records indicated that the radiographer who was alleged to have been audited on July 21, 1987, was on vacation during this time period.

On April 25, 1988, during a telephone conversation with three NRC representatives, the VP/RSO orally informed them that he personally audited the radiographer in question on July 21, 1987. Although the VP/RSO was asked to locate and mail to the NRC a copy of the utilization record for that date to verify that the radiographic device was in use, such source utilization log was never sent.

Subsequently, during an interview by the NRC Office of Investigations (OI) on February 8, 1989, Mr. Joseph Cuozzo admitted that the July 21, 1987, radiography field inspection audit report, as well as a second audit report dated July 20, 1987, were fraudulent in that he had not audited either individual although his signature at the bottom of each document so indicated. Mr. Cuozzo stated that he was very busy during the time period and no radiography or field audits were performed on those days. Mr. Cuozzo also stated that he "made up" both documents to give the appearance that he was conforming with the three month audit requirement, after reviewing the field survey files and discovering that neither radiography had been audited within three months of his previous audit, as required. Mr. Cuozzo stated he accomplished the falsification when he "whited out" the radiographer's name and audit date from a previous, valid audit, made a copy of the document, and then inserted the names of the radiographers allegedly audited on each of the audit reports. Mr. Cuozzo said he then inserted the date of performance of the audits as July 20, 1987 and July 21, 1987, respectively. The original "whited out" field survey report was provided to the NRC during the investigation. In addition, Mr. Cuozzo provided a signed letter dated February 8, 1989, stating that the forms were made up and audits were never actually performed on July 20, 1987 and July 21, 1987. These facts establish a violation of a license condition requiring a quarterly field audit of each radiographer. Furthermore, the information provided by Mr. Cuozzo during the April 25, 1988, telephone call with the NRC was also false, and constitutes a willful failure to provide information to the NRC that is complete and accurate in all material respects.

During a subsequent transcribed enforcement conference by the NRC with the Licensee on December 12, 1989, at the Licensee's facility, Mr. Cuozzo (in contradiction to his previous statements to the OI investigator) indicated that he had actually performed the audits of the two radiographers within the three month interval as required by the license. However, Mr. Cuozzo indicated that the particular audit reports were lost, and because his subsequent documentation of the audits was not contemporaneous with their performance, he may have entered the wrong dates for when the audits were performed.

Notwithstanding Mr. Cuozzo's assertion at the enforcement conference, his statements and admissions to the NRC investigator on February 8, 1989, the documentary evidence indicating that information on the original audit report was "whited out," and the absence of any utilization log for July 21, 1987, establish that, at a minimum, the field audit report for July 21, 1987 was fraudulent, and that the VP/RSO's oral statement to the NRC representatives on April 25, 1988 was false.

III

The NRC in its investigation and inspection process must be able to obtain complete and accurate information from the Licensee in order to carry out the NRC's statutory mission. False statements to Commission officials cannot and will not be tolerated. The actions of Mr. Cuozzo raise questions concerning whether the Licensee will comply with Commission requirements while Mr. Cuozzo is the Radiation Safety Officer at the Bordentown facility. In addition, these actions, as well as the conflicting information provided by Mr. Cuozzo during the inspection, investigation, and enforcement conference, raise substantial questions whether Mr. Cuozzo would comply with Commission requirements in the performance or supervision of any licensed activities.

Therefore, in view of the potential for serious adverse effects to the health and safety of the public that could arise from inadequately managed and supervised activities under a radiography license, and in light of Mr. Cuozzo's past actions, I am ordering that the Licensee show cause why Mr. Cuozzo should not be removed from the position of Radiation Safety Officer (RSO) of the Bordentown facility and from all involvement in the performance or supervision of NRC licensed activities.

IV

Accordingly, pursuant to sections 81, 161b, 161c, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30 and 34, it is hereby ordered that:

Certified Testing Laboratory, Inc., shall show cause why License No. 29–14150–01 should not be modified to add the following condition: Mr. Joseph Cuozzo shall not serve as Radiation Safety Officer or in any other position involving the performance or supervision of any licensed activities for Certified Testing Laboratories, Inc., including the supervision of any Radiation Safety Officer.

V

The licensee shall show cause, as required by section IV above, by filing a written answer under oath or affirmation within thirty days after the date of issuance of this Order, setting forth the matters of fact and law on which the Licensee relies to demonstrate that the prohibition of Mr. Joseph Cuozzo from performance of licensed activities is not warranted. Mr. Joseph Cuozzo may also file a written answer within thirty days after the issuance of this Order, setting forth the matters of fact and law relied upon to demonstrate that modification of License No. 29–14150–01 is not warranted. The Licensee may answer this Order, as provided in 10 CFR 2.202(d), by consenting to the entry of an order in substantially the form proposed in this Order.

VI

The Licensee, Mr. Cuozzo, or any other person adversely affected by this Order may request a hearing within thirty days of the date of its issuance. Any answer to this Order or request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies shall also be sent to the Secretary, U.S. Nuclear Regulatory Commission and the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406. If a person other than the Licensee or Mr. Cuozzo requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). Upon the Licensee's consent to the condition set forth in section IV of this Order, or upon failure of the Licensee and Mr. Cuozzo to file an answer within the specified time, and in the absence of any request for a hearing, the licensee is modified to include the condition specified in section IV above without further Order or proceedings.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

Dated at Rockville, Maryland this 7th day of March 1990.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

[FR Doc. 90–6412 Filed 3–20–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219]

GPU Nuclear Corp.; Consideration of Issuance of Amendment to Provisional Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–16, issued to GPU Nuclear Corporation (GPUN, the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The amendment would revise Technical Specifications 3.13.B.1 and 3.13.B.2, delete current Technical Specifications 3.13.B.3 and 3.13.B.4 and the note at the bottom of page 3.13–1 which applied only during the previous operating cycle. Specifically, proposed Specification 3.13.B.2 would replace current Specifications 3.13.B.2, 3.13.B.3 and 3.13.B.4 and place no limit on the number of safety valve position indicators during operating periods between cold shutdowns. A minor change to the associated bases will also be made. In addition, where Technical Specifications definitions are used in Specifications 3.13.D, 3.13.E, 3.13.F and 3.13.G they are now capitalized.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 20, 1990, 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 petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made 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 fifteen (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 fifteen (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 of 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.

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, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 200 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 15, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Rockville, Maryland, this 15th day of March 1990.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–6413 Filed 3–20–90; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of Form for OMB Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a proposed extension of a form that collects information from the public. The Standard Form 85, Questionnaire for Non-Sensitive Positions, is completed by applicants for, or appointees to, Non-Sensitive duties with the Federal government. The information collected on this form is used by the Office of Personnel Management to initiate the background investigation required under E.O. 10450, Security Requirement for Government Employment, issued 4/27/53; by E.O. 10577 (5 CFR Rule V), issued 11/23/54, or by various public laws. Approximately 3570 individuals who are not already appointees complete the SF 85 annually with reporting hours of 1500.

For copies of this proposal call Lawrence Dambrose, on (202) 632–0199.

DATES: Comments on this proposal should be received on or before April 20, 1990.

ADDRESSES: Send or deliver comments to:

Joseph Lackey,
Information Desk Officer,
Office of Information and Regulatory Affairs,
Office of Management and Budget,
New Executive Office Building NW,
Room 3235,
Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Peter Garcia, (202) 376–3800.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90–6382 Filed 3–20–90; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–6857; File No. S7–3–90]

Securities Uniformity; Annual Conference on Uniformity of Securities Law

AGENCY: Securities and Exchange Commission.

ACTION: Publication of release announcing issues to be considered at a conference concerning uniformity of securities laws, and requesting written comments.

SUMMARY: In conjunction with a conference to be held on April 25, 1990, the Commission and the North American Securities Administration, Inc. today announced a request for comments on the proposed agenda for the conference. This inquiry is intended to carry out the policies and purposes of section 19(c) of the Securities Act of 1933, adopted as part of the Small Business Investment Incentive Act of 1980, to increase uniformity in matters concerning state and Federal regulation of securities, maximize the effectiveness of securities regulation in promoting investor protection, and reduce burdens on capital formation through increased cooperation between the Commission and the state securities regulatory authorities.

DATES: The conference will be held on April 25, 1990. Written comments must be received on or before April 20, 1990 in order to be considered by the conference participants.

ADDRESSES: Written comments shoud be submitted in triplicate by April 20, 1990 to Jonathan G. Katz, Secretary,

Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments should refer to File No. S7–3–90 and will be available for public inspection at the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 25049.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or William E. Toomey, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, (202) 272–2644.

SUPPLEMENTARY INFORMATION:

I. Discussion

A dual system of federal-state securities regulation has existed since the adoption of a federal regulatory structure in the Securities Act of 1933 (the "Securities Act").[1] Issuers attempting to raise capital through securities offerings, as well as participants in the secondary trading markets, are responsible for complying with federal securities laws as well as all applicable state regulations. In recent years, it has been recognized that there is a need to increase uniformity between federal and state regulatory systems and to improve cooperation among those regulatory bodies so that capital formation can be made easier while investor protections are retained.

The importance of facilitating greater uniformity in securities regulation was endorsed by Congress with the enactment of section 19(c) of the Securities Act in the Small Business Investment Incentive Act of 1980 (the "Investment Incentive Act").[2] Section 19(c) authorities the Commission to cooperate with any association of state securities regulators which can assist in carrying out the declared policy and purpose of section 19(c). The declared policy of the section is that there should be greater Federal and state cooperation in securities matters, including: (1) Maximum effectiveness of regulation; (2) maximum uniformity in federal and state standards; (3) minimum interference with the business of capital formation; and (4) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital, particularly by small business, and to diminish the costs of the administration of the government programs involved. In order to establish methods to accomplish these goals, the Commission is required to conduct an annual conference. The 1990 conference will be the seventh annual conference.

[1] 15 U.S.C. 77a et seq.

[2] Pub. L. 96–77 (October 21, 1980).

II. 1990 Conference

The Commission and the North American Securities Administrators Association, Inc. ("NASAA")[3] are planning the 1990 Conference on Federal-State Securities Regulation (the "Conference") to held April 25, 1990, in Washington, DC. At the Conference, representatives from the Commission and NASAA will divide into working groups in the areas of corporation finance, market regulation, investment management, and enforcement, to discuss methods of enhancing cooperation in securities matters in order to improve the efficiency and effectiveness of federal and state securities regulation. Generally, attendance will be limited to representatives from the Commission and NASAA in an effort to maximize the ability of Commission and state representatives to engage in frank and uninhabited discussion. However, each working group, in its own discretion, may invite certain self-regulatory organizations to attend participate in certain sessions.

Representatives from the Commission and NASAA currently are in the process of formulating an agenda for the Conference. As part of that process, the public, securities associations, self-regulatory organizations, agencies, and private organizations are invited to participate through the submission of written comments on the issues set forth below. In addition, comment is requested on other appropriate subjects that commenters wish to be included in Conference agenda. All comments will be considered by the Conference attendees.

III. Tentative Agenda and Request for Comments

The tentative agenda for the Conference consists of the following topics in the areas of corporation finance, investment management, market regulation and oversight and enforcement.

(1) Corporation Finance Issues

a. Uniform Limited Offering Exemption

Congressd specifically acknowledged the need for a uniform limited offering exemption in enacting section 19(c) of the Securities Act and authorized the Commission to cooperate with NASAA in its development. Working with the states, the Commission developed Regulation D, the federal exemption governing exempt limited offerings. Regulation D was adopted by the Commission in March 1982. On September 21, 1983, NASAA endorsed a revised form of the Uniform Limited Offering Exemption ("ULOE") that is intended to coordinate with Regulation D.

ULOE provides a uniform exemption from state registration for certain issuers. An issuer raising capital in a state which has adopted ULOE may take advantage of both a state registration exemption and a federal exemption under Regulation D. Because Regulation D provides the framework for ULOE, NASAA's assistance in developing proposals to change Regulation D is invaluable. Within the past four years, the Commission, with NASAA's cooperation, has adopted significant changes to Regulation D.[4]

To date, more than half of the state have adopted some form of ULOE. Both the Commission and NASAA continue to make a concerted effort toward the universal adoption of ULOE. The conferees will discuss viable options to convince states which do not currently have ULOE, to adopt ULOE.

b. Other Exemptive Approaches

Participants at the Conference will consider possible rulemaking initiatives which the Commission may introduce. Further discussions will be addressed to the Rule 504 requirement that all investors be provided a written statement of the restricted nature of their securities, to consider whether under some circumstances, such as a transaction involving a limited number of participants or a small amount of money, the delivery of the writing could be avoided.

The Commission's Regulation A provides a general exemption from the registration requirements of the Securities Act. The conferees will discuss possible revisions and amendments to that provision which could form the basis for further uniform exemptions at both the federal and state levels.

The Commission and NASAA hope to achieve the goal of uniformity envisioned by section 19(c). Comment is requested on approaches to achieve this goal and on other issues relating to uniformity of exemptions.

[3] NASAA is an association of securities administrators from each of the 50 states, the District of Columbia, Puerto Rico, Mexico and twelve Canadian provinces.

[4] Release No. 33–6663 (October 2, 1986) [51 FR 36385]; Release No. 33–6758 (March 3, 1988) [53 FR 7866]; Release No. 33–6825 (March 14, 1989) [54 FR 11369].

c. Disclosure Policy and Standards

The Commission has an ongoing program of considering, reviewing and revising its policies with regard to the most appropriate methods of ensuring the disclosure of material information to the public. Coordination with the states has been beneficial. Recently, both the Commission and the states have been devoting a considerable amount of their resources to penny stock companies. The conferees will discuss the issues unique to disclosure policy involving these companies. The so-called "blank check" offerings also will be discussed.

Commenters are invited to discuss other areas where federal-state cooperation could be of particular significance as well as any ways in which Federal-state cooperation could be improved.

d. Multinational Securities Offerings

In July 1989, the Commission, the Ontario Securities Commission and the Commission des valeurs mobilieres due Quebec published for comment a multijurisdictional disclosure system that would permit certain Canadian and U.S. issuers to offer securities, undertake tender offers, and make periodic reports using the disclosure and procedures of their home jurisdiction.[5] NASAA has endorsed the multijurisdictional system and is working with the Commission and the provinces to facilitate the use of the multijurisdictional process under state securities laws.

The current status of the multijurisdictional system will be discussed. Comment is specifically requested on ways to coordinate federal and state treatment of multinational offerings.

(2) Market Regulation Issues

a. Central Registration Depository ("CRD")

The CRD is a computerized system developed by Nasaa and the National Association of Securities Dealers, Inc. ("NASD") and is used to register securities industry personnel with the NASD and the states. The CRD will be discussed by the market regulation working group. The NASD, forty-five states, the District of Columbia, Puerto Rico and the New York Stock Exchange presently approve or register broker-dealer agents by means of the CRD. Persons filing applications for agent registration file a Form U–4 and any required fees with the CRD, which disseminates the information contained on the forms and transmits fees electronically to the appropriate participating jurisdictions. This agent phase of CRD, known as Phase I, similarly provides for the filing of U–4 amendments and for the transfer of agent registration under certain circumstances. Implementation of the final state of Phase II was completed on February 1, 1989, and broker-dealers are now able to use CRD for Form BD filings as well as filings for associated persons.

During the sessions, participants will focus on the present efficacy of the CRD, future uses of the CRD by the states and the relationship of the Commission to the CRD (including processing of broker-dealer registrations with the Commission through the system). In this regard, the Commission has obtained funding fiscal year 1990 to become a CRD participant, thereby permitting a one-stop filing system for broker-dealer documents, consistent with the Commission's electronic filing policy. This will permit broker-dealers to make one filing of a uniform registration form and amendments with the NASD, which will include the filing in the CRD. In addition to improving the efficiency of the registration process, the new system will provide better access to critical data and result in substantial cost savings to registrants by eliminating multiple filings with several regulatory bodies.

Commenters are requested to address the effectiveness and efficiency of the CRD (including any suggestions for improving the system) as well as the future direction of the system.

b. National Market System Exemption from Registration

Most state securities laws currently provide an exemption from their securities registration requirements to issuers that list on the New York ("NYSE") or American ("Amex") Stock Exchanges, or, in some cases, certain regional stock exchanges. Recently, some states have extended these exemptions to include over-the-counter ("OTC") securities designated as National Market System ("NMS") securities, while other states and legislatures have rejected such proposals. According to the NASD, thirty states have now enacted legislation granting registration exemptions to NASDAQ/NMS securities. Commenters are asked to address whether the states generally should exempt certain securities from registration, particularly in light of the changes to company listing standards on corporate governance and foreign issuers. Commenters are asked to address, in particular, the adoption of a uniform, objective exemptive standard, applicable to all reported securities in light of increasing competition between NASDAQ and the exchanges.

c. Forms Revision

The Commission and NASAA are considering revisions to Schedules A, B, and C of Forms BD and ADV to clarify the ownership disclosure requirements of those schedules, simplify the presentation of this information, and possibly the reporting burden.

d. Internationalization of the Securities Markets

The implications of multinational securities offerings are being discussed in the corporation finance working group with a particular focus on the development of a reciprocal prospectus for certain offerings. The Market Regulation Task Force will also discuss internationalization with the resulting development of the global securities markets. The Commission continues to follow closely these developments and, to that end, requests comment on the direction of the internationalization of the trading markets. Commenters are asked to address steps that would be useful on the national and state levels to facilitate international markets while protecting investors and maintaining fair and orderly markets in the United States.

e. "Pink Sheet" Fraud

The Commission and NASAA will discuss regulatory approaches to reducing the incidence of fraud in the sale of pink sheet securities. Newly adopted Commission Rule 15c2–6, which became effective on January 1, 1990 and was designed to restrict certain high-pressure sales tactics involving penny stocks to retail investors, will be discussed along with similar rules or statutes enacted by serveral states. The proposed amendments to Commission Rule 15c2–11 and other possible rule proposals to improve information available to customers and heighten broker-dealer compliance with their fiduciary duties to their customers also will be discussed. Finally, the Commission and NASAA will discuss ways to further enhance effective regulatory coordination between and among the states, the Commission and the self-regulatory organizations.

(3) Investment Management Issues

a. Investment Companies

(i) Uniform Disclosure Requirements. Representatives of NASAA and the staff of the Commission's Division of Investment Management have discussed the possibility of finding a method by

[5] Release No. 33–6841 (July 24, 1989) [54 FR 32226].

which the Commission and as many states as possible could accept the same disclosure documents from investment company registrants. This result could be achieved by either harmonizing the federal and state disclosure requirements, as was done with Form ADV, the investment adviser registration form, or by providing a way to create a disclosure filing that meets Commission and all state requirements even if the Commission or some states would not alone require all of the disclosure. With respect to open-end management investment companies and unit investment trusts, it is important to note that many states use the currently existing uniform application forms, Forms U–1 and U–2. Streamlining uniform state filing procedures would have the added advantage of facilitating eventual one-stop electronic filing meeting both federal and state requirements. The conferees will review what progress has been made to achieve this goal.

(ii) Blue Sky Laws. In recent years the Commission occasionally has encountered situations in which investment companies have failed to maintain the registration of their shares under state "Blue Sky" laws. Failure to register may result in the investment company accruing substantial contingent liabilities. This, in turn, raises questions concerning the accurate calculation of net asset values and the adequacy of prospectus disclosure. At its 1989 annual meeting, the membership of NASAA adopted a resolution setting out procedures designed to facilitate cooperation between the states and the Commission for determining the amount of liabilities resulting from failures to register. The conferees will discuss the effectiveness of these procedures, how to better assure compliance with applicable state registration requirements, and the regulatory problems resulting from the failure of an investment company to comply with these requirements.

(iii) Unit Investment Trust Yield Advertising. In February 1988 the Commission adopted new rules and amendments to several rules and forms under the Securities Act of 1933 and the Investment Company Act of 1940 ("Investment Company Act") [6] affecting the advertising of mutual funds and insurance company separate accounts offering variable annuity contracts. Among other things, these rules standardized the computation of fund performance data used in advertisements. The staff of the Division of Investment Management is currently considering developing similar rule proposals for unit investment trusts ("UITs"). The conferees expect to discuss various aspects of UIT advestising and performance data and current disclosure positions taken by the staff of the Division in reviewing registration statements filed by UITs.

(iv) Internationalization Issues. In November 1988 the Commissioin released a Policy Statement on Regulation of International Securities Markets ("Policy Statement") which identified areas of regulatory concern presented by the continued internationalization of the securities markets. The Policy Statement cites as one goal the easing of restrictions on cross-border sales of investment company shares. The Policy Statement notes that if cross-border sales of investment company shares are to be facilitated, cooperative efforts by securities regulators are a necessity, and that the most promising approach currently seems to be one based on mutually acceptable standards which are adequate for protection of investors. The conferees expect to discuss various issues related to achieving this goal.

b. Investment Advisers

(i) Proposed Federal Registration Exemptions. In March, 1986, the Commission authorized its staff to seek NASAA's views on possible relemaking to exempt certain smaller investment advisers from most federal adviser regulation under the Investment Advisers Act of 1940 ("Advisers Act"), other than statutory antifraud prohibitions, if the advisers were registered in all states in which they do business. NASAA polled it members in response to the staff's draft exemptive rules and, in December 1987, its Board of Directors endorsed the concept of the draft rules, with certain changes.

On September 16, 1987, the Commission proposed rules exempting certain small and intrastate advisers similar to the draft rules endorsed by the NASAA Board of Directors.[7] The proposals, which include both an interstate and intrastate exemption, would determine eligibility for the exemptions by reference to the size of the adviser's business, whether the adviser has custody of clients' funds or securities, and whether the adviser is registered as an adviser in all states in which it does business. The comment period ended on November 22, 1988, and the Commission received 15 comments on the proposals including letters from NASAA and two states. The purpose of the proposed exemptions is to place primary regulatory responsibility for certain smaller advisers with states that regulate advisers. The conferees will discuss comments received on the rulemaking proposals.

(ii) Central Registration Depository ("CRD"). As indicated above, certain aspects of the CRD will be discussed in the Market Regulation working sessions. The CRD also will be discussed in the Investment Management sessions. In October 1985, NASAA and the Commission adopted a uniform adviser registration form for advisers registering with the Commission and the states that register advisers. At that time NASAA and the Commission indicated that a clearing house procedure, such as the CRD, would be considered to process adviser registration filings. In 1986, the CRD, in a pilot test, began registering investment adviser agents for the state of Virginia, which had just begun to require registration of advisers and their agents.

The conferees will continue to discuss developing a central registration system for advisers. The discussions will consider, among other things, how the system should be designed, what cost savings to advisers and regulatory benefits would result from a central registration processing system, what the experience is of the Virginia agent registration pilot, and whether cost-effective means can be developed for Commission participation in any central processing system using the CRD.

(iii) Investment Adviser Registration Form. Last summer, the Forms Revision Committee of NASAA began exploring possible revisions to Form ADV. Its efforts have been focused on accommodating future entry of the form onto the NASD's CRD system and reducing the amount of information requested by the form by eliminating certain items and including them in an expanded annual report. These items would generally be those that are currently required to be updated on an annual basis. The conferees will discuss the progress of this committee's efforts.

(iv) Inspections. The conferees also expect to discuss the ongoing cooperative efforts of the Commission and the states to increase routine surveillance of investment advisers. A joint Commission-State inspection and training program was instituted in 1984 to coordinate regulatory efforts by sharing registration and examination information, thereby increasing the overall regulatory coverage of the investment adviser industry. To date

[6] *See* Release No. 33–6753 (Feb. 2, 1988) [53 FR 3868].

[7] Investment Advisers Act Rel. No. 1140 (Sept. 16, 1988) [53 FR 36997].

this program has provided training to more than 145 inspectors from approximately 30 states.

(v) Self-Regulatory Organization for Investment Advisers. In June 1989, the Commission submitted to Congress legislation to require all investment advisers registered with the Commission to become part of a self-regulatory system through membershp in a national investment adviser association. This legislation was introduced in both houses of Congress in July 1989. The proposed legislation would amend the Advisers Act to authorized the creation of one or more SROs for investment advisers, patterned as a general matter, after the SROs authorized for broker dealers by Section 15A of the Securities Echange Act of 1934. Like the system of self-regulation for broker-dealers, the Commission would oversee the activities of any investment adviser SRO. In its discussion of the proposed legislation, the Commission stated that state authorities will retain, as currently provided in the Advisers Act, their authority under state investment advisory or other applicable statutes to regulate investment advisers doing business in their respective states, and that it is anticipated that any SRO will coordinate, to the maximum extent possible, with state authorities concerning the regulation of investment advisers. The conferees are expected to discuss comments submitted on the proposed legislation.

(4) Enforcement Issues

In addition to the above stated topics, the state and federal regulators will discuss various enforcement related issues which are of mutual interest.

(5) General

There are a number of matters which are applicable to all, or a number, of the areas noted above. These include Edgar, the Commission's pilot electronic disclosure system, the coordination of Commission rulemaking procedures with the states, training and educating staff examiners and analysts, and sharing of information.

The Commission and NASAA request specific public comments and recommendations on the above-mentioned topics. Commenters should focus on the agenda but may also discuss or comment on other topics in which the existing scheme of state and federal regulation can be made more uniform while high standards of investor protection are maintained.

By the Commission.

Dated: March 14, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6418 Filed 3-20-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27795; File NO. SR-DGOC-90-01]

Self-Regulatory Organizations; Proposed Rule Change by Delta Government Options Corporation Relating to Procedures for Short-Dated Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 15, 1990, Delta Government Options Corporation ("Delta") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Delta is filing herewith a proposed rule change relating to procedures for Delta's short-dated options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under Delta's current rules, all options traded in Delta's system expire on the Saturday after the third Friday of each month. Delta proposes to change the day of options expiration to the third Friday of each month. In addition, Delta also proposes to establish a new category of options that are issuable only after the third Friday of each month and expire on the first Friday of the following month. This would give Delta's participants the opportunity to trade options through Delta's system that have a two to three week expiration horizon, and expire towards the beginning of a month.

Delta believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to Delta since the proposed rule change will permit more utilization of its facilities by those participants who prefer to trade in options on a two to three week expiration horizon.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Delta does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Delta has neither solicited nor received any comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned the self-regulatory organization. All submissions should refer to file number SR-DGOC-90-01 and should submitted by April, 1990.

For the Commission, by the Divison of Market Regulation, pursuant to delegated authority.

Dated: March 13, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-6417 Filed 3-20-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of Hearings

[Docket 46700 et al., Order 90-3-33]

1990 United States-Japan Gateways Proceeding; Order Granting Interventions and Ruling on Outstanding Motions

Applications of

	Dockets
Air Micronesia, Inc.	46725
Aloha Airlines, Inc.	46722
American Airlines, Inc.	46592
America West Airlines, Inc.	46721
Continental Airlines, Inc.	46732
Delta Air Lines, Inc.	46720
Hawaiian Airlines, Inc.	46728
Northwest Airlines, Inc.	46730
Pan American World Airways, Inc.	46717
Trans World Airlines, Inc.	46719
United Air Lines, Inc.	46704

for certificate authority pursuant to section 401 of the Federal Aviation Act of 1958, as amended.

Issued Under Delegated Authority; March 14, 1990.

Motions for leave to intervene out of time have been filed by the Governor of the State of Florida, the City of Miami, Florida, and by Miami International Airport. These motions indicate that the parties involved did not previously have a sufficient basis to determine the impact of the applications filed herein on their interests. Since good cause has been shown, the motions for leave to file are granted. And, since each of the requests to intervene establishes a sufficient basis to sustain intervention, the three aforementioned entities are granted intervenor party status in this cause.

Moreover, the City of Miami and the Governor of the State of Florida have filed exhibits and the Governor has requested that he be granted until March 16, 1990 to supplement and complete such exhibits, if necessary. This request is reasonable and is granted. In addition, Miami Airport is given until March 16, 1990 to submit exhibits, if it wishes to do so.[1] These grants of intervention are conditioned upon these intervenors taking the record as they find it. In this regard, it is the responsibility of these intervenors to contact the parties on the exhibit exchange list to secure copies of exhibits already filed. These intervenors should, however, be added to the exhibit exchange list (1 copy) for exchange of rebuttal exhibits.[2] Also, these intervenors are required to comply with the Ground Rules in the February 5, 1990 Prehearing Conference Report and to comply with the instructions of pages 3 and 4 of the Prehearing Conference Report with regard to presentation of cases and alignment of parties.

Further, Pan American World Airways, Inc. (Pan Am) has filed a motion for leave to amend its application to delete its request for Los Angeles-Nagoya authority. The grounds for the motion is that it is not viable for Pan Am to operate the Los Angeles-Nagoya route and that Pan Am will concentrate on obtaining a Los Angeles-Tokyo route. Since good cause has been shown, the Pan Am motion to amend its application is granted.

In addition, Aloha Airlines, Inc. (Aloha) has filed a motion requesting dismissal of its application.[3] The basis for the motion to dimiss is that Aloha's main interest is Honolulu-Tokyo service, the same market in the pending U.S.-Japan Service case, Docket 46438, and Aloha prefers to prosecute its application in that proceeding as the more realistic opportunity to gain entry into the Honolulu-Tokyo market. Since good cause has been shown, the Aloha motion is granted and, pursuant to § 385.11(b) of the Department of Transportation (Department) Regulations, 14 CFR, § 385.11(b), the Aloha application is ordered dismissed.

Because of time constraints, the motions and petitions involved herein are being acted upon without awaiting expiration of the response periods provided for in the Department's Rules of Practice. Any party wishing to contest the action taken herein may do so by filing a motion for reconsideration.

Persons entitled, pursuant to §§ 385.50 and 385.51 of the Department's Regulations, 14 CFR 385.50 and 385.51, to petition the Department for review of the action taken herein regarding dismissal of Aloha's application, may file such a petition within ten (10) days after service of this order. In this regard, the order shall be effective and become the action of the Department on expiration of the above period unless, before that date, a petition for review is filed or the Department gives notice that it will review the order for its own motion.

Daniel M. Head,

Administrative Law Judge.

Service List

R. Tenney Johnson, Esq., 2300 N Street, NW., Suite 600, Washington, DC 20037-1122, for *Air Micronesia, Inc.*

Marshall S. Sinick, Esq., Squire, Sanders & Dempsey, 1201 Pennsylvania Avenue, NW., Suite 500, Washington, DC 20004, for *Aloha Airlines, Inc.*

Carl B. Nelson Jr., Esq., Prather Seegar Doolittle & Farmer, 1600 M Street, NW., 7th Floor, Washington, DC 20036, for *American Airlines, Inc.*

John E. Gillick, Esq., Winthrop, Stimson, Putnam & Roberts, 1133 Connecticut Avenue, NW., Suite 1200, Washington, DC 20036, for *America West Airlines, Inc.*

Elliott M. Seiden, Vice President and Associate General Counsel, Texas Air Corporation, 901-15th Street, NW., Washington, DC 20005, for *Continental Airlines, Inc.*

James R. Weiss, Esq., Preston Gates Ellis and Rouvelas Meed, 1735 New York Avenue, NW., Suite 500, Washington, DC 20006-4759, for *Delta Air Lines, Inc.*

Jonathan B. Hill, Esq., Dow, Lohnes & Albertson, 1255-23rd Street, NW., Suite 500, Washington, DC 20037, for *Hawaiian Airlines, Inc.*

Ronald D. Eastman, Esq., Cadwalader, Wickersham & Taft, 1333 New Hampshire Avenue, NW., Washington, DC 20036, for *Northwest Airlines, Inc.*

Donald T. Bliss, Esq., O'Melveny & Myers, 555-13th Street, NW., Suite 500-W, Washington, DC 20004, for *Pan American World Airways, Inc.*

Bert W. Rein, Esq., Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006, for *Trans World Airlines, Inc.*

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[1] The intervenor parties involved have been notified of the exhibit filing deadline by telephone.

[2] A copy of the revised exhibit exchange list is being sent to these intervenors. The address for Miami International Airport for the exhibit exchange list is: Frederick A. Elder, Esq., Peter Reaveley, Esq., Dade County Aviation Department, Miami International Airport, Concourse E Terminal Building, Fifth Floor, Miami, Florida 33159.

[3] Aloha's application also requested Guam authority and, insofar as there may be any question concerning whether the guam proportion of the Aloha application was consolidated into this docket, it should be noted that consolidation of the request for Guam authority is outside the jurisdiction of the U.S.-Japan Gateways Proceeding. If it might reasonably be interpreted that the request for Guam authority was consolidated into Docket 46700, this purported consolidation should be considered as null and void.

Joel Stephen Burton, Esq., Ginsburg, Feldman and Bress, 1250 connecticut Avenue, NW., Suite 800, Washington, DC 20036, for *United Air Lines, Inc.*

Patrick C. LeFevre, Assistant Chief Counsel, City of Phoenix, 251 West Washington Street, Suite 800, Phoenix, Arizona 85003, for *Arizona Parties.*

Joanne W. Young, Esq., Lord Day & Lord, Barrett Smith, 1201 Pennsylvania Avenue, NW., Suite 821, Washington, DC 20004, for *Bangor International Airport.*

Kelly R. Welsh, Corporation Counsel, City Hall, Room 511, 121 North LaSalle Street, Room 511, Chicago, Illinois 60602, for *City of Chicago.*

Arthur L. Bickmeyer, president, A.L. Bickmeyer & Associates, 9500 Annapolis Road, Suite A–302, Lanham, Maryland 20706, for *Cincinnati Parties.*

Michael F. Goldman, Esq., Steele, Goldman & Silcox, 2020 K Street, NW., Washington, DC 20006–1806, for *City and County of Denver, Colorado.*

Peter M. Dunbar, Esq., Office of the Governor for the State of Florida, 209 Capitol, Tallahassee, Florida 32399–0001, for *Governor of the State of Florida.*

Randi S. Field, Esq., McNair Law Firm, P.A., 1155–15th Street, NW., Suite 400, Washington, DC 20005, for *State of Hawaii.*

Robert E. Cohn, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, for *Houston Parties.*

Thomas W. McLaughlin, Esq., Pierson Semmes and Finley, 1054–31st Street, NW., Washington, DC 20007, for *State of Illinois.*

Robert W. Kneislay, Esq., Wilner & Scheiner, 1200 New Hampshire Avenue, NW., Suite 300, Washington, DC 20036, for *Indianapolis Airport Authority.*

George M. Dickerson, Esq., Dickerson, Dickerson & Lieberman, 330 South Third Street, Suite 1130, Las Vegas, Nevada 89101, for *Las Vegas parties.*

James K. Hahn, City Attorney, City Hall East, 200 North Main Street, Room 1800, Los Angeles, California 90012, for *City of Los Angeles.*

Charles E. DeWitt Jr., Legal Counsel, Massachusetts Port Authority, 10 Park Plaza, Boston, Massachusetts 02116, for *Massachusetts Port Authority.*

Saturnino E. Lucio II, Esq., and Idelsi C. Sanchez, Esq., Weil, Lucio, Mandler & Croland, P.A., 777 Brickell Avenue, Suite 1200, Miami, Florida 33131, for *City of Miami, Florida.*

Frederick A. Elder, Esq. and Peter Reaveley, Esq., Dade County Aviation Department, Miami International Airport, Concourse E Terminal Building, Fifth Floor, Miami, Florida 33159, for *Miami International Airport*

Richard P. Taylor, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, NW., Washington, DC 20036, for *Missouri Parties.*

Rene C. Arceneaux, Esq., Beckley, Singleton, De Lanoy, Jemison & List, Chartered, 411 East Bonneville Avenue, Las Vegas, Nevada 80101, for *Nevada Parties.*

Thomas B. Reston, Esq., 1544–34th Street, NW., Washington, DC 20007, for *Greater Orlando Aviation Authority.*

B. Waring Partridge, III, Esq., The Partridge Group Chartered, 131 C Street, SE., Washington, DC 20003, for *Pittsburgh Parties.*

Bill Alberger, Esq., Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005, for *Port of Portland, Oregon.*

Albert M. Reese, Vice President of Public Affairs, San Diego Convention & Visitors Bureau, 1200 Third Avenue, Suite 824, San Diego, California 92101–4190, for *San Diego Parties.*

Theodore I. Seamon, Esq., Seamon, Wasko & Ozmont, 1015–18th Street, Suite 800, NW., Washington, DC 20036, for *City of San Jose.*

Michael F. Goldman, Esq., Steele, Goldman & Silcox, 2020 K Street, NW., Suite 850, Washington, DC 20006–1806, for *Port of Seattle.*

Russell E. Pommer, Esq., Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, 901–15th Street, NW., Suite 700, Washington, DC 20005, for *Tampa Bay Parties.*

Wesley Kennedy, Esq., Cotton, Watt, Jones and King, 122 South Michigan Avenue, Suite 2050, Chicago, Illinois 60603, for *United Pilots Master Executive Council.*

Keith F. McCrea, Virginia Department of Aviation, 4508 South Laburnum Avenue, Richmond, Virginia 23231–2422, for *Virginia Department of Aviation.*

George U. Carneal, Esq., Hogan & Hartson, 555–13th Street, NW., Washington, DC 20004, for *Metropolitan Washington Airports Authority.*

Stephen L. Gelband, Esq., Hewes, Morella, Gelband & Lamberton, 1000 Potomac Street, NW., Washington, DC 20007, for *Washington Airports Task Force.*

Dayton Lehman Jr., Esq., Office of Aviation Enforcement and Proceedings C–70, Room 4116, U.S. Department of Transportation, 400–7th Street, SW., Washington, DC 20590, for *Public Counsel.*

Robert S. Goldner, Special Counsel, Office of the Deputy Assistant Secretary for Policy and International Affairs, P–7, Room 9216, U.S. Department of Transportation, 400–7th Street, SW., Washington, DC 20509.

U.S. Department of State, Office of Aviation, 2201 C Street, NW., Washington, DC 20520.

Embassy of Japan, 2520 Massachusetts Avenue, NW., Washington, DC 20008.

The Honorable Daniel M. Head, Administrative Law Judge, Office of Hearings, M–50, Room 9228, U.S. Department of Transportation, 400–7th Street, SW., Washington, DC 20590.

[FR Doc. 90–6345 Filed 3–20–90; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 90–013]

Houston/Galveston Navigation Safety Advisory Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of the twenty-third meeting of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, May 24, 1990 in the conference room of the Houston Pilots Office, 8150 South Loop East, Houston, Texas. The meeting is scheduled to begin at approximately 9:30 a.m. and end at approximately 1 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Presentation of the minutes of the Inshore and Offshore Waterways Subcommittees and discussion of recommendations.
3. Discussion of previous recommendations made by the Committee.
4. Presentation of any additional new items for consideration of the Committee.
5. Adjournment.

The purpose of this Advisory Committee is to provide recommendations and guidance to the Commander, Eighth Coast Guard District on navigation safety matters affecting the Houston/Galveston area.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C. T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: March 8, 1990.

W.F. Merlin,

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

[FR Doc. 90–6350 Filed 3–20–90; 8:45 am]

BILLING CODE 4910–14–M

[CGD 90–012]

Houston/Galveston Navigation Safety Advisory Committee; Inshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Inshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, April 26, 1990 at the Houston Yacht Club, 3620 Miramar Drive, La Porte, Texas. The meeting is scheduled to begin at 9 a.m. and end at 10:30 a.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Inshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration to the Subcommittee.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C. T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: March 8, 1990.

W. F. Merlin,

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

[FR Doc. 90–6348 Filed 3–20–90; 8:45 am]

BILLING CODE 4910–14–M

[CGD–90–011]

Houston/Galveston Navigation Safety Advisory Committee; Offshore Waterway Management Subcommittee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Offshore Waterway Management Subcommittee of the Houston/Galveston Navigation Safety Advisory Committee. The meeting will be held on Thursday, April 26, 1990 at the Houston Yacht Club, 3620 Miramar Drive, La Porte, Texas. The meeting is scheduled to begin at 10:30 a.m. and end at 12 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Discussion of previous recommendations made by the full Advisory Committee and the Offshore Waterway Management Subcommittee.
3. Presentation of any additional new items for consideration by the Subcommittee.
4. Adjournment.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander C. T. Bohner, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (oan), Room 1209, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

Dated: March 8, 1990.

W.F. Merlin,

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

[FR Doc. 90–6349 Filed 3–20–90; 8:45 am]

BILLING CODE 4910–14–M

Maritime Administration

[Docket S–864]

Chestnut Shipping Company, et al.; Application for Amendment of a Previously Granted Section 804 Waiver To Operate Nine Foreign-Flag Vessels

Chestnut Shipping Company and Margate Shipping Company (Applicants), by letter of March 2, 1990, requested an amendment of the section 804 waiver granted on March 21, 1989 which permitted their affiliate Keystone Shipping Company (Keystone) to acquire an interest in or charter nine foreign-flag liquid bulk vessels of approximately 40,000 to 130,000 deadweight ton (DWT) capacity. The requested amendment would alter the tonnage range from 40,000 to 130,000 DWT capacity, to 30,000 to 160,000 DWT capacity. The Applicants state that the grant of the instant request will enhance the flexibility and viability of the Applicants' and Keystone's operations. Furthermore, the Applicants believe that changing the DWT range by the modest amounts requested will not have any material adverse effects on U.S.-flag ships in the DWT range requested that are available on any practical basis to provide tanker service in the foreign trade.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application, must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW, Washington, DC 20590. Comments must be received no later than 5 p.m. on April 3, 1990.

This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

By Order of the Maritime Administrator.

Dated: March 15, 1990.

James E. Saari,

Secretary.

[FR Doc. 90–6346 Filed 3–20–90; 8:45 am]

BILLING CODE 9410–81–M

[Docket S–863]

Lykes Bros. Steamship Co., Inc.; Application To Amend Operating-Differential Subsidy Agreement Contract MA/MSB–451

By application dated February 27, 1990, Lykes Bros. Steamship Co., Inc. (Lykes) requested that its Operating-Differential Subsidy Agreement (ODSA), Contract MA/MSB–451 be amended.

Lykes is currently providing liner container service on Trade Route 31/2 between U.S. Atlantic and West Coast of South America (Line A). That service includes calls in the Republic of Panama, but Lykes' subsidy contract stipulates that it may not operate with subsidy between U.S. Atlantic ports south of Jacksonville, Florida, and the Atlantic coast of Panama, including Cristobal. This stipulation limits Lykes' Panamanian operations to the port of Balboa, which is located on the Pacific coast of Panama.

Lykes claims that until recently, this has not been a significant operational or competitive impediment in serving Panama, but the port facilities at Balboa have been deteriorating rapidly, thereby calling into question Lykes' ability to continue this service. At the present time, Lykes states that it is the only regular user of the Balboa facility.

In view of the deteriorating port conditions at Balboa and the general cargo flows to and from Panama, Lykes requests an amendment to ODSA Contract MA/MSB–451 to permit it to operate with subsidy between U.S. Atlantic ports south of Jacksonville, Florida, and the Atlantic coast of Panama, including Cristobal. Lykes feels that this is in keeping with the purposes and policies of the Merchant Marine Act, 1936, as amended, since it will ensure that cargo to and from Panama will continue to move on U.S.-flag vessels.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such

request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on April 3, 1990. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Subsidy Board.
Dated: March 15, 1990.

James E. Saari,

Secretary.

[FR Doc. 90-6347 Filed 3-20-90; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Equipment Noncompliance Petition

This notice sets forth the reasons for the denial of a petition for a recall order submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Ms. Laura Polacheck of the Center for Auto Safety (CFAS) petitioned the agency on December 15, 1989, on behalf of both CFAS and Consumer Action (CA) of San Francisco to order Evenflo Juvenile Products Manufacturing Company to replace all 1.4 million Dyn-O-Mite child restraints for failure to remedy the defect covered under recall 89E-008 on April 19, 1989.

The Evenflo Dyn-O-Mite seat has been tested to the requirements of Federal Motor Vehicle Safety Standard 213 in five differnt compliance test programs. In FY 81 and FY 82, the seat was tested in position 2, at that time the only position intended by the manufacturer for use in motor vehicles. (Pursuant to section S5.5.2(i), manufacturers may impose adjustment restrictions on the use of their child seats as long as they include a label that clearly advises the consumer of those restrictions.) The seats tested in both years easily passed the dynamic performance requirements. In FY 84, after the manufacturer changed its adjustment restrictions to allow position 4 for in-vehicle use, NHTSA tested the seat in that position. The seat passed the dynamic tests with a 65 degree seat back angle, meeting requirement of section S5.1.4 of FMVSS 213.

That section provides that the angle between the back of the seat and the vertical shall not exceed 70 degrees during the dynamic sled test. The 70 degree requirement was established to minimize the possibility of ejection from the seat by an unbelted or improperly belted infant during an accident.

When NHTSA dynamically tested the Dyn-O-Mite seat in March 1988, the seat failed the 70 degree seat back angle requirement at an angle of 88.5 degrees. The agency immediately notified Evenflo of this failure by phone and sent a written request for certification data on April 11, 1988.

A series of engineering meetings were held with the manufacturer in an attempt to determine the cause of the difference in test results from previous years. After review of the manufacturer's certification data and quality control records and after considering whether there were changes in testing techniques or any other factors which could have affected test results, neither NHTSA nor the manufacturer was able to determine the cause of the differences in dynamic test results. Although the manufacturer cited the previous NHTSA test data, the proper retention of the infant dummy during the test and the fact that the seat would not exceed the 70 degree seatback angle if the shoulder belt was used in conjunction with the lap belt, NHTSA nonetheless insisted that a recall campaign be conducted since there was a clear failure to satisfy the requirements of the standard. The manufacturer then agreed to notify and recall, in accordance with the Vehicle Safety Act, on April 17, 1989.

Under the Safety Act, it is the responsibility of the manufacturer in the first instance to choose a corrective action in the event of a safety related defect or noncompliance with Federal standards. Here, Evenflo chose to issue a warning label to advise consumers that the seat should not be used in position 4. FMVSS 213 permits a manufacturer to exclude certain seat adjustment positions when certifying its product, as long as the restrictions are clearly indicated on the certification label. The new warning label, in effect, modified the existing certification label to exclude position 4 when the seat is used in a vehicle. NHTSA had no basis for rejecting the remedy selected by Evenflo since, as modified, the seat complied with FMVSS 213 in all authorized in-vehicle seating positions. Evenflo also changed the design of the seat for subsequent production to remove position 4.

Evenflo conducted its notification and recall campaign by issuing a press release, notifying distributors and dealership, placing advertising in various publications, and providing information to pediatricians for posting in waiting rooms. This notification program was identical to that used by all other child seat manufactures in recent history when conducting a recall campaign.

At the present time, 10 months after the commencement of the recall campaign, reports submitted to NHTSA by Evenflo indicate that owners of 1.9 percent of the child seats covered by the campaign have responded and have been sent warning labels. However, in NHTSA's opinion, in recall campaigns where the remedy is to provide a warning label, the number of seat owners who contact the manufacturer is likely a significant understatement of the effectiveness of the campaign. Many owners who see an advertisement or a notice in a pediatricians office advising them not to use a particular seating position will simply stop using that position, and will not take action to obtain a label that will tell them what they already know.

The Dyn-O-Mite seat was tested again in November 1988 and easily passed the dynamic sled test (with an angle of 57 degrees) when adjusted in position 3.

The investigative file relating to the noncompliance discovered in March of 1988 has been examined in detail, and it has been determined that normal investigative procedures were followed. Once the failure was detected, the manufacturer was notified promptly, and the NHTSA staff worked closely with the manufacturer's technical staff until a proper remedy was developed. The petition submitted by Ms. Polacheck on December 15, 1989, as well as the supplementary information submitted by the petitioner on December 24, 1989, have been carefully reviewed, and they contain no information which contradicts the conclusions and action arrived at during the investigation. In addition, the consumer complaint file maintained by the Office of Defects Investigation has been reviewed, and there was only one complaint on the Evenflo Dyn-O-Mite (received prior to the petition date). The complaint involved proper fit of the baby in the most upright position and was not related to any problem with noncompliance to the standard or the corrective action offered in the Evenflo recall campaign. There have been no compliants on the Dyn-O-Mite submitted since the petition date. The manufacturer's position on the noncompliance and the recall has also been carefully examined. This was

outlined in a letter dated January 29, 1990, from Evenflo's division counsel, Mr. Robert V. Potter, Jr., to Mr. Ben Cohen of the Subcommittee on Transportation and Hazardous Materials of the House Energy and Commerce Committee. Evenflo's version of the events following the noncompliance and leading up the notification and remedy action are entirely consistent with NHTSA's investigative history on this case.

The Office of Vehicle Safety Compliance staff has analyzed all available information on this case and has drawn the following conclusions.

1. The notification and remedy action taken by the Evenflo Juvenile Products Manufacturing Company relative to the Dyn-O-Mite child restraint was appropriate for the situation.

2. There is no basis for the agency to now order the company to replace all 1.4 million Dyn-O-Mite seats as petitioned by Ms. Polacheck.

Based on the above facts, the petition is denied.

Authority: Sec. 124, Pub. L. 93–492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: March 15, 1990.

George L. Reagle,

Associate Administrator for Enforcement.

[FR Doc. 90–6351 Filed 3–20–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated March 15, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0150.
Form Number: IRS Form 2848.
Type of Review: Revision.
Title: Power of Attorney and Declaration of Representative.
Description: Form 2848 is used to authorize someone to act for the respondent in tax matters. It grants all powers that the taxpayer has except signing a return and cashing refund checks. Data is used to identify representatives and to ensure that confidential information is not divulged to unauthorized persons.
Respondents: Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Responses/Recordkeeping: 800,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	Minutes
Recordkeeping	20
Learning about the law or the form	31
Preparing the form	14
Copying, assembling and sending the form to IRS	35

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 1,344,000 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–6408 Filed 3–20–90; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

March 15, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Savings Bonds Division

OMB Number: 1535–0001.
Form Number: SB–60 and SB–60A.
Type of Review: Extension.
Title: Payroll Savings Report.
Description: The total number of payroll savers is determined from Reports SB–60 and 60A completed by companies that offer sale of Savings Bonds throughout payroll savings plans. Total number of savers is used in budget formulation and measure of program effectiveness.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 12,955.
Estimated Burden Hours Per Response: 41 minutes.
Frequency of Response: Semi-annually.
Estimated Total Reporting Burden: 17,871 hours.
Clearance Officer: William L. McCarney (202) 634–5295, U.S. Savings Bonds Division, Room 219 Vanguard Building, 1111 20th Street NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–6409 Filed 3–20–90; 8:45 am]

BILLING CODE 4810–41–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: March 15, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Cleareance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

U.S. Customs Service

OMB Number: 1515–0116.
Form Number: None.
Type of Review: Extension.
Title: Marking Serially Numbered Substantial Holders or Containers.
Description: The marking is used to provide for duty-free entry of holders or containers which were manufactured in

federal register

Wednesday
March 21, 1990

Part II

Department of Education

Star Schools Program; Notice Inviting Applications for New Awards for FY 1990

DEPARTMENT OF EDUCATION

[CDFA No: 84.203]

Star Schools Program Notice Inviting Applications for New Awards for Fiscal Year 1990

Note to Applicants

This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of the Program

Provides demonstration grants to eligible telecommunications partnerships to develop, construct, and acquire telecommunications audio and visual facilities and equipment, to develop and acquire instructional programming, and to obtain technical assistance for the use of such facilities and instructional programming in order to encourage improved instruction in mathematics, science, and foreign languages as well as other subjects such as vocational education.

Deadline for Transmittal of Applications

May 16, 1990.

Deadline for Intergovernmental Review

June 29, 1990.

Available Funds

$14,813,000.

Estimated Range of Awards

Up to $10,000,000 per year.

Estimated Average Size of Awards

$3,700,000.

Estimated Number of Awards

3 to 5 awards.

Project Period

Up to 24 months. Funding of projects after the first year will be contingent upon availability of funds from future Star Schools appropriations and other factors set forth in 34 CFR 75.253(a).

Budget Period

12 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), and part 85 (Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

Authority and Description of the Program

The Star Schools Program is authorized by title IX of the Education for Economic Security Act, as amended by Public Law 100–297 (Act).

Eligible Parties

Telecommunications partnerships must be organized on a statewide or multistate basis to be eligible. Two types of partnerships are eligible:

(a) A public agency or corporation established for the purpose of developing and operating telecommunications networks to enhance educational opportunities provided by educational institutions, teacher training centers, and other entities. Any such agency or corporation must represent the interests of elementary and secondary schools eligible to participate in chapter 1 of title 1 of the Elementary and Secondary Education Act of 1965 (ESEA); or

(b) A partnership that includes three or more of the following, at least one of which shall be an agency described in (1) or (2):

(1) A local educational agency that has a significant number of elementary and secondary schools that are eligible for assistance under title 1 of the ESEA, or are operated by the Department of Interior for Indian children eligible under section 1005(d) of the ESEA.

(2) A State educational agency, or a State higher education agency.

(3) An institution of higher education.

(4) A teacher training center which provides preservice and inservice training and which receives Federal financial assistance or has been approved by a State agency.

(5) A public agency with experience or expertise in operating or planning a telecommunications network.

(6) A private organization with such experience.

(7) A public broadcasting entity with such experience.

Priorities

In accordance with 34 CFR 75.105(c)(2)(ii), the Secretary will select an application that meets one or more of the following competitive priorities over an application of comparable merit that meets fewer or none of the priorities. Priority will be given to applications that demonstrate that:

(a) A concentration and quality of mathematics, science, and foreign language resources will, by their distribution through the eligible telecommunications partnership, offer significant new educational opportunity to network participants, particularly to traditionally underserved populations and areas with scarce resources and limited access to courses in mathematics, science, and foreign languages.

(b) The eligible telecommunications partnership has secured the direct cooperation and involvement of public and private educational institutions, State and local government, and industry in planning the network.

(c) The eligible telecommunications partnership will serve the broadest range of institutions, including public and private elementary and secondary schools, particularly schools having significant numbers of children counted for the purpose of chapter 1 of title 1 of the ESEA, programs providing instruction outside of the school setting, institutions of higher education, teacher training centers, research institutes, and private industry.

(d) A significant number of educational institutions have agreed to participate in the use of the telecommunications system for which assistance is sought.

(e) The eligible telecommunications partnership will have substantial academic and teaching capabilities including the capability of training, retraining, and inservice upgrading of teaching skills.

(f) The eligible telecommunications partnership will serve a multistate area.

(g) The eligible telecommunications partnership will, in providing services with assistance sought under this Act, meet the needs of groups of individuals traditionally excluded from careers in mathematics and science because of discrimination, inaccessibility, or economically disadvantaged backgrounds.

Geographic Distribution

The Secretary assures an equitable geographic distribution of grants. The least served areas of the nation under the first round of grants were the Northwest and the Northeast. The Secretary will give preference to these geographic areas if applications receive comparable rating. However, this

competition is not limited to these least served areas.

Matching Funds

The Federal share for any grant may not exceed 75 percent. Applicants must provide at least 25 percent matching on a cash or in-kind basis. Determination as to which costs may be counted toward the matching requirement will be made in accordance with 34 CFR part 74, subpart G (Cost Sharing or Matching) or 34 CFR 80.24, depending on the type of institution or agency. All resources must be used to supplement and not supplant resources otherwise available for the purposes of ESEA. The Secretary will consider requests to reduce or waive matching requirements upon a showing of financial hardship.

Budget Requirement

The Secretary is required by the Act to award not less than 25 percent of the funds appropriated for instructional programming, and not less than 50 percent for facilities, equipment, teacher training or retraining, technical assistance, or programming for local educational agencies under chapter 1 of title 1 of ESEA. Applicants are requested to provide a separate detailed budget for activities associated with each of these two areas. See Special Budget Requirements following Budget Information and Instructions (part II of the appendix to this application).

Definitions

The following definitions apply to the terms used in this notice:

"Educational institution" means an institution of higher education, a local educational agency, or a State educational agency.

"Institution of higher education" has the same meaning as given that term under section 1201(a) of the Higher Education Act of 1965, as amended.

"Instructional programming" means courses of instruction for students and training courses for teachers, and materials for use in such instruction and training which have been prepared in audio and visual form on tape, disc, film or live and presented by means of telecommunications devices.

"Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools.

"Local educational agency" includes any other public institution or agency having administrative control and direction of a public elementary or secondary school.

"Public broadcasting entity" has the same meaning given that term in section 397 of the Communications Act of 1934.

"Secretary" means the Secretary of Education.

"State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

"State educational agency" means the office or agency primarily responsible for the State supervision of public elementary and secondary schools.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the Star Schools Program, Title IX of the Act, as amended by Public Law 100–297 (referred to in these selection criteria as the authorizing statute), including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the authorizing statute, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review Of Federal Programs:

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 15, 1989, pages 38342–38343.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.203, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which the applicant submits its completed application. Do not send application to the above address.

INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA # 84.203) Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center, Attention: (CFDA # 84.203) Room # 3633, Regional Office Building # 3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732–2495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

PART II: Budget Information and instructions.

PART III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions. (NOTE: ED Form GCS–009 is intended for the use of grantees and should not be transmitted to the Department.)

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

Certification Regarding Lobbying for Grants and Cooperative Agreements (ED 80–0008).

Note: This form is required if requesting, making, or entering into a grant or cooperative agreement for more than $100,000.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

Information Conference

An information conference for prospective applicants and interested parties will be held on Friday, March 30, 1990 in Room 326, 555 New Jersey Avenue, NW., Washington, DC from 1:00 p.m. until 4:00 p.m. Prospective applicants who are unable to attend are invited to contact Frank B. Withrow (see address below) for a written summary of questions asked at the conference and answers provided.

For Further Information Contact

Frank B. Withrow, U.S. Department of Education, Office of Educational Research and Improvement, 555 New

Jersey Ave. NW., Washington, DC 20208–5644. Phone 202–357–6200.

Authority: 20 U.S.C. 4081–4086.

Dated: March 12, 1990.

Christopher T. Cross,

Assistant Secretary, Educational Research and Improvement.

BILLING CODE 4000–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 84.203

TITLE: STAR SCHOOLS PROGRAM

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4000-01-C

Instructions of the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primay organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - —"New" means a new assistance award.
   - —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanaiton on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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PART II

BUDGET INFORMATION

Section A - Budget Catagories For Program Years FY 90 FY91

1..	Salary and wages	$
2.	Fringe Benefits	
3.	Travel	
4.	Equipment	
5.	Supplies	
6.	Contractual Services	
7.	Other (itemize)	
8.	Total Direct Costs (lines 1 to 7)	
9.	Total Indirect Costs	
10,	Total Project Costs (lines 8 + 9)	

Section B = Cost Sharing

1.	Program Income	$
2.	Non-Federal Funds (State, Local, Private)	
3.	In-Kind Contributions	

Section C - Estimate of Funding Needs

1.	First Fiscal Year (FY 90)	$
2.	Second Fiscal Year (FY 91)	

BILLING CODE 6000-41-C

BILLING CODE 4000-01-C

Instructions for Part II—Budget Data

Section A—Detailed Budget

1. *Salaries and Wages:* Show salary and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in line 6.

2. *Fringe benefits:* Include contributions to Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits applicable to direct salaries and wages are treated as part of the indirect costs.

3. *Travel:* Indicate the amount requested for travel for employees.

4. *Equipment:* Indicate the costs of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of $500 or more per unit.

5. *Supplies:* Include the cost of consumable supplies and materials to be used in the project. These should be items which cost less than $500 per unit with a useful life of less than two years.

6. *Contractual Services:* Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (2) subgrants.

7. *Other:* Indicate all direct costs not clearly covered by lines 1–6.

8. *Total Direct Costs:* Show totals for lines 1–7.

9. *Total Indirect Costs:* Indicate the amount of indirect costs to be charged to the program or project. Explain under the budget narrative the indirect cost rate and base.

10. *Total Project Costs:* Total lines 8 and 9.

Section B—Cost Sharing

1. *Project Income:* Enter the dollar amount of estimated project income that will be generated by the Federal funds if authorized by the Department of Education.

2. *Non-Federal Funds:* Enter the dollar amount of funds to be provided from other sources, e.g. State, local governments, private organizations, etc.

3. *In-Kind Contributions:* Enter the dollar value of donated services and goods to be used to support the program or project.

Section C—Estimate of Funding Needs

1. Enter the amount of Federal funds needed for the first year of the program or project.

2. Enter the amount of Federal funds needed to complete a multi-year program or project in its second year.

Section D—Budget Narrative

Attach a budget narrative that explains—

(a) The amounts for individual direct cost categories that may appear to be out of the ordinary;

(b) The indirect costs rate and base; and

(c) The costs or contributions that are proposed for meeting the matching requirements.

Special Budget Requirement

Provide a separate detailed budget for activities associated with each of the two areas described below, where applicable. Each such budget should employ the format set forth in part II, as described above, that is required for the total budget:

(a) Instructional programming.

Note: while individual applicants are not required to propose activities in this area, the Act requires that not less than 25% of the total funds appropriated be awarded by the Secretary to support such activities.

(b) Facilities, equipment, teacher training or retraining, technical assistance or programming for local educational agencies which are eligible to receive assistance under chapter 1 of the ESEA.

Note: while individual applicants are not required to propose activities in this area, the Act requires that not less than 50% of the funds appropriated are to be awarded by the Secretary to support such activities.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the priorities, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract that is a summary of the proposed project.

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this notice.

3. Describe how the proposed project will meet any or all of the several priorities listed in this notice.

4. Describe the telecommunications facilities and equipment and technical assistance for which assistance is sought which may include: (a) The design, development, construction, and acquisition of State or multistate educational telecommunications networks and technology resource centers; (b) microwave, fiber optics, cable, and satellite transmission equipment; (c) reception facilities; (d) satellite time; (e) production facilities; (f) other telecommunications equipment capable of serving a wide geographic area; (g) the provision of training services to elementary and secondary school teachers (particularly teachers in schools receiving assistance under chapter 1 of the ESEA in using the facilities and equipment for which assistance is sought); and (h) the development of educational programming for use on a telecommunications network.

5. In the case of an application for assistance for instructional programming, describe the types of programming which will be developed to enhance instruction and training.

6. Describe activities that will demonstrate that the telecommunications partnership has engaged in sufficient survey and analysis of the area to be served to ensure that the services offered by the telecommunications partnership will increase the availability of courses of instruction in mathematics, science, and foreign languages, as well as other subjects to be offered.

7. Describe the teacher training policies to be implemented to ensure the effective use of telecommunications facilities and equipment for which assistance is sought.

8. Describe how the applicant will ensure that the financial interest of the United States in the telecommunications facilities and equipment will be protected for the useful life of such facilities and equipment. The interest of the United States in facilities and equipment is described in 34 CFR part 74, subpart O and 34 CFR 80.32.

9. Describe how the applicant will ensure that a significant portion of the facilities and programming for which assistance is sought will be made available to elementary and secondary schools of local educational agencies which have a high percentage of children counted for the purposes of chapter 1 of the ESEA.

10. Describe the manner in which traditionally underserved students will participate in the benefits of the telecommunications facilities, equipment, technical assistance, and programming provided by the proposed project.

11. Describe how the applicant will ensure that grant funds are used to supplement and not supplant funds otherwise available for purposes of the Star Schools Program as stated in the "Purpose of the Program" section of this notice.

12. Include other pertinent information that may assist the Secretary in reviewing the application, including the scope and degree of services to be provided, who will render the telecommunications service, when it will be delivered, and the role of the interactive components. Justifications and specifications for equipment purchases should be clearly related to programs to be delivered as well as to existing facilities and resources. Applicants that apply for the production of instructional programming should be specific in the scope and sequence of the content and production tasks to produce proposed courses of instruction. The application should enable reviewers to make clear linkages between the proposed budget and the specific tasks, operations, and service delivery.

Please limit the Application Narrative to no more than 45 double-spaced, typed 8½" × 11" pages (on one side only). Any additional written supporting materials should be on 8½" × 11" paper. Any videotape should be on VHS ½" tape and last no more than 12 minutes. No additional supporting material is required by the Secretary.

Attachments to the narrative must include copies of documents associated with the applicant partnerships, descriptions of partnership members, and agreements and letters of commitment associated with the assurances and priorities.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 120 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including

suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850–0623, Washington, DC 20503.

(Information collection approved under OMB control number 1850–0623. Expiration date: 3–19–1991.)

BILLING CODE 4000–01–M

Assurances:

The applicant hereby assures and certifies that it will comply with the following special provisions of the Act:

(1) The financial interest of the United States in the telecommunications facilities and equipment will be protected for the useful life of such telecommunications facilities and equipment.

(2) A significant portion of the facilities, equipment, technical assistance, and programming for which assistance is sought will be made available to elementary and secondary schools of local educational agencies which have a high percentage of children counted for purposes of Chapter 1 of the ESEA.

(3) All grant funds awarded will be used to supplement and not supplant funds otherwise available for the purposes of this program.

(4) On a schedule to be prescribed by the Secretary, a report shall be made, listing and describing all available courses of instruction and materials to be offered by educational institutions and teacher training centers which will be transmitted over satellite, specifying the satellite on which each transmission will occur, and the time of the transmission.

Date_____

Authorized Representative_____

Title_____

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse, (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature | Date

ED Form GCS-008, (REV.12/88)

BILLING CODE 4000-01-C

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

BILLING CODE 4000-01-M

Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED Form GCS-009, (REV. 12/88)

BILLING CODE 4000-01-C

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

BILLING CODE 4000-01-M

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and
(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

ED 80-0004

Certification Regarding Lobbying For Grants and Cooperative Agreements

Submission of this certification is required by Section 1352, Title 31 of the U.S. Code and is a prerequisite for making or entering into a grant or cooperative agreement over $100,000.

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact on which the Department of Education relied when it made or entered into this grant or cooperative agreement. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Organization Name	PR/Award (or Application) Number or Project Name

Name and Title of Authorized Representative	

Signature	Date

ED 80-0008 12/89

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known*:
Congressional District, *if known*:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
Congressional District, *if known*:

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, *if applicable*: _____

8. Federal Action Number, *if known*:

9. Award Amount, *if known*:
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply)*:
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply)*:
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

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Standard Form - LLL

BILLING CODE 4000-01-C

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF–LLL–A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known, Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF–LLL–A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Note.—Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, D.C. 20503.

BILLING CODE 4000–01–M

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

[FR Doc. 90-6305 Filed 3-20-90; 8:45 am]
BILLING CODE 4000-01-C

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Wednesday, March 21, 1990

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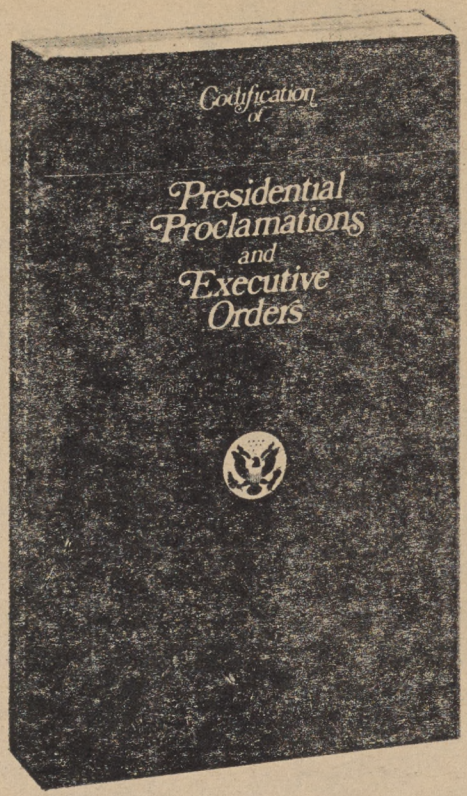
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